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6 RECORDED INTERVIEW
7 OF
8 KAREN HIGGINS
9 Friday, October 4, 2019
10 11:28 a.m.
11
12 In Re: NC DEQ Interviews
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1 A P P E A R A N C E

2

3 KAREN HIGGINS

4 Interviewee

5

6 KEVIN GREENE

7 Eagle Intel Services LLC

8

9 THOMAS BEERS

10 Eagle Intel Services LLC

11

12 BILL LANE

13 North Carolina Department of Environmental Quality

14

15 DREW HARGROVE

16 North Carolina Department of Environmental Quality

17

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1 P R O C E E D I N G S

2 MR. GREENE: I'm going to turn the recorders

3 on.

4 MS. HIGGINS: Sorry.

5 MR. Lane: No, I'm just -- wherever you want.

6 On the floor next to you.

7 MS. HIGGINS: That takes care of it.

8 MR. GREENE: Yeah, exactly. Okay. All right.

9 Today's date is October 4, 2019. My name is Kevin

10 Greene. My company is Eagle Intel Services. And we've

11 been contracted by the North Carolina General Assembly

12 Subcommittee on the ACP for the purpose of gathering

13 and reporting information back to the subcommittee. We

14 are recording this interview. I would like to have

15 each person present to state their names, their

16 position and that you acknowledge that we are recording

17 this interview. I'll start with Tom.

18 MR. BEERS: My name is Tom Beers. I'm a

19 investigator with Eagle Intel Services and I understand

20 this is being recorded.

21 MR. LANE: Bill Lane from DEQ. I understand

22 this is being recorded.

23 MS. HIGGINS: Karen Higgins, division of Water

24 Resources. I understand this is being recorded.

25 MR. HARGROVE: Drew Hargrove, DEQ. I

1 understand this is being recorded.
2 MR. GREENE: Thank you. And I believe Mr.
3 Lane, would you like to add something?
4 MR. LANE: Yes. So this interview is
5 beginning at 11:30 -- 11:31. I will -- based upon
6 agreement of the parties, it will last no longer than
7 an hour, so we will conclude no later than 12:31. Also
8 by agreement of the parties the questions that will be
9 presented today will deal with Ms. Higgins' official
10 duties related to the 401 water quality certification
11 for the Atlantic Coast Pipeline. There won't be any
12 questions related to her other projects or to anything
13 in her personal life. Thank you.
14 MR. GREENE: Thank you. And thank you for
15 being here. You've already stated your name. Would
16 just -- would you give just a brief history of your
17 employment within the department or within government?
18 MS. HIGGINS: Sure. So as of August 2019 I
19 became the water planning section chief within the
20 division of Water Resources. Prior to that I was the
21 401 & Buffer Permitting Branch supervisor. I took that
22 position in I think May of 2011. Prior to that I was a
23 training coordinator within the division and an
24 environmental specialist with the division. I started
25 working for the state in August of 2005.

1 MR. GREENE: So the position that you were in
2 beginning of 2011 through 2019 was -- what was that
3 position one more time?
4 MS. HIGGINS: My current position?
5 MR. GREENE: Is it -- that's the current
6 position?
7 MS. HIGGINS: My current position, yes. So I
8 changed positions in August of 2019 and I'm now the
9 Water Planning Section chief.
10 MR. GREENE: Okay. All right. During 2017-
11 2018, during the ACP permitting process, what was your
12 position at that time?
13 MS. HIGGINS: My position at the time was the
14 401 & Buffer Permitting Branch supervisor.
15 MR. GREENE: And who did you supervise?
16 MS. HIGGINS: So I have eight staff. Do you
17 want me to…
18 MR. GREENE: Who was involved in the ACP
19 permitting process that you supervised?
20 MS. HIGGINS: So the primary staff that I
21 supervised was Jennifer Burdette. She was the
22 environmental specialist.
23 MR. GREENE: Okay. And then the authorities
24 above you, what was the chain of command above you?
25 MS. HIGGINS: So when I was 401 branch

1 supervisor, my direct supervisor is Jeff Poupart. He
2 is the section chief.
3 MR. GREENE: Okay. And above him?
4 MS. HIGGINS: Above him is Jim Gregson, the
5 deputy director.
6 MR. GREENE: Was he deputy director in 2017?
7 MS. HIGGINS: I don't remember.
8 MR. GREENE: Okay. And can you explain your
9 involvement with specifically the ACP, Atlantic Coast
10 Pipeline permitting process?
11 MS. HIGGINS: So we were -- we received an
12 application requesting issuance of a 401 water quality
13 certification and buffer authorization. And those
14 tasks on that application was reviewed by my staff and
15 myself to recommend a decision.
16 MR. GREENE: Okay. Do you recall when you
17 received that application?
18 MS. HIGGINS: It was in May of -- I forget the
19 year, but it was in May of…
20 MR. GREENE: 2017. It really kind of reminds
21 of that, 2017. Did you have -- prior to receiving the
22 application, did you have contact or discussions with
23 the applicant?
24 MS. HIGGINS: I did not have any discussions
25 with the applicant prior to May.

1 MR. GREENE: Are you aware that other people
2 within that division had conversations with the
3 applicant?
4 MS. HIGGINS: Are you asking about --
5 MR. GREENE: Prior?
6 MS. HIGGINS: -- my division?
7 MR. GREENE: Yes.
8 MS. HIGGINS: Yes.
9 MR. GREENE: Okay. And what were those
10 regarding?
11 MS. HIGGINS: That was regarding the 401
12 application and buffer process.
13 MR. GREENE: Okay. Do you know when that
14 began, when those conversations began or that process
15 began?
16 MS. HIGGINS: I don't have a date.
17 MR. GREENE: All right. And what would be
18 your role or involvement in the process, the 401
19 permitting process specifically with the ACP?
20 MS. HIGGINS: So my job is to support my
21 staff, help respond to questions that they may have.
22 If we sent requests for additional information, I may
23 be the one asked to sign that letter and inform
24 management if there are questions that require their
25 decision.

1 MR. GREENE: Okay. And do you recall how many
2 requests for additional information they received, the
3 applicant received or that you requested?
4 MS. HIGGINS: Without looking at it, I don't
5 remember the specific number.
6 MR. GREENE: Okay. We'll get into that in
7 just a few minutes. At that particular time, were you
8 dealing with other 401 applicants outside of the ACP?
9 MS. HIGGINS: Yes.
10 MR. GREENE: Do you have any idea how many?
11 MS. HIGGINS: No.
12 MR. GREENE: Would it be tens, hundreds?
13 MS. HIGGINS: I mean, without reviewing our
14 database, I don't want to speculate.
15 MR. GREENE: Okay. Were there any projects
16 similar to the ACP that you were having to deal with?
17 MS. HIGGINS: Can you clarify?
18 MR. GREENE: Yes.
19 MS. HIGGINS: Similar in what way?
20 MR. GREENE: Okay. Let's break it down into
21 how would you categorize the ACP 401 permitting process
22 compared to every other ones you receive within your
23 division?
24 MS. HIGGINS: It was a large project to
25 review.

1 MR. GREENE: Did you have other large
2 projects?
3 MS. HIGGINS: Again, I mean, I don't remember
4 every project we had in-house to review. We did --
5 have any -- did we have any at the exact scale of ACP,
6 no.
7 MR. GREENE: Okay. Had you ever worked on or
8 supervised individuals working on a permitting project
9 at the scale of the ACP?
10 MS. HIGGINS: Yes, I have worked on similarly
11 scaled projects.
12 MR. GREENE: Okay. And roughly how many?
13 MS. HIGGINS: It would be a guess, so I --
14 several. I couldn't really give a number.
15 MR. GREENE: Okay. Okay. Were those before
16 or after the ACP?
17 MS. HIGGINS: Again, I don't -- before, yes.
18 After, I'd have to review our files.
19 MR. GREENE: Okay. So you were experienced in
20 dealing with large projects such as the ACP prior to
21 the ACP permitting project?
22 MS. HIGGINS: Yes. Yes, I was.
23 MR. GREENE: Okay. And of those did the ACP
24 project permitting differ from any -- in any way the
25 procedures differ than those that you'd previously been

1 dealing with at the same magnitude?
2 MS. HIGGINS: They did not differ.
3 MR. GREENE: Okay. Did those projects receive
4 the same type of scrutiny as the ACP?
5 MS. HIGGINS: So I mean, I'm giving a broad
6 general answer without --
7 MR. GREENE: I understand.
8 MS. HIGGINS: -- getting into the details, but
9 we scrutinize every project thoroughly.
10 MR. GREENE: Okay. And what are some of the
11 factors that you consider in issuing a permit?
12 MS. HIGGINS: So the 401 rules spell out six
13 criteria that we have to evaluate to issue our
14 decision. So we follow those six criteria.
15 MR. GREENE: Okay. And for the ACP project,
16 out of those six criteria, were there any ones that you
17 had more difficulty, or it was I guess more difficult
18 to receive the information or to get the information
19 from the applicant?
20 MS. HIGGINS: Sorry, I'm just going through
21 the six to see. So I would say there were two factors
22 that were relatively straightforward to receive the
23 information from the applicant. The rest were not as
24 straightforward.
25 MR. GREENE: And what would you say the most

1 significant one was?
2 MS. HIGGINS: I don't think I could pick one
3 specifically.
4 MR. GREENE: Okay. What of those four factors
5 are we talking about -- well, name those four factors.
6 MS. HIGGINS: Oh, this is a test.
7 MR. GREENE: I'm sorry.
8 MS. HIGGINS: So I don't have the rules in
9 front of me.
10 MR. GREENE: What about cumulative impact?
11 MS. HIGGINS: So that -- the -- that was one
12 of the four. That is one of the criteria.
13 MR. GREENE: Okay. During the 401 processing,
14 was there anything out of the norm of how you proceeded
15 with the permitting process, how you would normally
16 proceed with the process?
17 MS. HIGGINS: There was nothing out of the
18 norm.
19 MR. GREENE: Okay. At any time were you asked
20 to have staff meetings on a regular basis?
21 MS. HIGGINS: With my -- is the question was I
22 asked to have meetings with my staff or with who do you
23 mean?
24 MR. GREENE: With other divisions coming
25 together, I'm assuming other divisions on a regular

1 basis?
2 MS. HIGGINS: Yes.
3 MR. GREENE: We have notes that there's
4 meetings on it seems like a weekly basis. Do you
5 recall that?
6 MS. HIGGINS: I do recall the weekly meetings,
7 yes.
8 MR. GREENE: Okay. And can you give us a
9 brief summary of what those entailed and who
10 participated?
11 MS. HIGGINS: So without having a list of
12 attendees, the -- my understanding the intent of those
13 meetings was to provide updates on our status of our
14 application review to management so they were aware of
15 what we were doing.
16 MR. GREENE: Okay. Was that a common practice
17 with the other large-scale applications that you'd
18 previously processed?
19 MS. HIGGINS: I did not have weekly meetings
20 with previous projects.
21 MR. GREENE: Okay. How often did you
22 communicate with the secretary's office regarding the
23 ACP project permitting process?
24 MS. HIGGINS: I mean, I don't have a record of
25 every communication in front of me, so I'm not sure I

1 could answer that accurately.
2 MR. GREENE: Okay. And you previously stated
3 that I believe the application was submitted in May of
4 -- we determined '17, it is '17?
5 MS. HIGGINS: I believe you.
6 MR. GREENE: So thank you.
7 MS. HIGGINS: 2017.
8 MR. GREENE: At that point in time, there were
9 numerous requests for additional informations. Was
10 there a point during 2017 that you thought the permit
11 was going to be issued or could have been issued?
12 MS. HIGGINS: With -- can you clarify?
13 MR. GREENE: Well, we'll get into -- we'll get
14 into that --
15 MS. HIGGINS: Okay.
16 MR. GREENE: -- a little bit more. In fact
17 let's just go to kind of a little timeline of events
18 that took place. There were four requests for
19 additional information that we have seen the letters.
20 MS. HIGGINS: Okay.
21 MR. GREENE: And do you want to go over
22 MR. BEERS-- I can -- I'm going to show you,
23 this is a copy of the hearing officer's report.
24 Are you familiar with these with the process,
25 right, the…

1 MS. HIGGINS: Yes, I'm familiar with the
2 hearing officer's report.
3 MR. BEERS: And who was the hearing officer?
4 MS. HIGGINS: Brian Wrenn.
5 MR. BEERS: And did he work kind of under you,
6 with you, how did that relationship as hearing officer,
7 what is that relationship?
8 MS. HIGGINS: Sure. So the hearing officer is
9 often not within the decision-making chain so that we
10 have an independent entity to hear public comments and
11 provide recommendation to the department.
12 MR. BEERS: Okay.
13 MS. HIGGINS: So Brian does not work for me
14 and never has.
15 MR. BEERS: Okay. Thank you.
16 MR. BEERS: This is the final approved hearing
17 officer's report. It's dated January 22nd signed by
18 Brian Wrenn. I think this is from the files from DEQ.
19 Second page there's a -- basically a table that shows
20 dates of additional information requested and received.
21 So I assume that's all the information that was
22 requested, the dates when you asked for information to
23 supplement the application and then the dates you
24 received that?
25 MS. HIGGINS: Yes.

1 MR. BEERS: And how is that usually requested,
2 the additional information?
3 MS. HIGGINS: Sure. So additional information
4 is requested -- for this particular project we issued
5 letters. We sent e-mails and then if we had a meeting
6 or a phone call with the applicant and there were
7 questions raised, they may have provided additional
8 information in response to questions at meetings.
9 MR. BEERS: Okay. So is there official
10 request that's followed up by letter than just other
11 supplemental more informal receipts and requests? Or
12 is it all formalized through a letter or documentation
13 somehow?
14 MS. HIGGINS: It's primarily formalized
15 through a letter. If in the process we have just a
16 quick question, we may have e-mailed the applicant for
17 a small point to clarify and they may have responded
18 via e-mail.
19 MR. BEERS: Okay. Okay. So going with that
20 timeline, this is a schedule of timing events that was
21 from your notes from the ACP or section of the DEQ
22 webpage.
23 MS. HIGGINS: Okay.
24 MR. BEERS: I'm just going to show it you,
25 then I'm going to ask for it back so I can ask a couple

1 of questions.
2 MS. HIGGINS: Okay.
3 MR. BEERS: Okay. Well, so on the hearing
4 officer's report we see November 15th. On that date I
5 think there's request number 11/15, additional info
6 number three (phonetic) received related to request
7 number 3. So there was a request number 3 on October
8 26. It looks like the final additional information
9 received on November 15th. So in your notes it look --
10 this is dated 11/20, so 5 days after that receipt of
11 information. You have a timeline that kind of breaks
12 down when you received that final information. And it
13 looks like you plan on getting the additional
14 information and you're actually making some plans for
15 issuing the hearing officer's report and working
16 towards the final permit. Do you recall that timeframe
17 when you were -- it looks like you had an understanding
18 that the review was nearing completion and you're
19 working towards a permit at that timeframe?
20 MS. HIGGINS: I'm sorry, can you ask your
21 question again?
22 MR. BEERS: Yeah.
23 MS. HIGGINS: I was reading and listening.
24 MR. BEERS: Yeah, I understand.
25 MS. HIGGINS: I'm sorry, I apologize.

