US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: December 18, 2018
Comment Deadline: January 17, 2019
Corps Action ID Number: SAW-2018-01915

The Wilmington District, Corps of Engineers (Corps) received an application from Duke Energy seeking Department of the Army authorization to discharge dredged or fill material into wetlands and convert forested wetlands to herbaceous wetlands within a maintained utility easement in Hydrologic Unit Code (HUC) 03020201 (Neuse River Basin). These activities are related to developing infrastructure necessary for the excavation and beneficial reuse of coal combustion residual (CCR) materials from areas of coal ash fill at the H.F. Lee Energy Complex in Wayne County, North Carolina.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at
http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx

Applicant:
Mr. Steve Cahoon
Duke Energy
411 Fayetteville Street
Raleigh, NC 27601

AGENT:
Mr. Richard Harmon
Wood Environment and Infrastructure Solutions, Inc.
4021 Stirrup Creek Drive, Suite 100
Durham, NC 27703

Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

☒ Section 404 of the Clean Water Act (33 U.S.C. 1344)

☒ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

Location

Location Description:

Project Area (acres): 45 acres Nearest Town: Goldsboro
Nearest Waterway: Neuse River River Basin: Neuse
Latitude and Longitude: 35.374157 N, -78.093265 W

Existing Site Conditions

The 920-MW H.F. Lee Energy Complex comprises a natural gas-fired combined cycle plant and four Wayne County oil-fueled combustion turbine units. The plant property comprises the following features: power generation plant and associated operations buildings, trailers, sheds, and parking areas; electrical power transmission line corridors; paved and unpaved roadways; materials and equipment yard; cooling lake, also known as Quaker Neck Lake; three inactive ash basins; the 1982 active ash basin, to be abandoned; maintained areas, grassed and/or landscaped; natural vegetated areas, including forested uplands and wetlands, as well as shrub and brushland; stream features; and a manmade Discharge Canal. Forested areas abut portions of the property boundaries. The Neuse River passes through the property from west to east, and borders the eastern-southeastern property boundary. Surrounding land use includes low-density residential and agriculture (improved pasture and row crops). The plant property is accessed from the north by Old Smithfield Road or from the south by Black Jack Church Road.

The H.F. Lee Energy Complex is in the Inner Coastal Plain Physiographic Region of North Carolina, and generally lies within the Southeastern Floodplains and Low Terraces Level IV Ecoregion of North Carolina. With respect to geologic formations, the plant property is in the Pre-Mesozoic Basement (sedimentary rock), which dates from the Cretaceous Period and Mesozoic Era, and primarily encompasses the Cape Fear Formation (sandstone and sandy mudstone) and the Black Creek Formation (lignitic sand and clay). The Black Creek Formation is limited to the eastern half of the property. Felsic metavolcanic rock (Eastern Slate Belt) also occurs within the central portion of the property. Topography across the plant property ranges from approximately 75 to 120 feet above mean sea level.

The proposed project areas within the H.F. Lee Energy Complex are displayed on the attached **Figures 1-7** and consist of the following:

- Haul Road Project Area (10.5 acres)
- Haul Road Extension Project Area (1.5 acres)
- Neuse River Water Intake & Powerline Crossing (6.2 acres)
- Future Haul Road Extension Project Area (6.9 acres)
- STAR Unit (19.45 acres)

The attached **Figure 3. NRCS Soils Map** depicts the soil types (map units) occurring within the proposed project areas of the H.F. Lee Energy Complex. The soil types are presented in Table 1 below. Among the twelve soil types that occur within the project area (excluding water classification), nine are listed as hydric map units. The non-hydric soil types are Goldsboro loamy sand (Go), Norfolk loamy sand, 0 to 2 percent slopes (NoA), and Ruston loamy sand, 0 to 2 percent slopes (RuA).