1 MR. BEERS: Yeah. I have had a chance to look
2 at all this stuff ahead of time. I understand it's
3 been a while. So that's -- that was your notes. It
4 looks like it's kind of a draft anticipated schedule of
5 what may occur with the permit process. It looks like
6 there's some projected dates of when the hearing
7 officer's report could be submitted.
8 MS. HIGGINS: Yes. It was a projected…
9 MR. BEERS: Projected, right, projected. So -
10 - and that date -- that's dated 11/20.
11 MS. HIGGINS: Okay.
12 MR. BEERS: And it's after that final
13 information was received. I guess the question is at
14 that point in time did you have an understanding that
15 you had received all the information that you would
16 need at that time and were you trying to work towards
17 the scheduling of the permit approval?
18 MS. HIGGINS: So I mean, I don't remember on
19 October 20th what I had reviewed or not. We --
20 MR. BEERS: November 20.
21 MS. HIGGINS: -- I'm sorry, November. Thank
22 you. November 20th. We did not have adequate
23 information to complete our review, so we asked for
24 more information and that protracted the schedule that
25 we thought we would be able to meet.

1 MR. BEERS: So you hadn't finished your review
2 of the additional information received at that time?
3 MS. HIGGINS: I don't know if we had reviewed
4 all of it on this date. It was 5 days after according
5 to this. I don't know if there was a weekend or not,
6 so I don't know if we had completed our review at that
7 time.
8 MR. BEERS: Okay. So I guess the question is,
9 it looks like you're projecting out an approval
10 process, but you don't recall if you had -- actually
11 had the understanding that this permit they had
12 satisfied all of the requirements at this point, you
13 don't recall because you asked for more information?
14 MS. HIGGINS: We asked for more information
15 because they didn't sufficiently respond to our
16 request. I cannot recall on October -- I keeping
17 saying that, November 20th, if we had reviewed all of
18 the information provided.
19 MR. BEERS: Okay. Okay. Let's move on to the
20 next -- I think the next request for information was
21 November 28th, is that the next one?
22 MS. HIGGINS: That is the next one on this
23 table, yes.
24 MR. BEERS: So do you recall -- and that was -
25 - is that the final request for information at that

1 point?
2 MS. HIGGINS: It was the final letter.
3 MR. BEERS: The final official request written
4 -- in a written letter?
5 MS. HIGGINS: In a written letter, yes.
6 MR. BEERS: Here it is, yeah. So this --
7 that's the written letter on November 20th asking for
8 that information. I know it's a long letter, we don't
9 have a lot of time. So --
10 MS. HIGGINS: Sure.
11 MR. BEERS: -- it looks like it's looking for
12 cumulative impacts information, does that ring a bell?
13 MS. HIGGINS: Yes.
14 MR. BEERS: Okay.
15 MS. HIGGINS: It does ring a bell.
16 MR. BEER: Okay. So could you explain that
17 final request, why that was made?
18 MS. HIGGINS: Yes. So we had several
19 iterations of the analysis submitted to us by ACP.
20 Each iteration got a little closer to answering our
21 question, but it was either not sufficient or not
22 correct and so we kept having to ask for additional
23 information so that we could say they have completed
24 the process. So the version that we received prior to
25 this letter did not sufficiently resolve the question

1 about cumulative impacts. We had remaining questions
2 and that's what this letter details.
3 MR. BEERS: Unanswered questions that they
4 didn't supply in their previous answers up until I
5 guess November 15th?
6 MS. HIGGINS: Correct.
7 MR. BEERS: Okay. Well, whose decision was it
8 to prepare that letter and send it out?
9 MS. HIGGINS: So Jennifer was the primary
10 reviewer. She and I met and we also discussed with
11 Brian as the hearing officer as to whether the three of
12 us had sufficient information to recommend a decision
13 to the director and we did not.
14 MR. BEERS: And that was the decision made by
15 the three of you speaking?
16 MS. HIGGINS: Yes.
17 MR. BEERS: It was -- it didn't come from
18 anywhere above you telling you to do this, it was your
19 decision, the three of you?
20 MS. HIGGINS: It was our decision.
21 MR. BEERS: And some of this is based on
22 information from the hearing officer's public comments,
23 is that what Brian Wrenn was involved with this because
24 he is involved in that aspect?
25 MS. HIGGINS: Correct. So as in the hearing

1 officer's report, so I'm going to flip to later in the
2 report, Brian provides -- I'm trying to get the V&A
3 (phonetic), so this Section 5 where Brian talks about
4 the criteria with which to make a decision and a
5 recommendation as to whether it's met. As we discussed
6 previously, one of those is cumulative impacts. And
7 so, you know, Brian made a conclusion in his report and
8 recommendation based on the information in the
9 application and throughout the hearing process. So
10 that's why he was involved.
11 MR. BEERS: Okay. Okay. So moving to later
12 dates…
13 MS. HIGGINS: Do you want this back?
14 MR. BEERS: Yeah, I'll take that back so I
15 don't lose it all.
16 SPEAKER: And he will lose it.
17 MR. BEERS: Yeah.
18 MS. HIGGINS: Oh, sorry, didn't know if you
19 still needed the table.
20 MR. BEERS: I know, I might need it again.
21 I'll just keep it here and I'll just play…
22 MS. HIGGINS: Okay.
23 MR. BEERS: So there's some e-mails that we
24 pulled from the DEQ website. It's your -- you could
25 have a -- I'll tell you what, you can look at these

1 reports. Because we are rushed for time, you can scan
2 these. I have a little summary that I can talk to you
3 about these, that first e-mail is December 14th, looks
4 like you're attempting to schedule a meeting with Linda
5 Culpepper who I think was the division -- it's like
6 division chief?
7 MS. HIGGINS: Director --
8 MR. BEERS: Director --
9 MS. HIGGINS: -- or acting director.
10 MR. BEERS: -- acting director. And you're
11 looking to try to schedule a meeting to speak with her
12 about the hearing officer's report and you're trying to
13 set that up for January 4th or 5th. So I guess at that
14 time you're anticipating -- at least on 12/14 you're
15 anticipating that you're going to get what you need?
16 MS. HIGGINS: Yes.
17 MR. BEERS: You're anticipating that, but you
18 haven't got it yet?
19 MS. HIGGINS: Anytime we send a request for
20 additional information, we anticipate a full and
21 complete response from the applicant. Whether we get
22 it is up to the applicant.
23 MR. BEERS: Because that's what they're
24 supposed to do, right? Okay. So that's on the 14th.
25 So there you're trying to I guess get this on the

1 schedule to work to get this approved and you're
2 scheduling that. Moving through some of those e-mails,
3 there's a January 3rd. It looks like you and I think
4 Ms. Burdette are reviewing the hearing officer's
5 report.
6 MR. GREENE: January 4th.
7 MR. BEERS: January 4th with Brian Wrenn.
8 Your -- this communication…
9 MR. LANE: I think that's -- hold on. Let’s
10 slow down. Just be clear we're looking -- all looking
11 at the same page.
12 MR. BEERS: Okay. I have a summary, so if
13 she's going to -- I can pull those up.
14 MR. LANE: Yeah. Yeah, let’s do that.
15 MR. BEERS: Okay. So here's the e-mail from
16 Brian Wrenn. It looks like he has incorporated some of
17 your changes into the hearing officer's report.
18 MS. HIGGINS: Okay.
19 MR. BEERS: Okay. And it looks like you're
20 getting ready for this meeting that was set up with Ms.
21 Culpepper to review the hearing officer's report.
22 There's some e-mail that -- where Bridget Munger is
23 communicating with Mr. Wrenn where he agrees to send
24 her the hearing officer's report to her rather than go
25 directly to Ms. Culpepper. Do you recall the hearing

1 officer's report going to the secretary's office rather
2 than to the division director?
3 MS. HIGGINS: I was not copied on these
4 messages and I don't recall if I was aware that there
5 was an exchange between Brian and Bridget.
6 MR. BEERS: Okay. Is it normal for the
7 secretary's office to review hearing officer's report
8 rather than the division director?
9 MR. LANE: Let's clarify we're not talking
10 about -- this is not an e-mail to the secretary's
11 office. This is an e-mail to Bridget Munger.
12 MR. BEERS: No. I think there's a -- well, if
13 she doesn't recall that was -- those e-mails at that
14 timeframe.
15 MS. HIGGINS: Well, I was not --
16 MR. BEERS: Yeah.
17 MS. HIGGINS: -- part of this e- mail
18 exchange.
19 MR. BEERS: You weren't part of that exchange.
20 Did you -- so the question I have, would it be a normal
21 -- who normally approves the hearing officer's report,
22 signs and sends it on?
23 MS. HIGGINS: The hearing officer's report
24 comes from the hearing officer. I don't know if I
25 would phrase it that there's an approval of it. It's a

1 working draft and becomes final by the hearing officer.
2 It's not uncommon to get review and feedback from
3 others.
4 MR. BEERS: So when you set up the meeting
5 back in December to try to meet with Linda Culpepper to
6 review the hearing officer's report, is that normal for
7 you to review this report with the director?
8 MS. HIGGINS: So the e-mail was anticipating
9 that we would have a final report with a recommendation
10 for the director. It's common that we sit down with
11 the director and review the final report. So this was
12 not to review and the director to modify a draft
13 report. The intent was to review the final report and
14 go over any questions that she may have after reviewing
15 the report.
16 MR. GREENE: And I guess his question, is it
17 common for the report to go to the secretary's office
18 prior to that review with the director?
19 MS. HIGGINS: So…
20 MR. LANE: Again, this doesn't -- this is an
21 e-mail to Bridget Munger, it was not to the secretary's
22 office.
23 MR. BEERS: Right. You can answer that -- is
24 that common?
25 MR. LANE: Yeah, you can answer the question.

1 I'm just clarifying that the e-mail…
2 MS. HIGGINS: Sure. So this -- I am aware
3 that it has happened on previous 401 applications. I
4 can't speak to hearing officer's reports and other
5 programs. The 401 program is not the only program
6 within DWR that has hearing officer's reports. So I
7 can't speak to the other programs --
8 MR. GREENE: Right.
9 MS. HIGGINS: -- but I'm aware of other 401
10 hearing officer reports that were reviewed by
11 individuals within -- outside of the division of Water
12 Resources or Water Quality at the time.
13 MR. GREENE: Okay. So just read that top --
14 that top e-mail there. That's the one that…
15 MS. HIGGINS: Okay.
16 MR. GREENE: So that's yours -- you had
17 communicated with that e-mail, correct?
18 MS. HIGGINS: I was.
19 MR. GREENE: And what does it reflect?
20 MS. HIGGINS: So the e-mail states someone is
21 home with a sick child and out of school due to snow.
22 The secretary's office wants to review the HO report
23 prior to sending to Linda. I told Bridget we would
24 send a copy to them when we send it to Jeff. I am
25 doing another read-through right now, when do you think

1 you can finish your review? The message is from Brian
2 to myself and to Jennifer.
3 MR. BEERS: So what did you understand from
4 that e-mail?
5 MS. HIGGINS: I don't recall this e-mail, you
6 know. So I -- not -- I don't -- if I said anything I'd
7 be speculating on my memory.
8 MR. BEERS: Right. So, well, what is the body
9 -- what is -- do you -- his message to you that you
10 believe that to be true what he'd told you that he's --
11 the secretary's office is going to review it?
12 MS. HIGGINS: I mean, I can't speak for Brian
13 as to, you know, whether --
14 MR. BEERS: Right.
15 MS. HIGGINS: -- someone communicated that to
16 him or not.
17 MR. BEERS: Right. But that is -- that's --
18 if that is truly an e-mail that he sent to you to tell
19 you that the secretary's office wants to review it, in
20 your experience is that a normal process for the 401
21 hearing officer's reports?
22 MS. HIGGINS: It doesn't happen with every
23 one, but it certainly has happened on previous ones.
24 So we don't have that many hearing officer's reports in
25 401 land, so it's hard to speak in broad generalities

1 about what's normal when it's a very small handful of
2 projects. So I -- that's why I'm being a bit reluctant
3 to speak in broad generalities when the sample size is
4 so small.
5 MR. BEERS: Okay. Okay. So for your
6 recollection at that time you don't recall this being a
7 big thing that you -- it was something that you
8 remember today that this happening --
9 MS. HIGGINS: I…
10 MR. GREENE: -- or conversation like why are
11 they doing this? This is out of the ordinary, do you
12 recall why they're…
13 MS. HIGGINS: I do not remember being alarmed
14 or any sort of red flags being raised --
15 MR. BEERS: Okay.
16 MS. HIGGINS: -- by this.
17 MR. BEERS: That's in?
18 MR. GREENE: This is just the follow up.
19 MR. BEERS: Okay.
20 MR. GREENE: Your follow-up, and I'll show you
21 this in just a second I want to – read it -- this is a
22 e-mail. “Just a few minor suggestions highlighted in
23 yellow(inaudible).” "I don't think Jennifer reviewed
24 this today, so please go ahead and send to Jeff and
25 others. Since the department is reviewing the

1 documents before going to Linda, I'm sure that it will
2 be ready for her by Monday. Should we try to
3 reschedule for later in the week? We could try to try
4 for after the EMC (phonetic) on Thursday maybe 3:30 or
5 Friday." And this is an e-mail dated January 5th --
6 Friday, January, 11:37.
7 MS. HIGGINS: Okay.
8 MR. GREENE: So at that point you're trying to
9 still schedule to meet with Linda Culpepper and for her
10 to review the hearing officer's report?
11 MS. HIGGINS: For her to review the final.
12 MR. GREENE: The final?
13 MS. HIGGINS: Yes.
14 MR. GREENE: The final. And once she reviews
15 the final, what typically happens?
16 MS. HIGGINS: So the hearing officer's report
17 has a recommendation and the director can agree with
18 the recommendation from the hearing officer's report or
19 not. Staff may or may not have a different
20 recommendation than the hearing officer. We present
21 all that to the director. The director considers it
22 and they ultimately make the final decision.
23 MR. GREENE: Whether a permit will be issued
24 or not?
25 MS. HIGGINS: Yes.

1 MR. BEERS: Okay. In your experience there
2 was hearing officer's report submitted at that final
3 stage with all the effort that went into working on the
4 hearing officer's report, is it typical for that to be
5 approved or it's sometimes denied at that point, the
6 director?
7 MS. HIGGINS: Do you mean is the
8 recommendation denied or is the project denied?
9 MR. BEERS: The project denied, would it be
10 denied?
11 MS. HIGGINS: I have been involved in a 401
12 review where at that stage the director determined to
13 deny the project.
14 MR. BEERS: Which one was that, do you recall?
15 MS. HIGGINS: I do. It was the Alcoa 401
16 certification associated with their FERC license.
17 MR. BEERS: Did -- was that similar
18 circumstances as to this -- was there any other
19 circumstances that may have been involved with that
20 that would differ from this one? Like do you recall
21 the reason for that denial?
22 MS. HIGGINS: I do. I remember the reason for
23 the denial. It was related to the department of
24 administration filing a lawsuit about ownership of the
25 riverbed. That was not related to the ACP. That was

1 not a --
2 MR. BEERS: Right.
3 MS. HIGGINS: -- point of question in this
4 particular project review.
5 MR. BEERS: So in this particular project did
6 you have any expectations that this would not have been
7 approved?
8 MS. HIGGINS: We did not expect it to not be
9 approved. Our recommendation was to approve. And at
10 no point were we told something different.
11 MR. BEERS: Okay. Had this been delivered to
12 the director rather than going first another layer of
13 review, how long would it take for that permit to be
14 issued after it was reviewed by the director typically?
15 MS. HIGGINS: It -- I don't know that I could
16 give you a definitive date. It's usually a short
17 amount of time. The clock is very tight and so we're
18 usually recommending it to the director with not a lot
19 of time before we run out of the clock. So it's
20 usually a shorter window.
21 MR. BEERS: Like within a week or -- you mean
22 a short window like you're talking weeks, months, days?
23 MS. HIGGINS: Oh, I mean the ones I'm thinking
24 of a couple days to probably not more than a week.
25 MR. BEERS: Okay. So a few days, an average

1 that you expect it, wouldn’t have been weeks typically?
2 So I'm -- we're just talking about --
3 MS. HIGGINS: Sure.
4 MR. GREENE: -- what you would expect.
5 MS. HIGGINS: Right. So I can't think of any
6 examples where it was several weeks.
7 MR. BEERS: Okay. In this case there was
8 another layer of review. Rather than anticipating
9 going to Culpepper for review, it went to secretary's
10 office for another layer of review. The permit in this
11 case was issued January 26th. So that was 20 --
12 roughly 20 days later. Is that extended that -- well,
13 let me ask you a different question. Do you know what
14 came of the review from the secretary's office? Were
15 you informed what they found from that review with the
16 report?
17 MS. HIGGINS: So I…
18 MR. GREENE: Can I interject right here?
19 MR. BEERES: Yeah.
20 MS. HIGGINS: I was…
21 MR. GREENE: Hold on.
22 MS. HIGGINS: I just -- I would…
23 MR. GREENE: I'll show you a document.
24 MS. HIGGINS: Sure. So I wouldn't quite agree
25 with your characterization of the review steps, but I

1 don't recall whether I saw any edits from the -- from
2 Bridget to Brian. I don't recall if I saw that or not.
3 MR. GREENE: Okay. Let me ask the question
4 then, if it was going to this -- Mr. Brian's words in
5 his e-mail that the secretary's office, would Bridget
6 have been the person to review the document or would
7 there be someone else at the secretary's office that
8 would actually -- looking at the document for accuracy
9 or what would they be looking at?
10 MS. HIGGINS: You would have to ask the
11 secretary's office who reviewed it. I -- someone spoke
12 to Brian, which is why he made the statement. That was
13 not conveyed to me, so I can't speak for who in the
14 secretary's office may or may not have looked at that.
15 MR. GREENE: So you don't know how he was
16 notified or…
17 MS. HIGGINS: I do not.
18 MR. BEERS: Okay. And you don't know the
19 result of that review with the secretary, if it was
20 reviewed or who reviewed it, you weren't informed of
21 that?
22 MS. HIGGINS: So what I can say is that I
23 don't remember seeing like a track changes or redlined
24 version of edits from the secretary's office. I can
25 say that the hearing officer's recommendation was not

1 changed.
2 MR. GREENE: Okay. Do you recall meeting with
3 the secretary regarding this?
4 MS. HIGGINS: Yes. I've met with the
5 secretary and others on those, yes.
6 MR. GREENE: Okay. Do you recall a -- this is
7 your -- I'll let you identify them, but these were
8 taken off the staff files. Are these your notes?
9 MS. HIGGINS: Yes, those look like my notes.
10 MR. GREENE: Okay. And what -- I have
11 actually highlighted that top thing. And I believe
12 there's a date up there 1/12?
13 MS. HIGGINS: Yes.
14 MR. GREENE: And if you can just read what
15 your notes state there?
16 MS. HIGGINS: Sure. So it says it's a meeting
17 with Secretary Regan, with Sheila, Linda and Brian.
18 Questions regarding -- do you just want me to read the
19 highlighted…
20 MR. GREENE: Yes ma'am.
21 MS. HIGGINS: Okay. Sorry. Questions
22 regarding cumulative analysis, what info does commerce
23 have? Send the summary of conclusions. And then it
24 says "Hearing officer recommendations."
25 MR. GREENE: Can you add a little more context

1 to what that meeting was about in reference to your
2 notes there?
3 MS. HIGGINS: Sure. So as I stated
4 previously, meetings -- the weekly meetings as well as
5 this meeting was to provide a status update on where we
6 were on the review of the application and responses to
7 additional information requests we had sent.
8 MR. GREENE: Okay. And so is this regarding -
9 - what issues were being addressed this time?
10 MS. HIGGINS: So I -- we provided an update to
11 the secretary that some of the challenges we felt as
12 staff we were having with the applicant was trying to
13 reconcile the information they were portraying in the
14 cumulative impacts analysis that there wouldn't be any
15 with their website and commercials we were hearing on
16 the radio about all the economic development that was
17 going to result from this project. So we were reading
18 information that there was going to be all this
19 economic development and then they were telling us
20 there was nothing foreseeable happening. And so we
21 were having a challenge kind of reconciling those two
22 pieces of information coming from the applicant. And
23 so that's what we talked about at the meeting.
24 MR. GREENE: Okay. So this would have been
25 after you reviewed the hearing officer's report I

1 believe we got the 4th or 5th, whatever timeframe that
2 was. And then you met on the 12th. So as -- per your
3 review of the hearing officer report with Brian --
4 well, Brian's, you know, the report, were those
5 concerns addressed to him, Brian, prior to meeting with
6 the secretary?
7 MS. HIGGINS: The concerns about the
8 information from the applicant --
9 MR. GREENE: Yes. And the --
10 MS. HIGGINS: -- is that your question?
11 MR. GREENE: -- impact, yes ma'am.
12 MS. HIGGINS: Okay. Yes, Brian was involved
13 in all the discussions we were having with the
14 applicant. He was -- I don't -- I shouldn't say that.
15 I can't remember if he was at every single phone call
16 and meeting, but he was certainly involved in the broad
17 discussion about cumulative -- the cumulative impact
18 analysis and the information contained therein.
19 MR. GREENE: Okay. So when you reviewed his
20 work product I believe on the 5th and you were looking
21 to set up a meeting with Culpepper, what changed in
22 between that timeframe that now this -- it's -- this
23 was becoming an issue, the impact has become --
24 cumulative impact is becoming an issue?
25 MS. HIGGINS: It did not become an issue

1 between the 5th and the 12th. It had been an issue
2 throughout the entire application review.
3 MR. GREENE: Okay. In your review of the
4 hearing officer's report, did you make recommendations
5 that we needed more information on that?
6 MS. HIGGINS: No. It was in response -- the
7 add info request came from that review of information
8 in the application. At the same time we were reviewing
9 the application, Brian was also working on the hearing
10 officer's report and putting that information together.
11 MR. GREENE: Okay.
12 MR. BEERS: The hearing officer's report was
13 complete with all those answers presumably in the
14 report. This is after it's been sent to the
15 secretary's office for review that you're having this
16 discussion about these impacts. Were -- was someone at
17 the secretary's office asking to revisit the hearing
18 officer's report, make edits to it, is this what the
19 purpose…
20 MS. HIGGINS: No. The purpose of the meeting
21 was not -- it was information seeking, status update
22 from staff. It was not providing directions on how we
23 were to proceed with review.
24 MR. BEERS: There was no request to go compare
25 any documents or to reconcile what the ACP commercials

1 were saying versus what you were finding? They didn't
2 -- was there a request to do that at that point?
3 MS. HIGGINS: There was not a request from
4 Secretary Regan or Sheila to do that at this meeting,
5 no.
6 MR. BEERS: That was basically you giving them
7 the status of what's going on?
8 MS. HIGGINS: Yes.
9 MR. BEERS: Okay. That meeting?
10 MS. HIGGINS: Yes. It was us explaining where
11 we were at in the process and what the back and forth
12 was with the applicant.
13 MR. BEERS: At that meeting do you recall
14 getting information that the hearing officer's report
15 is approved and that they're moving towards the permit?
16 MS. HIGGINS: That was not -- I have no
17 recollection of that being discussed at the meeting.
18 Based on my notes, we discussed the questions we had
19 had on the cumulative impact analysis and provided an
20 update on that to the secretary. And then we discussed
21 the recommendations that Brian was going to put forth
22 in the hearing officer's report.
23 MR. BEERS: Which he already did put in,
24 right?
25 MS. HIGGINS: He had -- it was a discussion of

1 what are the recommendations. So if you read the
2 hearing officer's report, it provides recommendations
3 on if 401 is issued how it should be conditioned. And
4 so that's the subject that we discussed, were some of
5 those details of recommendations that Brian had
6 regarding if it was issued, how it should be
7 conditioned.
8 MR. BEERS: Okay.
9 MR. GREENE: Did the secretary's office ask
10 you to contact commerce and get additional information
11 from commerce? Go ahead.
12 MS. HIGGINS: They did not ask us to contact
13 commerce.
14 MR. GREENE: Okay. And going back to -- and
15 this is your notes from the 4th, "We've got to give the
16 HO report decisions to Linda on Monday. Bridget will
17 talk with Doug (phonetic) about news release decision."
18 So what is that pertaining to, the news release
19 decision?
20 MS. HIGGINS: So the department, when there is
21 a decision that has a lot of public interest, they may
22 issue a news release regarding the decision so that the
23 public is aware.
24 MR. GREENE: Okay. So on the 4th it was -- it
25 appears it's apparent that everyone is ready to move

1 forward with a decision?
2 MS. HIGGINS: I mean, we were always working
3 towards moving a decision -- moving towards a decision.
4 MR. GREENE: Right.
5 MS. HIGGINS: And you know, we worked through
6 the month of January to get to a decision as we had
7 since May of 2017.
8 MR. GREENE: Right. I understand. And so you
9 worked on Sundays and weekends per these e-mails?
10 MS. HIGGINS: I did.
11 MR. GREENE: Especially up towards the end.
12 It was a lot of time invested on that. So I guess my
13 question though, were you anticipating the permit to be
14 issued in the imminent -- and I say imminent, within a
15 normal timeframe of 1 or 2 weeks at that point in time,
16 January 4th?
17 MS. HIGGINS: I was not.
18 MR. GREENE: Okay. Then why were we talking
19 about notifying for the press release?
20 MS. HIGGINS: Again, it's not uncommon that we
21 work on multiple steps so that we're ready.
22 MR. GREENE: Okay.
23 MS. HIGGINS: So when we're working towards
24 getting to that final decision and that hearing
25 officer's report, another step could be the news

1 release --
2 MR. GREENE: Okay.
3 MS. HIGGINS: -- and so we go ahead and start
4 working on that because everybody has a lot of things
5 going on and the sooner we get started, the more likely
6 we are to be ready.
7 MR. GREENE: Okay. Are you familiar with the
8 draft denial letter?
9 MS. HIGGINS: I am.
10 MR. GREENE: And can you give us a little
11 background on why that was prepared and did you prepare
12 that?
13 MS. HIGGINS: I did prepare that.
14 MR. GREENE: Okay. And when did you prepare
15 that?
16 MS. HIGGINS: I prepared it -- I think I first
17 drafted it sometime in January. I have to look at the
18 file to see the date that it was…
19 MR. GREENE: I think we actually have --
20 MR. BEERS: January 1st.
21 MR. GREENE: -- January 1st. This one is in
22 the file.
23 MR. LANE: Can you show that to her?
24 MR. GREENE: Yeah. Let's see. This a print
25 from the webpage that shows it.

1 MS. HIGGINS: Okay. So can you ask your
2 question again, I'm sorry?
3 MR. GREENE: Okay. Well, we'll start out, can
4 you give us a little background as to why you drafted
5 that?
6 MR. BEERS: This is the actual-- that's just
7 the print from the webpage from the date --
8 MR. GREENE: Yeah.
9 SPEAKER: -- it's the -- that's the date that
10 has no date -- the draft with no date on it.
11 MS. HIGGINS: Sure. So as I stated
12 previously, when there is a public hearing we provide a
13 hearing officer's recommendation and staff
14 recommendation to the director for the director to
15 consider, but the director makes the ultimate decision.
16 So the director could choose to issue or deny. If --
17 in this particular case our recommendation, both the
18 hearing officer and staff, was to issue the project, if
19 the director didn't go along with our recommendation
20 and elected to deny it, this was prepared just so we
21 had, you know, the address, the project number ready
22 and then the director would fill in the reasons for
23 denial based on whatever their conclusions were.
24 MR. GREENE: Would that be something that the
25 director would seek information from the people who

1 gather the information from the applicant?
2 MS. HIGGINS: They could, but if they have --
3 so for this particular project we didn't have -- staff
4 did not have any reasons to recommend denial. So --
5 and we weren't asked to fill in this letter, so I can't
6 speak to whether Linda would have asked us to fill it
7 out or if she would have filled it out.
8 MR. GREENE: Were you asked to prepare the
9 letter?
10 MS. HIGGINS: No, I was not.
11 MR. GREENE: Okay. And why -- you do that on
12 a normal regular basis when you have a public hearing,
13 is that what -- the way I understand it?
14 MS. HIGGINS: Right. So we had done this
15 previously on projects that had a public hearing where
16 we presented it to the director.
17 MR. GREENE: Okay. Can you tell us how many?
18 MR. BEERS: Every project has a public hearing
19 to draft a letter, that's -- is that fair to say?
20 MS. HIGGINS: I would not say that, no. So
21 this was something that we did based on discussions
22 during a previous project and so that was -- it was
23 sort of the -- it may have been the first time we had
24 done that, I'm not sure. And as I said we don't have a
25 lot of public hearings on 401 applications. There's

1 not a large sample size to speak in broad generalities.
2 MR. BEERS: Okay.
3 MS. HIGGINS: But we had done this before and
4 so that's why I recommended having this so it was clear
5 that the director discretion to make the final
6 decision.
7 MR. GREENE: Is that a document that you would
8 normally prepare when you're ready to present
9 everything to the director?
10 MS. HIGGINS: Yes, it was given to her at the
11 same time as the draft 401 certification and the
12 hearing officer's report.
13 MR. BEERS: So just to be clear, when the
14 hearing officer's report was reviewed by the
15 secretary's office, you weren’t aware of what -- who
16 reviewed it if it was reviewed, but you realized there
17 was -- they didn't make any edits to that document as
18 far as you know, to the final?
19 MS. HIGGINS: No, I believe what I said was I
20 don't know whether they made recommendations. The
21 recommendation from the hearing officer to issue the
22 401 was not modified. That was from the original draft
23 I saw that Brian was preparing the hearing officer's
24 report to the final -- throughout the entire process,
25 the final recommendation was to issue.