Table 1. Soil Types Occurring within the Project Area

Soil Type	Map Unit Symbol	Hydric / Non-hydric
Chewacla loam	Ch	Hydric
Coxville loam	Co	Hydric
Goldsboro loamy sand	Go	Non-hydric
Johns sandy loam	Jo	Hydric
Kalmia loamy sand, 2 to 6 percent slopes	KaB	Hydric
Kinston loam	Kn	Hydric
Lakeland sand	La	Hydric
Leaf loam	Le	Hydric
Myatt very fine sandy loam	My	Hydric
Norfolk loamy sand, 0 to 2 percent slopes	NoA	Non-hydric
Ruston loamy sand, 0 to 2 percent slopes	RuA	Non-hydric
Ruston loamy sand, 2 to 6 percent slopes, eroded	RyB2	Hydric
Water	W	---

The dominant, forested, terrestrial communities on the H.F. Lee Energy Complex are upland hardwood forest and mixed pine-hardwood upland forest. Forested wetland communities include bottomland hardwood forest, riverine swamp forest, headwater forest, hardwood flat, and basin wetland. Shrub and brushland and herbaceous areas also occur on the property, which encompass disturbed/altered land within the plant property, particularly electrical power transmission line corridors. Open areas include maintained areas, which are typically grassed and/or landscaped. Information on the terrestrial communities and species composition within the Haul Road and Haul Road Extension project areas is discussed below.

Wood Environment & Infrastructure Solutions, Inc. (Wood), consultant for the applicant, conducted a jurisdictional delineation of the H.F. Lee Energy Complex in 2014 and 2015 (see **Figure 4. Jurisdictional Waters**). The jurisdictional boundaries were field verified by the Corps on April 1 and 21, 2015; and March 22, July 20, and September 20, 2016. All streams on the site carry the North Carolina Division of Water Resources (NCDWR) best usage classification of "WS-IV" and "NSW." The classification WS-IV refers to

those waters used as sources of water supply for drinking, culinary, or food processing purposes where a WS-I, II or III classification is not feasible. These waters are also protected for Class C uses. WS-IV waters are generally in moderately to highly developed watersheds or Protected Areas. The classification NSW is a supplemental classification intended for waters needing additional nutrient management due to being subject to excessive growth of microscopic or macroscopic vegetation. There are no designated Outstanding Resource Waters (ORW), High Quality Waters (HQW), Water Supply I (WS-I), or Water Supply (WS-II) waters within 1.0 mile of the project area. The wetlands within the project area consist of Bottomland Hardwood Forest, Basin, Hardwood Flat, and Headwater Forest wetland types, according to the North Carolina Wetland Assessment Method (NCWAM).

Additional details regarding the existing site conditions can be found in Section 5.0 of the "H.F. Lee Energy Complex Section 404/401 Individual Permit H.F. Lee Energy Complex Haul Road and Haul Road Extension Permit Support" document, accessible on the District Website at https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/.

Applicant's Stated Purpose

The purpose of the proposed project, as stated by the applicant is the following:

The purpose of the Project (proposed action) is to allow for the transportation of coal ash from the existing ash basins to the ash processing facility to be constructed adjacent to the gas-fired power station and facilitate future ash basin closure activities within the H.F. Lee Energy Complex.

Project Description

On August 20, 2014, the North Carolina General Assembly passed S 729, the Coal Ash Management Act of 2014 (CAMA), requiring Duke Energy to phase out wet coal ash handling. Under CAMA, all coal ash in the state will be covered by North Carolina's solid waste laws. The processing of coal ash from within the existing basins would be performed to ensure compliance with the applicable sections of state law and facilitate future ash basin closure activities at the H.F. Lee Energy Complex. Specifically, the coal ash would be excavated from the existing ash basins and transported to the proposed ash processing facility for processing to make it useable as a partial replacement for cement in ready-mixed concrete. The processing facility is scheduled to be operational by the end of 2020. The necessary haul roads would need to be constructed in advance of the processing facility becoming operational to meet the regulatory requirements.

The primary driver for the schedule and sequence of the project components is to meet CAMA requirements to divert concentrated stormwater flow from the ash basin on or before December 31, 2019, specifically:

Per General Statute §130A-309.208(d), on or after December 31, 2019, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are actively producing coal combustion residuals is prohibited.