1 MR. BEERS: So it was never modified by the
2 secretary's office?
3 MS. HIGGINS: Not that I'm aware.
4 MR. BEERS: That you would -- you could
5 compare the two documents and see if there were changes
6 in there? There were none?
7 MS. HIGGINS: I never saw a version --
8 MR. BEERS: You didn't see that? Okay.
9 MS. HIGGINS: -- from -- of (inaudible) edits.
10 MR. BEERS: Okay. And they didn't involve you
11 in discussions to go back and edit? Of course, that
12 didn't happen. You didn't have any discussions with it
13 about that review process?
14 MS. HIGGINS: I do not recall having any
15 discussions with anyone in the secretary's office about
16 that, no.
17 MR. LANE: Two minutes.
18 MR. BEERS: Okay. Thank you.
19 MR. GREENE: Two minute warning.
20 MR. GREENE: All right. We'll just wrap up
21 the end process of how everything shook out because it
22 appears everything appeared towards -- we have e-mails
23 going back and forth on the weekend of the 21st; 19th
24 is a Friday. The 21st there is a e-mail at 8:50 p.m.
25 On Sunday evening Wrenn e-mails Higgins back with final

1 HO report, ask questions about final permit. Do you
2 recall working and answering stuff on the weekends of
3 the 21st, 22nd?
4 MS. HIGGINS: I mean, I recall working on the
5 project. I don't have specific dates without looking.
6 MR. GREENE: Okay. What was the reason for
7 the sense of urgency at that point in time?
8 MS. HIGGINS: I don't know if it was a sense
9 of urgency. It's not uncommon that I work on nights
10 and weekends.
11 MR. GREENE: Okay. And then I believe you
12 sent Culpepper electronic copy on the 23rd with the ACP
13 permit and denial letter. Do you recall doing that?
14 MS. HIGGINS: So again I don't have anything
15 in front of me. My recollection is Brian e-mailed
16 Linda the hearing officer's report.
17 MR. GREENE: Okay.
18 MS. HIGGINS: And we -- I provided the 401
19 certification we were recommending and then the blank
20 denial template.
21 MR. BEERS: Okay. Have you ever -- were you
22 made aware that there was a mitigation fund being
23 negotiated between governor's office and the ACP
24 partners related to the ACP?
25 MS. HIGGINS: I was not.

1 MR. BEERS: You never were made aware of that?
2 MS. HIGGINS: Not during the review of the
3 application, no.
4 MR. BEERS: Okay. Did you find out after the
5 fact?
6 MS. HIGGINS: So I was actually on vacation
7 the day the final 401 was issued and I read a article
8 and that was the first I was aware of whatever the fund
9 is.
10 MR. GREENE: Okay. No discussion between the
11 governor's office regarding that and your department
12 for mitigation purposes?
13 MS. HIGGINS: They -- no one discussed it with
14 me.
15 MR. GREENE: Okay. Did you have any other
16 discussions with any of the governor's staff regarding
17 the ACP permit?
18 MS. HIGGINS: No, I've never discussed it with
19 the governor's office or their staff.
20 MR. GREENE: Okay. Well, we appreciate it,
21 but our time is up. So I'm going to officially stop
22 this at 12:31 and 50 seconds.
23
24
25

I, Karen Higgins, have read the foregoing transcript of my interview on October 4, 2019, and hereby certify that the responses contained therein are true and accurate to the best of my knowledge.

Karen Higgins

Interviewee's Signature

Karen Higgins

Interviewee's Printed Name

10-17-19

Date

State of North Carolina County Wake

I, Janet T Mack, Notary Public

Do hereby certify that Karen Higgins

Personally appeared before me this day and acknowledged

The due execution of the foregoing instrument.

Witness my hand and official seal, this 17th day of

October, 20 19

Janet Mack, Notary Public

JANET T MACK
My Commission Expires
NOTARY
PUBLIC
May 7, 2020
WAKE COUNTY, NC

EXHIBIT

A

January 22, 2018

MEMORANDUM

To: Linda Culpepper
Interim Director, Division of Water Resources

From: Brian Wrenn, Ecosystems Branch Supervisor
Division of Water Resources, Water Sciences Section

Subject: Hearing Officer's Report and Recommendations
Atlantic Coast Pipeline, LLC
Individual 401 Water Quality Certification and Buffer Authorization Certificates
Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland, and Robeson Counties

I served as the Hearing Officer for the subject Public Hearings held at the Fayetteville Technical Community College in Fayetteville, NC on July 18, 2017 and at the Nash Community College in Rocky Mount, NC on July 20, 2017. The public hearings were held under the authority of Title 15A NCAC 02H .0504. The purpose of these public hearings was to receive comment on the Division of Water Resources' 401 Water Quality Certification (401 WQC) and buffer authorization certificates application (Appendix A) submitted by Atlantic Coast Pipeline, LLC (ACP). A 401 WQC and buffer authorization certificates are needed to construct a natural gas pipeline through Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland, and Robeson Counties.

In addition to listening to oral comments at the public hearings, I have reviewed all written comments received prior, during and after the public comment period. In preparation of this report, I have considered all of the public comments, the public record, discussions with Division of Water Resources (DWR) staff related to the rules, and their review of the applications for the project.

The report has been prepared using the following outline:

I. Site History / Background
II. July 18, 2017 Public Hearing Summary
III. July 20, 2017 Public Hearing Summary
IV. Comments
V. Recommendations
VI. Summary
VII. Appendices

I. History / Background

On May 9, 2017, Atlantic Coast Pipeline, LLC (ACP) submitted an application for a 401 WQC and buffer authorization certificates. ACP had previously applied to DWR on October 23, 2015. DWR requested additional information on November 18, 2015. The requested information was not provided, therefore DWR returned the application on August 31, 2016.

ACP is proposing to construct and operate an approximately 605-mile-long interstate natural gas transmission pipeline system including laterals through West Virginia, Virginia and North

Carolina. In North Carolina, ACP is proposing to construct one compressor station and install approximately 186 miles of transmission pipeline and appurtenances, including 3 metering and regulating stations, 11 valve sites and 4 pig launchers/receivers, through Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland and Robeson Counties.

ACP is proposing over 300 crossings of streams and open waters, temporarily impacting over 35,000 linear feet and permanently impacting over 700 linear feet of stream. ACP is also proposing crossing wetlands, temporarily impacting over 450 acres and permanently impacting less than one acre of wetlands. ACP will impact protected riparian buffers within the Neuse and Tar-Pamlico River basins, impacting over 655,000 square feet of zone 1 and over 459,000 square feet of zone 2 protected riparian buffer.

DWR requested and received additional information several times throughout the application review process:

Date	Action
June 27, 2017	Req. for Add Info (1)
July 12, 2017	Add Info Received (1)
September 14, 2017	Req. for Add Info (2)
September 22, 2017	Add Info Received (2)
October 2, 2017	Add Info Received (2)
October 13, 2017	Add Info Received (2)
October 26, 2017	Req. for Add Info (3)
November 4, 2017	Add Info Received (3)
November 15, 2017	Add Info Received (3)
November 28, 2017	Req. for Add Info (4)
November 29, 2017	Add Info Received (4)
December 8, 2017	Add Info Received (4)
December 14, 2017	Req. Correction to (4)
December 20, 2017	Add Info Received (4)
January 17, 2018	Add Info Received
January 18, 2018	Add Info Received

Under the authority of Title 15A NCAC 02H .0504, DWR held a public comment period from June 16, 2017 until August 19, 2017 to accept public input on the application. The public comment period included two public hearings described below.

In accordance with Title 15A NCAC 02H .0503, notice of the public hearings and availability of the 401 WQC and riparian buffer authorization certificates application was published in The Fayetteville Observer, the News & Observer, the Rocky Mount Telegram, the Roanoke-Chowan News-Herald, the Robesonian and the Wilson Times on June 17, 2017, in the Daily Herald and the Sampson Independent on June 18, 2017, and posted online and sent by mail to the Water Quality Certification Mailing List on June 16, 2017 (Appendix B). A correction to the public notice to correct a typo in the pipe diameter was posted online on June 19, sent to the mailing list on June 20, and issued in the newspapers on June 21 and 22 (Appendix C).

The public comment period ended on August 19, 2017; however, since August 19th was a Saturday, DWR accepted comments through Monday, August 21.

II. July 18, 2017 Public Hearing

A public hearing was held July 18, 2017, at 6 p.m. at the Fayetteville Technical Community College in Fayetteville, NC. The public hearing was held under the authority of Title 15A NCAC 02H .0504. This was a public hearing to receive public comment for the DWR 401 WQC application (Appendix A) submitted by ACP in order to construct a natural gas pipeline through Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland, and Robeson Counties.

One hundred thirty-nine people attended the July 18 public hearing, including eight staff members from the Department. A total of 131 individuals signed the attendance sign-in sheets at the registration table (Appendices D and E). The hearing officer provided opening remarks and Jennifer Burdette, DWR, presented background information on the 401 WQC process and the proposed application before the hearing was opened for public comment. Forty-four individuals registered in advance of the hearing to provide comments, and two additional individuals made comments for a total of 46 speakers. Speakers were given three minutes for initial presentations. Additional time was allowed for speakers after everyone that registered to speak was finished, which was used by three speakers. The list of speakers is included (Appendix E).

The public hearing transcript, including oral comments, is attached to this report (Appendix H). DWR also received approximately 9,600 written comments during the public comment period from local and state government agencies, individual citizens, and citizen groups (Appendix J). Approximately 8,220 comments were opposed to the project and approximately 1,370 were in favor. Some of the comments were written transcripts of the comments provided during the public hearings. A summary of the comments for both hearings and the comment period, along with detailed responses that have a direct impact on the certification decision making process are included in Sections IV and V below.

III. July 20, 2017 Public Hearing

A second public hearing was held July 20, 2017, at 6 p.m. at the Nash Community College in Rocky Mount, NC. The public hearing was held under the authority of Title 15A NCAC 02H .0504. This was a public hearing to receive public comment for the DWR 401 WQC application (Appendix A) submitted by ACP in order to construct a natural gas pipeline through Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland, and Robeson Counties.

One hundred seventy-six people attended the July 20 public hearing, including eight staff members from the Department. A total of 168 individuals signed the attendance sign in sheets at the registration table (Appendices F and G). The Hearing Officer provided opening remarks and Jennifer Burdette, DWR, presented background information on the 401 WQC process and the proposed application before the hearing was opened for public comment. Sixty-five individuals registered in advance of the hearing to make comments. Speakers were

given three minutes for presentations and the hearing was held open an additional thirty minutes to allow all speakers that registered to speak. The list of speakers is included (Appendix G).

The public hearing transcript, including oral comments, is attached to this report (Appendix I). DWR also received approximately 9,600 written comments during the public comment period from local and state government agencies, citizens and citizen groups (Appendix J). Approximately 8,220 comments were opposed to the project and approximately 1,370 were in favor. Some of the comments were written transcripts of the comments provided during the public hearings. A summary of the comments for both hearings and the comment period, along with detailed responses that have a direct impact on the certification decision making process, are included in Sections IV and V below.

IV. General Comments

The following is a summary of the comments received during the July 18, 2017 and July 20, 2017 public hearings and emails and other written comments received by DWR during the public comment period. Comments received outside of the public comment period were made part of the public record. An overwhelming majority of the comments were in opposition to the pipeline for a variety of reasons.

- Many comments received expressed concerns about the continued use of fossil fuels, specifically fracked natural gas, and their negative impact on climate change. Many think NC and the US should be moving toward the use of renewable energy sources. Proponents of the project believe that natural gas is a "clean" fuel option to replace coal and other fossil fuels.

  These comments are outside of the evaluation criteria established in N.C. Administrative Codes for the 401 WQC and Buffer Authorization Certificates review and should be directed to the Federal Energy Regulatory Commission (FERC).

- Many comments received were skeptical of ACP's promotion of the project as a job creation opportunity and economic stimulator for local communities. Several pointed out that ACP's own job creation estimates are very low and that the economic benefits to local communities are vague. Proponents of the project reiterated that the pipeline would bring jobs and economic development to NC.

  These comments are outside of the evaluation criteria established in N.C. Administrative Codes for the 401 WQC and Buffer Authorization Certificates review and should be directed to the NC Department of Commerce.

- Many comments received expressed concerns about the cumulative impacts analysis provided by ACP. Many believe that the analysis did not contain sufficient detail to properly evaluate the cumulative impacts. Some comments indicated that the temporary impacts from the project should be considered in the cumulative impact analysis and that the sheer volume of temporary impacts should be calculated to equal some level of permanent impacts.

  Cumulative impacts are addressed in Section V below. Further comments should be directed to the U.S. Army Corps of Engineers (Corps).

- Many comments received questioned the purpose and need of the project. Many pointed to evidence that the growth of natural gas markets was estimated to be negligible and questioned the need to build such a large and expensive pipeline. Many noted that the market demand was generated through companies owned or affiliated with Duke and Dominion power companies and that the need was self-serving rather than one identified through public interest. Furthermore, several commenters stated that the purpose of economic benefit was misleading as ACP's own estimates predict little permanent job growth as a result of the project.

  These comments are outside of the evaluation criteria established in N.C. Administrative Codes for the 401 WQC and Buffer Authorization Certificates review and should be directed to FERC and the Corps.

- Many comments received expressed concerns about environmental justice issues associated with pipeline's construction and operation. Many believe that the pipeline will have a disproportionate impact on low-income and minority communities. Many commenters feel that ACP has not made significant efforts to coordinate with these communities or to consider other routes that would reduce the impacts on these communities. Specifically, several commenters mentioned ACP's lack of coordination with state-recognized tribes such as the Lumbee and Haliwa-Saponi. Furthermore, they do not believe ACP has adequately addressed potential impacts to cultural resources along the pipeline route.

  Environmental Justice is addressed in Section V below. Further comments should be directed to FERC.

- Several commenters expressed opposition to ACP's use of eminent domain to obtain right-of-way for the pipeline.

  These comments are outside of the evaluation criteria established in N.C. Administrative Codes for the 401 WQC and Buffer Authorization Certificates review and should be directed to the NC Attorney General's Office.

- Several commenters raised concerns about Duke Power's past record of non-compliance with environmental regulations and permits.

  Compliance Inspection recommendations are addressed in Section V below.

- Several commenters raised concerns about living within the "blast zone" of the pipeline and questioned ACP's liability response should an explosion occur. Others believe that the pipeline is a safe and efficient way to transport natural gas.

  These comments are outside of the evaluation criteria established in N.C. Administrative Codes for the 401 WQC and Buffer Authorization Certificates review and should be directed to FERC.

- Many comments received expressed concerns over ACP's potential impacts to water quality from erosion and sedimentation. Many commenters feel that ACP's erosion and sedimentation control plan is inadequate and lacks sufficient detail. Others believe that trenching through streams and wetlands will have a negative effect on stream stability and threaten wildlife. Concerns over blasting effects were also raised.

  Water Quality is addressed in Section V below.

- Many comments received expressed concerns over impacts to wildlife, specifically threatened and endangered species. Many felt that the construction activities could destroy critical habitat and primary nursery areas for a variety of terrestrial and aquatic species. Others felt that the extensive coordination process with the US Fish and Wildlife Service and NC Wildlife Resources Commission (NCWRC) has adequately addressed any potential impacts.

  Aquatic species are addressed in Section V below. Further comments should be directed to NCWRC.

- Many commenters believe that the 401 WQC application is incomplete. They pointed to the lack of erosion and sedimentation control plans and site-specific water body crossing details as evidence that necessary information was missing from the application. In contrast, some commenters believe that the ACP project has gone through an extensive regulatory review process.

  The Division requested additional information multiple times as detailed in Section I above.

- The overwhelming majority of comments received raised concerns over the degradation of ground and surface waters as a result of the construction and operation of the pipeline. Many commenters mentioned the large number of streams and wetlands that would be crossed by the pipeline and raised red flags regarding the large amount of temporary and permanent impacts. They connected these impacts with the degradation of downstream uses including drinking water supply, aquatic life, primary and secondary contact recreation, and fisheries. Furthermore, commenters spoke in detail of the loss of wetlands through temporary impacts. Many felt the temporal and permanent vegetation changes from temporary wetland impacts should be considered permanent wetland impacts. Finally, many comments were made regarding potential impacts to drinking water wells. A significant level of concern was present among the commenters about impacts to wells from construction activities (mainly blasting activities) and operation of the pipeline.

  Degradation is addressed in Section V below.

V. Certification Specific Comments and Recommendations

Based on the review of public comments, the application, the North Carolina General Statutes and Administrative Code, and discussions with DWR staff, I offer the following comments and recommendations on the criteria for issuance of a 401 WQC pursuant to 15A NCAC 02H .0506(b) and the issuance of Neuse and Tar-Pamlico River Basin Buffer Authorization Certificates pursuant to 15A NCAC 02B .0233 and 15A NCAC 02B .0259, respectively.

15A NCAC 02H .0506(b)

(1) Has no practical alternative under the criteria outlined in Paragraph (f) of this Rule. Paragraph (f) states: "A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs the basic project purpose cannot be

practically accomplished in a manner which would avoid or result in less adverse impact to surface waters or wetlands."

The project proposes to construct a pipeline to transport natural gas from West Virginia and Pennsylvania through Virginia and North Carolina. The North Carolina portion of the proposed route will be constructed through Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland, and Robeson Counties. As part of the Federal Energy Regulatory Commission (FERC) National Environmental Policy Act (NEPA) analysis, ACP investigated several alternatives to meet the purpose and need of the project including no build, alternative energy, energy conservation, and system alternatives. Of these alternatives, FERC and ACP found that the build alternative best met the purpose and need of the project.

Next, ACP conducted an extensive alternatives analysis on potential route locations including collocation of the ACP with existing pipelines as well as Eastern and Western route alternatives. Ultimately, ACP chose the Eastern route as the best option based on the evaluation of a variety of criteria such as project length and human and natural resources. ACP continued to refine the Eastern alternative balancing a variety of human and natural environmental resources such as public lands, roads, conservation easements, forested lands, streams and wetlands, known historical and cultural resources, and homes and businesses. Development of the proposed pipeline route included the analysis of seventeen major route alternatives and thrity-seven minor adjustments in the North Carolina portion of the project in an effort to avoid and minimize impacts to these resources. This analysis included pre- and post-application communication with DWR and NC Wildlife Resources Commission (NCWRC) on avoidance and minimization opportunities. ACP has continued to refine the avoidance and minimization practices in response to additional information requests from DWR and through environmental commitments. A more detailed discussion of avoidance and minimization can be found below.

***Recommendation**: None. The applicant has sufficiently demonstrated that there is no practical alternative that can accomplish the project's basic purpose with less adverse impact to surface waters or wetlands.*

(2) Will minimize adverse impacts to the surface waters based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule.
Paragraph (g) states: "Minimization of impacts may be demonstrated by showing that the surface waters or wetlands are able to continue to support the existing uses after project completion, or that the impacts are required due to:
(1) The spatial and dimensional requirements of the project; or
(2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
(3) The purpose of the project and how the purpose relates to placement, configuration or density.

The applicant has minimized impacts to surface waters and wetlands to the greatest extent practical. The permanent impacts will be 766 linear feet of streams and 0.80 acres of wetlands. The permanent impacts related to streams and wetlands will be a result of

upgrading and improving access roads constructed for installation and maintenance of the pipeline, not from the pipeline itself. All crossings of major rivers will be conducted using horizontal directional drilling (HDD) to avoid open trenching. The magnitude of the temporary impacts is very high but within reason considering the size and scope of the project. The applicant will use a narrower construction corridor when crossing wetlands and construction techniques such as timber matting, temporary work bridges, and clean rock over piping to minimize temporary impacts to streams and wetlands. Temporary impacts to streambanks and wetland areas will be restored to the original contours and revegetated with native plants. ACP will monitor any temporary impact areas in streams or wetlands to ensure there is no permanent loss at these locations. The monitoring plan includes monitoring for a minimum of two years for streams and three years for wetlands with stability, vegetation, and hydrology requirements. Upon successful completion of the restoration and monitoring activities, the stream and wetland impact areas will continue to support existing uses of hydrology, vegetation, and aquatic and wildlife habitat.

The applicant has committed to a number of best management practices to avoid and minimize impacts to streams and wetlands.

- *Demarcation of wetland boundaries with flagging and signs prior to start of construction*
- *Use of temporary work bridges, matting and pads to reduce the risk of soil compaction*
- *Trench backfilling using native material to prevent soil contamination and to accelerate revegetation*
- *Limiting operation of construction equipment in wetlands to only that necessary for clearing, excavation, pipe installation, backfilling, and restoration*
- *Installing trench breakers or plugs at the boundaries of wetlands to prevent draining of wetlands*
- *Pump-out activities in the work area will be routed through an energy dissipation/sediment filtration device prior to discharging to waterbodies*
- *Use of a project-specific invasive plant species management plan*
- *Stump removal, grading, and excavation will be limited to the area immediately over the trench line to maintain native seed and rootstock*
- *Coating for concrete-coated pipe will be conducted at least 100 feet from surface waters and springs*
- *Prohibiting use of live concrete as a building material so that wet concrete does not come in contact with surface waters*
- *Prohibiting storage of chemicals, fuels, hazardous materials, and lubricating oils within 100 feet of surface waters*
- *Voluntarily implementing the requirements of the Construction Stormwater General Permit No. NCG010000*
- *Use of horizontal directional drilling for all major river crossings*
- *Implementation of a Spill Prevention, Control, and Countermeasure plan and a Horizontal Directional Drill Drilling Fluid Monitoring, Operations, and Contingency plan*

ACP has completed formal consultation with US Fish and Wildlife Service (USFWS) on threatened and endangered species along the corridor. In an October 16, 2017 biological opinion, USFWS did not identify any threatened and endangered species or sensitive habitat in NC along the proposed corridor. ACP has also coordinated extensively with the NCWRC. This coordination began with the alternatives analysis and site-specific routing of the pipeline. ACP worked with NCWRC to avoid threatened and endangered species and sensitive habitats and to develop relocation protocols for fish and mussels. ACP conducted pre-construction surveys for fish and mussels in the Neuse River at the proposed crossing location. These surveys found that the mussel population was much more abundant and diverse than previously known. This survey and the continued coordination with NCWRC resulted in ACP's revised proposal to use HDD at the Neuse River instead of open trenching. ACP has also developed a relocation plan for fish and mussels in coordination with NCWRC.

***Recommendation**: The applicant has sufficiently demonstrated that impacts to surface waters and wetlands are required due to spatial considerations, natural features and the purpose of the project. The 401 WQC should include requirements for monitoring of temporary impact areas in accordance with the proposed restoration and monitoring plan. The certification should also include reopener language in the event that temporarily disturbed wetland areas do not return to wetland conditions as defined by the 1987 US Army Corps of Engineers (Corps) Wetland Manual and confirmed by a Corps representative. The reopener language should require a modification to the 401 WQC to account for the additional permanent impacts and mitigation for all permanent wetland impacts should the permanent impacts exceed 1.0 acre. Furthermore, the 401 WQC should be conditioned to comply with any work moratoriums suggested by NCWRC for the proposed project as well as the fish and mussel relocation plan.*

(3) Does not result in the degradation of groundwaters or surface waters.

The main risk to surface and groundwater from the ACP project will be during construction activities. These risks include sedimentation and turbidity in surface waters, breaches of drilling fluids during HDD, and spills of petroleum products and hydraulic fluids from fueling and equipment maintenance. In addition, some commenters raised concerns regarding impacts to drinking water wells from trenching and blasting activities associated with the pipeline installation and from possible contamination due to pipeline leaks during operation.

The applicant has committed to working in the dry for all stream and wetland crossings unless site-specific conditions warrant working in wet conditions and the applicant obtains prior written approval from DWR. Proper erosion and sedimentation control measures will be required for the entire project in accordance with the Division of Energy, Mineral and Land Resources (DEMLR) sedimentation and erosion control Certificate of Plan Approval. All temporary fill placed in surface waters related to construction of the pipeline will be removed once installation of the pipeline is completed at the crossing. The stream banks or wetlands will be restored to the original contours and revegetated with a native seed mix to prevent erosion. Only in areas where vegetative stabilization is not successful will hardened stabilization (rip-rap, geogrid, etc.) techniques be used. No hardening will be placed below

the ordinary high water mark. Furthermore, the applicant has voluntarily agreed to meet the requirements of the NPDES Construction Activities General Permit No. NCG010000.

The applicant will store chemicals, fuels, hazardous materials, and lubricating oils and conduct all equipment and vehicle fueling and maintenance at least 100 feet from surface waters and 200 feet from private drinking water wells. In situations where equipment must continue to operate during fueling activities such as dewatering pumps near surface waters, secondary containment structures will be used to prevent any spillage from reaching the surface waters.

The applicant has conducted a desktop survey to identify all known drinking water wells within 150 feet of the pipeline construction corridor. Almost 50 private drinking water wells were located in NC. The applicant proposes to test each well prior to construction for a suite of parameters including pH, total suspended solids, total dissolved solids, conductivity, alkalinity, acidity, sulfates, oil/grease, phenolic, iron, manganese, aluminum, fecal coliform, copper, lead, nickel, silver, thallium, zinc, chromium, arsenic, mercury, selenium, cyanide, calcium magnesium, hardness, chlorides, antimony, cadmium, and beryllium as well as well yields. These tests will provide a baseline of groundwater quality and quantity against which to measure any construction-related impacts. In the event that blasting will occur within 500 feet of a drinking water well, the applicant proposes to conduct pre-blasting monitoring for the parameters listed above. Should the applicant receive a complaint regarding damage to well water quality or quantity, the applicant proposes to conduct post-construction well testing of the same parameters to verify no adverse impacts have occurred. Furthermore, in the event that adverse impacts do occur as a result of construction activity, ACP has committed to providing temporary water supplies, and/or a new water treatment system or well.

Operation of the pipeline is not expected to have adverse effects on surface waters and groundwater. Any post-construction stormwater generated as a result of impervious surfaces installed during construction are subject to state and local stormwater requirements. ACP has committed to using sheetflow and existing stormwater conveyances and drainage ditches. No curb and gutter stormwater management will be constructed. For impervious surfaces constructed in areas with no state or local stormwater programs, these stormwater management techniques will be protective of water quality.

Many commenters raised concerns about leaks from the pipeline impacting groundwater. The pipeline will be transporting dry natural gas which is not soluble in water. Liquids contained in the gas are removed at a natural gas processing plant prior to transport and at liquid separators at compressor stations. Any remaining liquid will be de minimus and is not likely to impact groundwater.

***Recommendation**: The project is not expected to violate water quality standards if the conditions in the 401 Water Quality Certification are fully complied with by the applicant (or its successor). The 401 WQC should be conditioned to require full compliance with the following permits:*

- *Certificate of Plan Approval No. Cumbe-2018-036, issued by DEMLR, Fayetteville Regional Office*
- *NPDES Permit No. NCG010000 issued by DEMLR*

The 401 WQC should also be contingent on the issuance of a sedimentation and erosion control Certificate of Plan Approval issued by DEMLR, Raleigh Regional Office and upon issuance of appropriate state and local stormwater permits. FERC NEPA and 401 WQC application documentation indicates that the applicant has agreed to conduct pre-construction water quality testing for drinking water wells within 150 feet of the pipeline construction corridor and within 500 feet of blasting activities. The 401 WQC should be conditioned to require ACP to conduct pre- and post-construction testing of all wells within 150 feet of the construction corridor and within 500 feet of blasting activities regardless of whether a complaint is received. Should post-construction testing indicate that well water quality or quantity has been impacted by the construction, ACP should be required to provide temporary water supplies, and/or a new water treatment system or well. An independent, qualified groundwater specialist should determine whether an impact has occurred or not.

The 401 WQC should be conditioned to require monthly ride-through inspections with appropriate DWR and DEMLR staff to measure compliance with the respective certifications and permits. The 401 WQC should also require a pre-construction meeting with the construction contractors, ACP staff, and DWR and DEMLR staff to review the conditions and requirements of the respective certifications and permits for clarity and understanding.

(4) Does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards.

Cumulative impacts are those impacts that would result from the incremental effects of the project added to other past, present and reasonably foreseeable future activities (15A NCAC 01C .0103). This includes secondary impacts or impacts from future activities that occur as a result of the proposed project. The proposed project for the most part will consist of temporary water quality impacts from the installation of the pipeline. These impacts could include sedimentation and temporary disturbance of aquatic and riparian habitat during construction. Permanent impacts will occur in streams and wetlands from access road improvements. The temporary and permanent impacts will be reduced through avoidance and mitigation efforts, erosion and sedimentation control and stormwater best management practices (BMPs), and spill prevention, control, and countermeasure practices. Any projects occurring in similar locations to the proposed project will be subject to local, state, and federal regulations that address stream and wetland impacts, stormwater management, and watershed protection.

Almost 80% of the increased natural gas supply has been committed to natural gas power plants. The remaining supply will be available for commercial, industrial and residential use. However, only three distribution points or M&R stations will be constructed in NC. These M&R stations will be located in Johnston, Cumberland, and Robeson Counties. Secondary development as a result of the pipeline is likely to be focused around these distribution points; therefore, water quality impacts are most likely in proximity to these areas. The applicant conducted a qualitative analysis of the potential secondary and cumulative impacts in these three counties.

In the qualitative analysis, the applicant completed an "indirect (secondary) and cumulative effects screening matrix" where a series of parameters including scope of the project, population growth, available land, water/sewer availability, natural gas availability, market for development, public policy, and notable water resources were evaluated on their ability to contribute to indirect and cumulative effects on water quality. Based on these ratings, areas of potential growth and development were identified. These growth areas were then compared in an action/no-action forecast where the differences in growth and development between building the pipeline and not building the pipeline were determined. Areas that had significant increases in growth and development from building the pipeline were mapped.

As discussed above, any new development projects will be subject to state and federal regulations for impacts to streams and wetlands and erosion and sedimentation control. However, stormwater management regulations are variable by location. Existing state and local stormwater programs were overlain on the areas of potential growth identified in action/no-action analysis to predict the net impact to water quality resulting from secondary development.

The action/no-action analysis demonstrated that growth could significantly increase in Johnston and Cumberland Counties if the pipeline is built. These areas have existing infrastructure for water/sewer and transportation, are predicted to have population growth, and have a number of shovel-ready development sites. Johnston and Cumberland Counties are almost entirely covered by state and local stormwater programs and Johnston County is subject to the Neuse River Nutrient Sensitive Waters Management Strategy. Any potential water quality impacts due to growth in the area would be mitigated through these programs.

Most of Robeson County does not have state or local stormwater programs. Those that are present are associated with High Quality Waters or Water Supply Watersheds and are limited in area. However, the action/no-action analysis demonstrated that Robeson County is not expected to have a significant increase in growth and development as a result of the pipeline. According to ACP's analysis, lacking infrastructure, population decline, and separation from metropolitan areas has stunted growth in this area. Only one shovel-ready industrial site is available in Robeson County, and it is located in the protected Water Supply Watershed and would be subject to a local stormwater program. Water quality impacts from secondary growth in this area would be minimal.

***Recommendation**: The project is not expected to result in cumulative impacts that violate water quality standards, if the conditions in the 401 WQC are fully implemented by the applicant (or its successor). The qualitative cumulative impacts analysis should be forwarded to the NC Department of Commerce for informational purposes.*

(5) Provides for protection of downstream water quality standards through the use of on-site stormwater control measures.