Haul Roads:

The proposed haul road would consist of three separate road construction/improvement projects. The first haul road section is called the "Haul Road Project Area" and consists of the construction of a two-lane asphalt road extending from an existing road crossing over the Neuse River south and south west approximately one mile to its terminus at the proposed ash processing facility (shown as STAR Unit on attached figures). The second haul road section is called "Haul Road Extension Project Area" and would consists improvements to the existing road leading east from the northern terminus of the "Haul Road Project Area" to the 1982 Active Basin located north of the Neuse River. The 1982 Ash Basin Haul Road improvements would include a wheel wash station and a truck scale station. The third haul road section is called the "Future Haul Road Extension Project Area" and consist of a new haul road from the northern terminus of the "Haul Road Project Area" west to access Inactive Ash Basins 1 and 2.

The proposed haul road projects would result in the permanent discharge of fill material into 0.583 acre of wetland (Wetland E) associated with the construction activities proposed with the "Haul Road Project Area."

Note that improvements to the existing bridge over the Neuse River and the construction of a new bridge over the discharge canal were previously permitted under a Nationwide Permit (NWP) 18 (Action ID: SAW-2018-02093 issued November 14, 2018). These activities were considered as single and complete projects with independent utility. The bridge projects were required because the weight ratings of the Neuse River bridge and the existing discharge canal bridge had decreased which significantly restricted the load weights that could travel across the bridges. Further, the bridge projects were required to provide access for equipment during emergency situations and for routine equipment maintenance. As per the applicant, the Neuse River bridge improvements and construction of the new discharge canal bridge would occur regardless of the proposed coal ash activities and haul road construction.

Ash Processing Facility (STAR Unit):

The ash processing facility would be comprised of the proposed STAR® (Staged Turbulent Air Reactor) Technology, which is a patented thermal beneficiation process to transform coal ash from surface impoundments or ponds into a high-quality, sustainable product for the concrete industry. The STAR® Process can also remove all the carbon in fly ash so that the purified mineral material can be used as raw feed material in other products and processes that historically have been unable to use fly ash as raw feed material because of the deleterious effect of residual carbon in fly ash. No impacts to waters of the U.S. are proposed with this activity.

Overhead Electric Utility Line (Powerline):

Duke Energy proposes to construct a new powerline across the Neuse River. The proposed powerline would provide power to support the ash basin excavation project. Pumps, a wheel wash station and a water hose are also proposed for this project. The proposed powerline would consists of a perpendicular crossing of the Neuse River east of the existing Neuse River bridge. The lowest portion of the proposed powerline would be 42.3 feet above the ordinary high water mark (OHWM) level of the Neuse River. The powerline construction includes a 30-foot utility easement that would be maintained in an herbaceous state. Construction of the powerline right-of-way would result in the temporary discharge of fill material into 0.012 acre of wetlands (Wetland BB) and the permanent conversion of 0.039 acre of forested wetland to herbaceous wetland within the utility easement.

The proposed haul road, powerline, and ash processing facility construction projects are all related to efforts by Duke Energy to decommission existing coal ash ponds at the H.F. Lee Energy Complex in order to comply with North Carolina's Coal Ash Management Act of 2014.

Additional details regarding the applicant's proposed project description can be found in Section 3.0 and 6.0 of the "H.F. Lee Energy Complex Section 404/401 Individual Permit H.F. Lee Energy Complex Haul Road and Haul Road Extension Permit Support" document, accessible on the District Website at https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

Appropriate and practicable steps to minimize potential adverse impacts to wetlands and streams were considered through analysis of the development concepts during project planning for the ash haul route at H.F. Lee Energy Complex. The complete avoidance of waters of the U.S. is not practicable for the necessary construction and improvements to the existing onsite road. The haul road construction is necessary to allow for the ultimate excavation and disposal of CCR materials at the H.F. Lee Energy Complex.