Post-construction stormwater is another potential water quality concern. The vast majority of the proposed pipeline project will not result in new impervious surfaces. However, some new impervious surfaces are proposed as part of the project. The impervious surfaces include multiple improved access roads, eleven valve stations, a compressor station, three metering

and regulating (M&R) stations, and multiple contractor yards. The access roads are existing unpaved roads that will be improved to allow construction and maintenance equipment to safely pass. Improvements will include minor widening and/or surface water crossing upgrades (e.g., minor pipe/culvert extensions). The valve sites are needed to segment the pipeline for safety, operation, and maintenance purposes. The compressor station will be located in Northampton County, and the M&R stations will be located in Johnston, Cumberland, and Robeson Counties. The applicant has indicated that stormwater will be managed by using existing drainage ditches and swales for access roads. No curb and gutter stormwater conveyances are proposed for the compressor or M&R stations, and stormwater will be managed through existing drainage ditches and swales.

Stormwater management for these impervious surfaces will be regulated through state programs in Phase II communities or by local programs where applicable. Valve sites and access roads in a small portion of Nash County and access roads, valve sites, and a contractor yard in Cumberland County will be regulated through the state-implemented Phase II Stormwater Program. ACP will have to meet the requirements of SWG040000 – General Permit To Construct A Linear Utility Line and Associated Incidental Built-Upon Area (SWG04) or an individual state stormwater permit. SWG04 and individual state stormwater permits require compliance with the conditions of the respective permits and with the provisions of 15A NCAC 02H .1000, Session Law 2006-246, and Session Law 2008-211 which ensure the protection of downstream water quality standards through on-site stormwater control measures. Any impervious surfaces built in areas covered by local stormwater programs will have to meet the requirements of the local stormwater program. The applicant also proposes to build impervious surfaces in areas where no state or local programs are applicable. Based on the descriptions of stormwater best management practices proposed by the applicant, stormwater is not expected to violate downstream water quality standards in these areas.

Recommendation: *Session Law 2017-10 prohibits DWR from requiring on-site stormwater management through a 401 WQC. As discussed above, the 401 WQC should be conditioned to require compliance with all applicable state and local stormwater permits for construction of a linear utility line and associated incidental built-upon area.*

(6) Provides for replacement of existing uses through mitigation.

Both federal and state requirements allow for the purchase of in lieu fee credits to offset unavoidable impacts to streams and wetlands. DWR requires mitigation [15A NCAC 02H .0506(h)] at a 1:1 ratio for permanent perennial stream impacts above 300 linear feet and a 1:1 ratio for permanent wetland impacts above one acre. Perennial stream and wetland impacts for this project will not exceed the respective mitigation thresholds, therefore, no stream or wetland mitigation is required by DWR. Mitigation is required, however, by the U.S. Army Corps of Engineers for the wetland conversion impacts. Riparian buffer mitigation is required for the uses identified in the Table of Uses of the Neuse and Tar-Pamlico River Basins Nutrient Sensitive Waters Management Strategies [15A NCAC 02B .0233(6) and 15A NCAC 02B .0259(6), respectively] as "ALLOWABLE WITH MITIGATION." "ALLOWABLE WITH MITIGATION" uses are defined in 15A NCAC 02B .0233(7)(c) and 15A NCAC 02B .0259(7)(c),

respectively. Buffer mitigation is discussed below in the buffer authorization certificates section.

***Recommendation**: No mitigation is required for stream or wetland impacts as a result of the proposed project. The 401 WQC should be conditioned to include language requiring mitigation should permanent impact changes occur that exceed mitigation thresholds.*

Neuse and Tar-Pamlico Nutrient Sensitive Waters Management Strategy

The Neuse River Basin Nutrient Sensitive Waters Management Strategy and the Tar-Pamlico River Basin Nutrient Sensitive Waters Management Strategy have the exact same requirements [15A NCAC 02B .0233 and 15A NCAC 02B .0259, respectively]. Furthermore, the mitigation requirements for impacts to protected buffers are exactly the same for the Neuse and Tar-Pamlico River Basins [15A NCAC 02B .0242 and 15A NCAC 02B .0260 respectively] and both make reference to the buffer mitigation rules [15A NCAC 02B .0295]. For the purposes of this report, the buffer authorization certificates recommendations will be combined in one discussion.

15A NCAC 02B .0233 and 15A NCAC 02B .0259

(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

As discussed above in Section 5 of the 15A NCAC 02H .0506 discussion, the vast majority of the proposed project will not result in new impervious surfaces that will create concentrated stormwater flow. However, there will be improved temporary and permanent access roads, and five valve sites constructed and maintained in the Neuse and Tar-Pamlico River Basins as part of the project. The access roads are existing unpaved roads that will be improved to allow construction and maintenance equipment to safely pass. Upgrades will include minor widening and/or surface water crossing upgrades (e.g., minor pipe/culvert extensions). The valve sites will consist of gravel pads around above-ground valves with gravel driveways.

Stormwater from these areas will be managed by sheetflow or by using existing roadside ditches and swales. Sheetflow from the access roads meets the diffuse flow requirements associated with the Neuse and Tar-Pamlico River Basins Nutrient Sensitive Waters Management Strategies [15A NCAC 02B .0233(5) and 15A NCAC 02B .0259(5), respectively]. ACP has committed to managing the existing roadside ditches and swales to minimize sediment, nutrients, and other pollution prior to entering surface waters. The Table of Uses for the Neuse and Tar-Pamlico River Basins Nutrient Sensitive Waters Management Strategies [15A NCAC 02B .0233(6) and 15A NCAC 02B .0259(6), respectively] identifies use of existing drainage ditches, roadside ditches, and stormwater outfalls provided they are managed to minimize the sediment, nutrients, and other pollution that convey to waterbodies as "EXEMPT" uses. "EXEMPT" uses are defined in 15A NCAC 02B .0233(7)(a) and 15A NCAC 02B .0259(7)(a), respectively.

The applicant proposes to locate the Smithfield M&R station in Johnston County which is subject to the Neuse River Buffer Rules. This station is also subject to state stormwater

permitting requirements as part of the Phase II stormwater rules. Stormwater management and diffuse flow requirements will addressed through the Phase II process.

***Recommendation**: The buffer authorization certificates should include conditions requiring that diffuse flow conditions be maintained for all stormwater from impervious surfaces flowing to or within the protected buffers in accordance with the diffuse flow requirements stated above or other applicable buffer clarification memos.*

(6) TABLE OF USES.

Non-electric utility lines:

- **Impacts other than perpendicular crossings in Zone 2 – Allowable**
- **Impacts other than perpendicular crossings in Zone 1 – Allowable with Mitigation**

Non-electric utility lines:

- **Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width - Allowable with Mitigation**
- **Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer – Allowable with Mitigation**

The proposed project is categorized as a non-electric utility line. The proposed project includes perpendicular and non-perpendicular crossings of streams and other surface waters subject to this rule. Due to the width of the maintenance corridor, 50 feet, all buffer impacts are "ALLOWABLE WITH MITIGATION" uses. "ALLOWABLE WITH MITIGATION" uses are defined in 15A NCAC 02B .0233(7)(c) and 15A NCAC 02B .0259(7)(c), respectively.

***Recommendation**: None. The proposed project is "ALLOWABLE WITH MITIGATION" under the Table of Uses.*

(8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated authority. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

(i) The basic project purpose cannot be practically accomplished in a manner that would better minimize the disturbance, preserve aquatic life and habitat, and protect water quality.

(ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

The project proposes to construct a pipeline to transport natural gas from West Virginia and Pennsylvania through Virginia and North Carolina. The North Carolina portion of the proposed route will be constructed through Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland, and Robeson Counties. The proposed project will permanently impact 521,430 square feet and 594,070 square feet of protected riparian buffers in the Neuse River Basin and the Tar-Pamlico River Basin, respectively. As part of the FERC NEPA analysis, ACP investigated several alternatives to meet the purpose and need of the project including no build, alternative energy, energy conservation, and system alternatives. Of these alternatives, the build alternative best met the purpose and need of the project.

Next ACP, conducted an extensive alternatives analysis on potential route locations including collocation of the ACP with existing pipelines as well as Eastern and Western route alternatives. Ultimately, ACP chose the Eastern route as the best option based on an evaluation of a variety of criteria such as project length and human and natural resources. ACP continued to refine the Eastern alternative balancing a variety of human and natural environmental resources such as public lands, roads, conservation easements, forested lands, streams, wetlands, protected riparian buffers, known historical and cultural resources, and homes and businesses. Development of the proposed pipeline route included the analysis of seventeen major route alternatives and 37 minor adjustments in the North Carolina portion of the project in an effort to avoid and minimize impacts to these resources. This analysis included pre- and post-application communication with DWR and NCWRC on avoidance and minimization opportunities. ACP has continued to refine the avoidance and minimization practices in response to additional information requests from DWR and through environmental commitments.

The applicant has demonstrated that the basic project purpose cannot be practically accomplished in a manner that would better minimize the disturbance, preserve aquatic life and habitat, and protect water quality. The applicant has demonstrated that the use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality. The applicant has proposed a number of best management practices in an effort to minimize disturbance, preserve aquatic life and habitat, and protect water quality including but not limited to the following:

- *Use of temporary work bridges, matting and pads to reduce the risk of soil compaction*
- *Trench backfilling using native material to prevent soil contamination and to accelerate revegetation*
- *Pump-out activities in the work area will be routed through an energy dissipation/sediment filtration device prior to discharging to waterbodies*
- *Coating for concrete-coated pipe will be conducted at least 100 feet from surface waters and springs*
- *Use of horizontal directional drilling for all major river crossings*
- *Implementation of a Spill Prevention, Control, and Countermeasure plan and a Horizontal Directional Drill Drilling Fluid Monitoring, Operations, and Contingency plan*
- *Use of a project-specific invasive plant species management plan*

- *Limiting operation of construction equipment in wetlands to only that necessary for clearing, excavation, pipe installation, backfilling, and restoration*
- *Stump removal, grading, and excavation will be limited to the area immediately over the trench line to maintain native seed and rootstock*
- *Voluntarily implementing the requirements of the Construction Stormwater General Permit No. NCG010000*

***Recommendation**: The applicant has sufficiently demonstrated that there is no practical alternative that can accomplish the project's basic purpose with less adverse impacts to protected buffers. The buffer authorization certificates should be conditioned to incorporate the best management practices proposed by the applicant intended to minimize disturbance, preserve aquatic life and habitat, and protect water quality. Furthermore, the buffer authorization certificates should require demarcation of protected buffer with flagging or signs prior to the initiation of construction and limiting operation of construction equipment in buffers to only that necessary for clearing, excavation, pipe installation, backfilling, and restoration*

(10) Mitigation. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (8) of this Rule.

(b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0242 [.260].

15A NCAC 02B .0242 and .0260 have been repealed and replaced with 15A NCAC 02B .0295.

As discussed above, the applicant has demonstrated that there is no practical alternative that can accomplish the project's basic purpose with less adverse impacts to protected buffers. Due to the fact that the maintenance corridor for the proposed pipeline will have a width of greater than 10 feet, all of the buffer impacts are considered "ALLOWABLE WITH MITIGATION" uses and subject to the buffer mitigation requirements [15A NCAC 02B .0295]. However, impacts to wetlands within the buffers are not subject to the buffer mitigation requirements and are regulated under 15A NCAC 02H .0506(h) as discussed above in section (6) of the 401 WQC application review process. The buffer mitigation totals reflect the removal of wetland areas within the buffer.

The applicant has proposed to obtain all buffer mitigation credits through the in-lieu fee program with the Division of Mitigation Services (DMS). A letter addressed to the applicant from DMS dated May 4, 2017 and renewed on October 6, 2017, states that DMS is willing to accept payment for the buffer mitigation credits for the proposed project. DMS will administer the mitigation credits in accordance with the In-Lieu Fee program instrument dated July 28, 2010 and 15A NCAC 02B .0295.

***Recommendation**: The buffer authorization certificates should include conditions requiring buffer mitigation in accordance with the table below:*

	Compensatory Mitigation Amount Required	River & Sub-basin Number	
Buffers	301,168 (square feet)	Tar-Pamlico	03020102
	318,868 (square feet)	Tar-Pamlico	03020101
	245,612 (square feet)	Neuse	03020203
	486,344 (square feet)	Neuse	03020201

Environmental Justice

One of the most common topics of the commenters was environmental justice. As discussed above in the General Comments Section, many comments received expressed concerns about environmental justice issues associated with pipeline's construction and operation. FERC's Final Environmental Impact Statement determined, "as a result of the project, no disproportionately high and adverse impacts on environmental justice populations as a result of air quality impacts, including impacts associated with the proposed Compressor Station 2, would be expected as a result of ACP and SHP. Also, no disproportionately high and adverse impacts on environmental justice populations as a result of other resources impacts would be expected." Many commenters disagreed with this determination and requested that the 401 WQC be denied based on the potential environmental justice impacts.

The Director evaluates a 401 WQC application based on five criteria including a no practical alternatives analysis, minimization of adverse impacts to surface waters, an analysis of the degradation of groundwaters or surface waters, a cumulative impacts analysis, and replacement of existing uses through mitigation. Environmental justice is not included in the criteria upon which the Director must evaluate the application. Although environmental justice is not an evaluation criteria, the Department has been intimately engaged with the stakeholders of North Carolina through the permitting process.

On March 23, 2017, the Department hosted a stakeholder meeting in Raleigh, NC to provide information and receive feedback on the proposed pipeline project. Eight environmental organizations, four government agencies, and a representative of the Commission of Indian Affairs were in attendance.

On July 18 and 20, 2017, the Department hosted 401 WQC Application Public Hearings. This was to allow the citizens of North Carolina to comment on the certification. Notification of the public hearings was provided in accordance with 15A NCAC 02H .0506(d) and (e). In addition, the Division of Water Resources provided notices of the hearings by mailing flyers in both English and Spanish to community organizations, such as churches, government and non-government organizations, libraries, etc.

On August 9, 2017, the Department participated in an Environmental Justice Forum hosted by the Haliwa-Saponi Indian Tribe and the North Carolina Commission of Indian Affairs. The forum allowed an opportunity for tribal leaders, commission members, state and federal regulators, and other stakeholders to discuss information on the proposed Atlantic Coast Pipeline.

Between August 15 and 17, 2017, the Department hosted three listening sessions along the proposed pipeline route to obtain additional public feedback on the project. In addition to the Department, the NC Department of Commerce, NC Department of Natural and Cultural Resources, and the US Army Corp of Engineers were present.

On October 20 and 21, 2017, the Department participated in the North Carolina Environmental Justice Network's Summit. This allowed for the Department to provide a summary of the permitting status of the project.

In addition to the various stakeholder engagements listed above, the Department has been transparent with citizens who requested to sign up for the email news feed on the project, as well as meetings with the Commission of Indian Affairs. The Department has been thorough in its review of the applications submitted for the proposed Atlantic Coast Pipeline.

VI. Summary

Public comments concerning the two public hearings focused on several major issue areas, including the degradation of water quality, cumulative impacts, environmental justice, sedimentation and erosion control, the permitting process, impacts on wildlife including threatened and endangered species, and ground and surface water supply protection. Due to the number of public comments, many of which expressed concerns on the same issues, each comment is not addressed individually. Only comments that have direct relevance to the certification decision have been addressed in the recommendations (Section V).

As stated above, a thorough review of all public comments received and the project record has been conducted, and additional insight has been obtained through discussions with DWR staff. Based on all of this information, it is my recommendation that the 401 Water Quality Certification and Buffer Authorization Certificates be issued and subject to the conditions included in the recommendations in Section V. It is further recommended that DWR include any additional conditions necessary to ensure that the project will meet state water quality standards.

VII. Appendices (available on Laserfiche)

A. May 8, 2017 401 Water Quality Certification Application

a. Laserfiche Folder Name: *401 Application*

b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/fol/547515/Row1.aspx

B. Notice of Public Hearings –June 16-18, 2017

a. Laserfiche Filename: *Listserve Public Notice 06_16_2017*

b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/547528/Page1.aspx

C. Correction to Notice of Public Hearings – June 19-22, 2017

a. Laserfiche Filename: *Listserve Public Notice Correction 06_19_2017*

b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/547588/Page1.aspx

D. July 18, 2017 Non-speaker sign-in sheets

a. Laserfiche Filename: *ACP_July18_FayettevilleHearing_Non-SpeakerSignInSheets*
b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/552613/Page1.aspx

E. July 18, 2017 Speaker list

a. Laserfiche Filename: *ACP_July18_Fayetteville Hearing_SpeakerSignInSheets*
b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/552611/Page1.aspx

F. July 20, 2017 Non-speaker sign-in sheets

a. Laserfiche Filename: *ACP_July20_RockyMtHearing_Non-SpeakerSignInSheets*
b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/553245/Page1.aspx

G. July 20, 2017 Speaker list

a. Laserfiche Filename: *ACP_July20_RockyMt Hearing_SpeakerSignInSheets*
b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/553247/Page1.aspx

H. July 18, 2017 Public Hearing transcript, including oral comments

a. Laserfiche Filename: *ACP_July18_Fayetteville Hearing_Transcripts*
b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/557323/Page1.aspx

I. July 20, 2017 Public Hearing transcript, including oral comments

a. Laserfiche Filename: *ACP_July20_RockyMt Hearing_Transcripts*
b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/doc/557322/Page1.aspx

J. Written comments received during the comment period, including at the public hearings

a. Laserfiche Folder Name: *Public Notice Comments*
b. Laserfiche link:
http://edocs.deq.nc.gov/WaterResources/0/fol/548242/Row1.aspx

EXHIBIT

B

401 Application for Atlantic Coast Pipeline

Date	Action
May 9, 2017	Application Received
June 27, 2017	Req. for Add Info (1) /Notice of Hearing
July 12, 2017	Add Info Received (1)
July 18, 2017	Public Hearing – Fayetteville
July 20, 2017	Public Hearing – Rocky Mount
August 19, 2017	Public Comment Period Ends
September 14, 2017	Req. for Add Info (2)
September 22, 2017	Add Info Received (2)
September 29, 2017	Add Info Received (2)
October 2, 2017	Add Info Received (2)
October 13, 2017	Add Info Received (2)
October 26, 2017	Req. for Add Info (3)
November 4, 2017	Add Info Received (3)
November 7, 2017	Phone call re Add Info Received
November 15, 2017	Add Info Received (3)
Nov. 21, 2017	Email requesting add info (4)
Nov. XX, 2017	Add Info Received (4)
Dec. 13, 2017	Provide HO Report and draft decision documents to Section Chief for review
Dec. 19, 2017	Provide HO Report and draft decision documents to Director for review
Jan. 2, 2018	Meet with Director for final decision

** indicate goal date not actual date **

1-3 ACP Call

- update on Air
- " " 401
- update on E&SC → still questions about access roads → sending a disapproval
  - and other little things
- stormwater → generals & individual
  - notice
  - ↳ notice & maybe hearing?

1-4

- give HO Report / Draft decisions to Linda on Monday
- Bridget will talk w/ Doug about news release of decision

1-5 Mtg. w/ JB

- double check impact #'s + buffer mit ✓
  - ↳ send to Spencer for review ✓
  - ↳ need open water impacts ✓
- WRC - relocation plans ✓
- → check NCG01 throughout ☐
- inundated wetlands - add curtains + monitoring ☑
- check all add infos + meeting notes for other conditions ✓
- → request variance from FERC to adjust route → see email
  - ↳ ~~add info~~? ☐
- add date recd for OW impacts to letter ✓
- → [illegible] ☐

1-12 Mtg. w/ Sec. Regan, Sheila, Linda, Brian

- questions re cum. analysis - DWR Add Info
  - ↳ what info does commerce have
- HD recommendations.

↓ send a summary of conclusions → send to Sheila email

↓ why was it limited to three counties

Apr - Dec 2017 1352248

#, impacts - 1 1.16

- 1,568,607.68

1-5 Call w/ Spencer

- meeting in Smithfield 9-12 or 10-12
  - ↳ let Spencer know if that week doesn't work
- haven't issued 404 permit yet - should be soon
- tree felling has started in NC

  spread 10 + spread 8 construction in 2018

  ↳ spread in South ↳ Northern

8-3 Jay

Jay's call

listening sessions → not public hearings - no Brian
↳ would point folks to the other agencies not necessarily have them there - we will invite other agencies
- not taking comments but telling folks to submit them + how

talk to MPK

↳ will check to see if JB or KH should be there, or is it higher level management
↳ will check about Aug. 9 meeting also

8-7 Mtg. with Mary Penny, Jennifer Mundt, Ken Taylor

- Jennifer, Karen & Brian

- Wed → no presentations, just there to answer questions
  ↳ Dominion will be there, EPA, NC State Prof. Emanuel
  ↳ Sarah will present
- make sure we're getting info out

- send invite for meeting w/ JB + BW on 8-24.

8-8 Pre-Meeting re 8-9 Meeting

- tribal leader comments
- provide overview of programs → powerpoint is available
- questions from tribal leaders

9-6 Meeting w/ DEMLR

Bill D., Thad V., Sally, Tim (on phone), Toby, Brian, Karen

- if insufficient info, would disapprove & include list of why disapproved
  - ↳ don't review preliminary plans.
- sequencing is more in language than seperate plans
- ERM: sealed plans
- don't allow nat. regeneration → can require veg. plans that match ours
- have to have construction mats
- silt fence or logs
- will ask for notification before different phases are open / construction start
- → checking re whether they are exempt from NCG01 → related to site not owner / FRP
- will have standard designs + list which they are using ~~where~~ @ each crossing
  - ↳ when more than one option, need to provide criteria for deciding

- do ask for proof of right away or encroachment agreement, including crossing other utilities

- no basins → just silt fences + logs, water bars, turbidity curtains
- can't approve phases w/ in one plan → if missing details, disapprove the whole thing

- prefer not to release until after 2 growing season
  - ↳ after each major phase + quarterly
    - ↳ onsite → available on request
      - ↳ could set up a digital file for them to send inspection reports to us.

- send SELC letter → highlight EAS comments

9-8 Meeting w/ Dept.

Bridget, Jay, Jennifer H., Sec. Regan, Karen, Jeff, Sarah R.
On phone → Sheila, John, Toby, Bill D., Sally C., Michael Abraczinskas

- DWR update - Karen
- DEMLR - have 2 plans in → have until Sept. 27
  - ↳ have not rec'd state sw permit application yet
    - ↳ currently a general, could have a petition to ask for an individual
  - ↳ if disapprove, have 15 days for new review
  - ↳ if miss deadline deemed [illegible]

9-27 Mtg w/ DEQ re ACP

- Mary Penny, Sheila, Bill, Toby, Julie, Linda, Jay, Jeff, Jennifer M.

- if there are areas we know are not sufficient, let them know Friday
- DEMLR
  - ↳ got responses to comments yesterday - a week or two from reviewing add'l info response.
  - ↳ checking on whether there is a 15 or 30 day clock.
- DAQ
  - ↳ met w/ Bridget & Sarah last week re outreach
  - ↳ will be a minor permit
  - ↳ doing a public hearing
    - ↳ notice by Oct. 11

↳ disapproving + request for new

no app for stormwater

Toby got an email re new pipeline in PA to GA

- letter to FERC drafted but not sent
  - ↳ FERC's next meeting is Oct. 19
- having nat. expert coming in tomorrow re pipelines
- next month is national energy awareness month

9-29 Meeting w/ ACP

- Mark McIntire, Spencer Trichell, ~~Bruce McKay~~ Colin, Richard Gangle, Sheila Holman, Jay Z., Jennifer, Karen
- ACP gave last submittal today
- Mark → timeline - when does 60 day start?
- Sheila → have rec'd request for another public hearing on add info
- Richard → questions at this point?
  - ↳ went through preliminary comments
  - 1a → provide plan & profile for both wetlands
  - 1b: → submitted Friday
    - ii → datasheets don't show inundation → points @ the edge
    - iv → will provide a little more info on lower vs. higher flow
    - vi → why A now?
      - ↳ it's not that it wasn't feasible, it wasn't an easy HDD → will it fail → if not high risk of failure, FERC directed them to do it, so they are
  - c → anticipate doing 1 everywhere → type II's (incised) are HDD
  - d4 → will add info re stability monitoring

- Questions about status of VA & WV reviews
- " " FL pipeline court decision

10-11 Weekly DEQ Meeting - call in

- DEMLR → have not received new plans yet
  → " " " an application for stormwater
- DAQ → have set up public hearing → Nov. 15
  → have communicated w/ VA
- letter to FERC → are proceeding w/ sending this
  ↳ highlighting circuit decision + ques. re extension into SC
- MPK + Ken Taylor → paper re chrom III → VI this year
  - northern part of route - maybe southto ??
  - bmps - keep it wet
  - E! SC or 401 or other
  - talk to VA

10-25 Weekly DEQ

- Ken Taylor, Mike A., Jeff P., Jay Z., Brian W., Renee, working w/ Seth, Jennifer, Karen phone → Bridget + Toby

- DAQ Update
  ↳ notice + hearing
- DWR
  ↳ questions related to risk from chrom VI →
  (see notes from yesterday)
  ↳ Black Creek → very low pH ~ 4 +/- → concerns
  maybe re corrosion → transco is installing oils
  ↳ may need to take add steps to prevent corrosion →
  not w/in scope of 401, but should convey to ACP
- Sergei → chrom should be reduced

- hoping to get Add Info out today
- Brian → working on HO report

- DEMLR
  ↳ rec'd revised E&SC Plans → plans in Laserfiche
- email Sheila re Add Info just as FYI
  ↳ cc MPK & Jay Z.

11-7 Brian: Jennifer re latest Add Info

- notable H_2Os → what is the comparison? wetlands in Rob. Co → seems it should be higher
- no mapping to show location of other projects
- Jo Co → Park station near existing developed area, 4 lane highway → potential for growth → could be covered by existing programs
  → industrial park → was in app → plans to tap in → not included at all.
- Cum. Co. → similar → can send out H_2O + sewer if not already there → I-95 right there → seems development is likely
- H_2O/sewers → more detail
- where is pot. development → where are there existing regulations

11-8 ACP Call

- update on 401 app
  - ↳ Sheila will talk w/ Sarah re EJ response
- SW
  - ↳ add info letters went out today
    - ↳ should have the info requested, just need to put it together → couldn't tell - whether what they submitted was enough?
      - ↳ anyone could petition a hearing or an individual
- E & SC
  - ↳ just sent disapprovals
- Air
  - ↳ prepared for hearing
- let Dept. know if any actions are pending

11-17 Brian & Jennifer

- missing SW layer → can show as inserts for certain areas if map too busy
  - ↳ discuss specific areas not just general county
  - ↳ include discussion of the map in doc → no connection → no analysis
- need clearly connection & support for conclusions → we cannot see how ~~they~~ their conclusions are supported
- industries that need NG to operate
- tie in terminus discussion from app into IC1

11-28 Call w/ ACP

Karen, Jennifer, James McRacken, Dennis Woods, Evan Ehrlich, Jacob Rosenberg, Jeremy Baksh, Steve Holden, Spencer Trichell, Stu Buchanan

- questions re add info letter

12-11 ASWM Call

Clifford Brown - WV(DNR):

- Wilma Reip - Project Manager in DEP
  - ↳ only requiring 401 b/c of diameter of pipe
  - ↳ all special conditions in new nationwides
  - ↳ trenching through surface mine that has been capped → acid → will comment through SW permit

12-18 Conf. call w/ ACP → see calendar invite

- draft redline sent Mon - morning
- page 17 → expand on this → RobCo has to advertise more + seek subsidies to try to attract industries

EXHIBIT

C

Water Resources
ENVIRONMENTAL QUALITY

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

LINDA CULPEPPER
Interim Director

November 28, 2017

DWR Project #14-0957 v2
Northampton, Halifax, Nash,
Wilson, Johnston, Sampson,
Cumberland and Robeson Counties

Atlantic Coast Pipeline, LLC
Attn: Ms. Leslie Hartz
707 E. Main Street, 19th Floor
Richmond, VA 23219

Subject: REQUEST FOR ADDITIONAL INFORMATION
Atlantic Coast Pipeline

Dear Ms. Hartz:

On May 8, 2017, the Division of Water Resources (Division) received your application dated May 3, 2017, requesting an Individual Water Quality Certification / Buffer Authorization from the Division for the subject project. Additional information was requested by the Division on June 27, 2017 and received on July 12, 2017. Two public hearings were held on July 18 and 20, 2017 in Fayetteville and Rocky Mount, respectively, with a public comment period from June 16 – August 19, 2017, to receive public comments on the proposed project. Comments received are available for review at the following link: http://edocs.deq.nc.gov/WaterResources/0/fol/548242/Row1.aspx.

Based on the comments received, additional information was requested by the Division on September 14, 2017 and responses were received on September 22 and 29, 2017. Department of Environmental Quality, Division and Atlantic Coast Pipeline (ACP) representatives met on September 29, 2017 to discuss the additional information that was received by the Division on September 22, 2017. On October 16, 2017, the Division received follow-up information from that meeting. The Division requested additional information again on October 26, 2017 and received a response on November 4, 2017. The Division had a conference call with ACP on November 7, 2017 to discuss the additional information that was received by the Division on November 4, 2017 and received follow-up information on November 15, 2017.

The Division has determined that the following additional information is necessary to continue to process your application [15A NCAC 02H .0502(c), 15A NCAC 02B .0233(8) and .0259 (8)]:

1. In our conference call, Division staff explained that ACP's Indirect and Cumulative Effects (ICE) Screening lacked an analysis of the project's potential to stimulate economic development and its potential impact on water quality. Staff suggested maps of available water and sewer infrastructure overlaid with the pipeline route, water resources, and existing developed areas and roadway infrastructure would be helpful to identify areas with potential to experience project-induced growth (within the County, not County-wide). Once these areas are identified, a more detailed discussion of the potential for *each specific area* to experience project-induced growth must be provided.
    a. Although ACP provided the mapping suggested by staff, there was no analysis of the information provided in the maps, specific areas were not identified, a detailed analysis of each area's potential for project-induced growth was not completed, nor was there a detailed discussion of the regulatory framework that may be in place or needed to protect water quality. Please include each of these in your analysis.
    b. Excerpts below from Guidance for Assessing Indirect and Cumulative Impacts of Transportation Projects in North Carolina Volume II[1] explain the analysis should include comparing forecasts of future conditions with and without the proposed project along with an explanation of the underlying system of logic used in the analysis.