All development projects in North Carolina that disturb an acre or greater of land require an approved Erosion & Sediment Control (E&SC) Plan. E&SC Plans must be produced in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual, dated May 2013. This manual includes best management practices (BMPs) for reducing erosion and sedimentation during construction. This requires proper site preparation techniques, surface stabilization, runoff control measures, diffuse flow through the riparian buffer, inlet and outlet protection, and stream protection. Wayne County relies upon the NCDEQ Raleigh Regional Office to oversee and enforce their

federal soil and erosion control requirements for new construction. The ash haul route project at the H.F. Lee Energy Complex Plant would be completed in accordance with the NCDEQ Raleigh Regional Office water quality rules and regulations.

The proposed STAR® Technology located at the terminus of the haul has been designed to be constructed entirely in uplands therefore completely avoiding impacts to jurisdictional wetlands and/or and streams.

The proposed haul road design to access the inactive ash basins is in the preliminary phase and is currently a conceptual design. No impacts to jurisdictional wetlands and/or streams in the vicinity of the inactive ash basins are anticipated for the inactive basins haul road.

The proposed powerline construction includes a 30-foot right-of-way that would be maintained in an herbaceous state. Construction of the powerline right-of-way would result in 0.039 acre of a forested wetland converted to an herbaceous wetland. No permanent impacts resulting from fill placed in wetland areas is proposed.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

- A mitigation ratio of 1:1 was applied for riparian and non-riparian wetlands with a NC WAM overall rating of low or medium.
- A mitigation ratio of 2:1 was applied for riparian and non-riparian wetlands with a NC WAM overall rating of high.

Haul Roads:

Impacts to 0.583 acre of wetlands would be compensated at a 2:1 mitigation to impact ratio.

Additional details regarding the applicant's compensatory mitigation plan can be found in Section 7.0 of the "H.F. Lee Energy Complex Section 404/401 Individual Permit H.F. Lee Energy Complex Haul Road and Haul Road Extension Permit Support" document, accessible on the District Website at https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/.

Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project would not effect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

Cultural Resources

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

☐ Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.

☒ No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).

☐ Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).

☐ Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).

☐ Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).

☒ The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-indentified permit area.

Endangered Species

Pursuant to the Endangered Species Act of 1973, the Corps reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information:

☐ The Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.

☒ The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat.

☐ The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

☐ The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

☐ The Corps has initiated consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

☒ The Corps reviewed this project in accordance with (IAW) the NLEB Standard Local Operating Procedures for Endangered Species (SLOPES) between the USACE, Wilmington District, and the Asheville and Raleigh U.S. Fish and Wildlife Service (Service) Offices, and determined that the action area for this project is located outside of the highlighted areas/red 12-digit HUCs and activities in the action area do not require prohibited incidental take; as such, this project meets the criteria for the 4(d) rule and any associated take is exempted/excepted.

☐ The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. Consultation has been completed for this type of activity and the effects of the proposed activity have been evaluated and/or authorized by the National Marine Fisheries Service (NMFS) in the South Atlantic Regional Biological Opinion or its associated documents, including 7(a)(2) & 7(d) analyses and Critical Habitat assessments. A copy of this public notice will be sent to the NMFS.

☐ The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

Other Required Authorizations

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

North Carolina Division of Water Resources (NCDWR): The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by January 7, 2019 to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(Physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

North Carolina Division of Coastal Management (NCDCM):

☐ The application did not include a certification that the proposed work complies with and would be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Program. Pursuant to 33 CFR 325.2 (b)(2) the Corps cannot issue a Department of Army (DA) permit for the proposed work until the applicant submits such a certification to the Corps and the NCDCM, and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification. As the application did not include the consistency certification, the Corpswill request, upon receipt,, concurrence or objection from the NCDCM.

☒ Based upon all available information, the Corps determines that this application for a Department of Army (DA) permit does not involve an activity which would affect the coastal zone, which is defined by the Coastal Zone Management (CZM) Act (16 U.S.C. § 1453).

Evaluation

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

Commenting Information

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing will be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, January 17, 2019. Comments should be submitted to Samantha Dailey,Raleigh Regulatory Field Office,
3331 Heritage Trade Drive, Suite 105 , Wake Forest, North Carolina 27587, at (919) 554-4884 extension 22.