> *Analyzing induced growth is an exercise in creating and comparing forecasts of future conditions. At least two forecasts are necessary:*
> - *a Base or No-Action Forecast which describes future conditions in the absence of the project or plan; and*
> - *an Action Forecast describing conditions in a future point in time following implementation of the project alternative or plan...*
>
> *The key in forecasting is an underlying system of logic that can produce reproducible and relatively consistent results regardless of the forecaster. It should be noted that forecasting is not the exact determination and prediction of the future, but the logical extrapolation of likely effects that will occur from known associations among different critical parts of the system.* (from page IV-4)

    c. The analysis should include a specific discussion of industries that need additional natural gas capacity to operate in North Carolina.
    d. There should be a clear connection in the discussion to support the conclusion statements.

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[1] Guidance for Assessing Indirect and Cumulative Impacts of Transportation Projects in North Carolina Volume II: Practitioner's Handbook. 2001. The Louis Berger Group, Inc. https://connect.ncdot.gov/resources/Environmental/Compliance%20Guides%20and%20Procedures/Volume%2002%20Assessment%20Guidance%20Practitioners%20Handbook.pdf

2. In addition to the more robust analysis of ICE, please also provide more details regarding the terminus of the project in the ICE document. On page 12 of the ICE, ACP states that there is no commitment to potential customers or reasonably foreseeable plans to extend the ACP beyond the current terminus. Include an explanation of the factor(s) that led to proposed terminus of the project.

Pursuant to 15A NCAC 02H .0502(e) / 15A NCAC 02B .0233 / 15A NCAC 02B .0259, the applicant shall furnish all the above requested information for the proper consideration of the application. Please respond in writing within 30 days by sending one copy of all the above requested information to the 401 & Buffer Permitting Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617.

Please be aware that you have no authorization under the Section 401 of the Clean Water Act or the Neuse or Tar-Pamlico Buffer Rules for this activity and any work done within waters of the state or protected riparian buffers may be a violation of North Carolina General Statutes and Administrative Code.

Contact me at 919-807-6360 or karen.higgins@ncdenr.gov or Jennifer Burdette at 919-807-6364 or jennifer.burdette@ncdenr.gov if you have any questions or concerns.

Sincerely,

Karen Higgins

Karen Higgins, Supervisor
401 & Buffer Permitting Branch

cc: Richard Gangle, Dominion Resources Services, Inc. (via richard.b.gangle@dom.com)
Spencer Trichell, Dominion Resources Services, Inc. (via spencer.trichell@dom.com)
USACE Raleigh Regulatory Field Office
DWR 401 & Buffer Permitting Branch file

Filename: 140957v2AtlanticCoastPipeline(Multi)_401_IC_NRB_TAR_AddInfo4

EXHIBIT

D

To: Bridgette R Morris-McLawhorn (bmorris@ncdenr.gov)
Subject: meeting with Linda
Date: Thursday, December 14, 2017 2:57:18 PM

Hi Bridgette-

I'd like to go ahead and schedule time with Linda, Jennifer Burdette, Brian Wren and me to go over the Atlantic Coast Pipeline Hearing Officer's report and recommendation. We'll probably need an hour and are looking for January 4th or 5th.

Thanks-
Karen

Karen Higgins
401 & Buffer Permitting Branch Supervisor
Division of Water Resources
Department of Environmental Quality

(919) 807-6360 office
[illegible]
[illegible] gov/about-divisions/water-resources/water-resources-permits/401-and-buffer-permits

512 N. Salisbury Street (Archdale Building), Suite 942-E, Raleigh, NC 27604
1617 Mail Service Center, Raleigh, NC 27699-1617

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From: Wrenn, Brian L
To: Rice, Sarah M
Subject: RE: ACP
Date: Friday, December 15, 2017 2:27:34 PM

Sarah,

Linda has scheduled a meeting to discuss the ACP hearing officer's report on Jan. 4th. I am finalizing the HO's report and hope to have a draft to Karen and Jennifer early next week (minus the cumulative impacts evaluation – still waiting on info). Do you think you could have a EJ statement completed next week? Thanks.

Brian Wrenn
919-743-8409 (office)
919-491-2616 (cell)

From: Rice, Sarah M
Sent: Wednesday, December 06, 2017 12:47 PM
To: Wrenn, Brian L <brian.wrenn@ncdenr.gov>
Subject: ACP

Hi Brian,

Please let me know if I can assist with any EJ related questions for the hearing officers report.

Regards,
Sarah
919.707.8287

Get Outlook for iOS

From: Doug Heyl

To: Julia White (julia.white@nc.gov)
Subject: Date: Attachments:

Heyl, Douglas

FW: ACP Update Notes - Jan. 3, 2018 Wednesday, January 3, 2018 1:36:00 PM image001.png

North Carolina Department of Environmental Quality 919.707.9034 (Office)
919.812.3415 (Mobile)
douglas.heyl@ncdenr.gov

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North Carolina Public Records Law and may be disclosed to third parties.

From: Munger, Bridget
Sent: Wednesday, January 03, 2018 1:04 PM
To: Holman, Sheila <sheila.holman@ncdenr.gov>
Cc: Heyl, Douglas <Douglas.Heyl@ncdenr.gov>; Munger, Bridget <bridget.munger@ncdenr.gov>
Subject: ACP Update Notes - Jan. 3, 2018

ACP Weekly Update Notes Jan. 3, 2018

DAQ: No written response has been received from Dominion following DAQ's request for additional information on the air quality permit application for the Northampton compressor station facility. Mike A. has reviewed draft hearing officer's report; it is in good shape.

DWR: In response to the fifth add-info request, Dominion submitted a revised cumulative analysis report on Dec. 20. Information submitted is under review to ensure that all the requested information has been provided. Final edits are being made to the hearing officer's report. Staff is meeting with Linda Culpepper tomorrow to discuss further.

DEMLR - E&SC: Staff will issue another letter of disapproval to Dominion by Jan. 4, which is the 15-day deadline date. The letter will include about 19 comments/items, which is down from 34 on the last letter of disapproval. There is no set deadline for Dominion to respond once the letter of disapproval is issued. Staff said the timeline is working out that we may be ready to issue an approval for the E&SC and construction stormwater permit application when the 401 certification issues are

resolved. Per standard procedures, DEMLR will not issue the E&SC or construction stormwater permit approval prior to 401/404 approvals.

DEMLR - Stormwater: No information has been received from Dominion in response to the DEMLR's requests for more information on the stormwater general permit and stormwater individual permit. Options for a public comment period are under discussion.

Bridget Munger
Public Information Officer
N.C. Department of Environmental Quality

From: Wrenn, Brian L

To: Higgins, Karen; Burdette, Jennifer a
Subject: Date: Attachments:

RE: ACP Well Testing
Thursday, January 4, 2018 12:54:46 PM image001.png

Ok, I think I have the comments and edits from both of you resolved. Karen, I made one change to the appendices order and double checked the references in the text but no changes to the Appendices other than that. I've included the well testing language about complaints, added the 500 feet zone around blasting, and the cumulative analysis write-up as well. I think that covers it. I've saved the report with today's date. Let me know what you think. Thanks.

Brian Wrenn 919-743-8409 (office) 919-491-2616 (cell)

From: Higgins, Karen
Sent: Thursday, January 04, 2018 9:47 AM
To: Burdette, Jennifer a <Jennifer.Burdette@ncdenr.gov>; Wrenn, Brian L <brian.wrenn@ncdenr.gov>
Subject: Re: ACP Well Testing

agreed

Thanks- Karen

Karen Higgins

401 & Buffer Permitting Branch Supervisor Division of Water Resources
Department of Environmental Quality

919 807-6360 office

From: Wrenn, Brian L

To: Higgins, Karen; Burdette, Jennifer

Subject: a FW: ACP HO report

Date: Friday, January 5, 2018 9:17:45 AM

Not sure if either of you got in this am, but I'm at home with one sick child and another out of school due to snow. The Secretary's office wants to review the HO report prior to sending to Linda. I told Bridget we would send a copy to them when we send to Jeff. I doing another read through right now. When do you think you can finish your review? Thanks!

Brian Wrenn 919-743-8409 (office) 919-491-2616 (cell)

From: Munger, Bridget
Sent: Friday, January 05, 2018 8:56 AM
To: Wrenn, Brian L <brian.wrenn@ncdenr.gov> **Subject:** RE: ACP HO report

That sounds great. Thanks!

From: Wrenn, Brian L
Sent: Friday, January 5, 2018 8:44 AM
To: Munger, Bridget <bridget.munger@ncdenr.gov> **Subject:** Re: ACP HO report

I think the HO report is their focus this am. If it's ok, we can send the draft to you when we send it to Jeff to review. Thanks.

Sent from my iPhone
On Jan 5, 2018, at 8:09 AM, Munger, Bridget <bridget.munger@ncdenr.gov> wrote:

Hi Brian,
If Karen and Jennifer will be looking at the report today, I can wait for that draft. Please let me know what you prefer.
Thank you!
Bridget
(Working at home this morning: 919-268-0069)

From: Wrenn, Brian L
Sent: Thursday, January 4, 2018 7:25 PM
To: Munger, Bridget <bridget.munger@ncdenr.gov> **Subject:** ACP HO report

Please make it known that this has not gone through final revisions. Some of the cumulative impact language is new and neither Karen nor Jennifer have reviewed it at all. Thanks.

From:

To: Subject: Date:

Brian-

Higgins, Karen

Wrenn, Brian L; Burdette, Jennifer a RE: ACP HO report
Friday, January 5, 2018 11:37:00 AM

Just a few minor suggestions highlighted in yellow. I don't think Jennifer will review this today so please go ahead and send to Jeff and others.

Since the department is reviewing the documents before going to Linda, I'm not sure that it will be ready for her by Monday. Should we try to reschedule for later in the week? We could try for after the EMC on Thursday (maybe 3:30) or Friday (maybe 8:45 or 2:00).

Thanks- Karen

Karen Higgins

401 & Buffer Permitting Branch Supervisor Division of Water Resources
Department of Environmental Quality

(919) 807-6360 office

karen.higgins@ncdenr.gov

https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits

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From: Wrenn, Brian L
Sent: Friday, January 05, 2018 9:18 AM
To: Higgins, Karen <karen.higgins@ncdenr.gov>; Burdette, Jennifer a <Jennifer.Burdette@ncdenr.gov>
Subject: FW: ACP HO report

Not sure if either of you got in this am, but I'm at home with one sick child and another out of school due to snow. The Secretary's office wants to review the HO report prior to sending to Linda. I told Bridget we would send a copy to them when we send to Jeff. I doing another read through right now. When do you think you can finish your review? Thanks!

Brian Wrenn 919-743-8409 (office)

From: Munger, Bridget
Sent: Friday, January 05, 2018 8:56 AM
To: Wrenn, Brian L <brian.wrenn@ncdenr.gov> **Subject:** RE: ACP HO report

That sounds great. Thanks!

From: Wrenn, Brian L
Sent: Friday, January 5, 2018 8:44 AM
To: Munger, Bridget <bridget.munger@ncdenr.gov> **Subject:** Re: ACP HO report

I think the HO report is their focus this am. If it's ok, we can send the draft to you when we send it to Jeff to review. Thanks.

Sent from my iPhone
On Jan 5, 2018, at 8:09 AM, Munger, Bridget <bridget.munger@ncdenr.gov> wrote:

Hi Brian,
If Karen and Jennifer will be looking at the report today, I can wait for that draft. Please let me know what you prefer.
Thank you!
Bridget
(Working at home this morning: 919-268-0069)

From: Wrenn, Brian L
Sent: Thursday, January 4, 2018 7:25 PM
To: Munger, Bridget <bridget.munger@ncdenr.gov> **Subject:** ACP HO report

Please make it known that this has not gone through final revisions. Some of the cumulative impact language is new and neither Karen nor Jennifer have reviewed it at all. Thanks.

Brian L. Wrenn
Ecosystems Branch Chief Water Sciences Section
NC Division of Water Resources 919-743-8409 (office) 919-491-2616 (cell)

Physical Address:

4401 Reedy Creek Road Raleigh, NC 27607

Mailing Address:

1621 Mail Service Center Raleigh, NC 27699-1623

From: Wrenn, Brian L

To: Higgins, Karen; Burdette, Jennifer a

Subject: FW: ACP hearing officer"s report

Date: Friday, January 5, 2018 12:19:39 PM

Attachments:

FYI

ACP_hearing officers rept_01052018.docx

Brian Wrenn 919-743-8409 (office) 919-491-2616 (cell)

From: Wrenn, Brian L
Sent: Friday, January 05, 2018 12:19 PM
To: Poupart, Jeff <jeff.poupart@ncdenr.gov>
Cc: Munger, Bridget <bridget.munger@ncdenr.gov> **Subject:** ACP hearing officer's report

Jeff,
Please find attached the draft hearing officer's report for the ACP project. If you have any questions, please do not hesitate to contact me. I'm at home with kids, so try my cell (919-491-2616). Thanks.

Brian L. Wrenn
Ecosystems Branch Chief Water Sciences Section
NC Division of Water Resources 919-743-8409 (office) 919-491-2616 (cell)

Physical Address:

4401 Reedy Creek Road Raleigh, N 19681C 27607

From: To: Subject: Date:

Burdette, Jennifer a

Wrenn, Brian L

RE: ACP hearing officer"s report Friday, January 5, 2018 4:15:00 PM

Sorry for missing your call this morning. I was deep into the draft of the 401. Before I left, I just wanted to thank you for all of your help with this project. I enjoyed and learned a lot working with you.

Take care, Jennifer

Jennifer Burdette

401/Buffer Coordinator
Division of Water Resources - 401 & Buffer Permitting Branch Department of Environmental Quality
919 807 6364 office
jennifer.burdette@ncdenr.gov

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(Physical Address: 512 N. Salisbury St, Raleigh, NC 27604 - 9th Flr Archdale Bldg – Room 942F) Email correspondence to and from this address is subject to the

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From: Wrenn, Brian L
Sent: Friday, January 05, 2018 12:20 PM
To: Higgins, Karen <karen.higgins@ncdenr.gov>; Burdette, Jennifer a <Jennifer.Burdette@ncdenr.gov>
Subject: FW: ACP hearing officer's report

FYI

Brian Wrenn 919-743-8409 (office) 919-491-2616 (cell)

From: Wrenn, Brian L
Sent: Friday, January 05, 2018 12:19 PM
To: Poupart, Jeff <jeff.poupart@ncdenr.gov>
Cc: Munger, Bridget <bridget.munger@ncdenr.gov> **Subject:** ACP hearing officer's report

Jeff,
Please find attached the draft hearing officer's report for the ACP project. If you have any questions, please do not hesitate to contact me. I'm at home with kids, so try my cell (919-491-2616). Thanks.

Brian L. Wrenn
Ecosystems Branch Chief Water Sciences Section
NC Division of Water Resources 919-743-8409 (office) 919-491-2616 (cell)

From: Wrenn, Brian L

To: Higgins, Karen
Poupart, Jeff
Cc:

Subject: Re: ACP - Draft Decision Documents

Date: Sunday, January 21, 2018 8:58:42 PM

Karen,
I accepted all of the edits on the HO rept. I looked at the 401 one last time. In condition 16, it references an exemption from condition #13. should that be #15 instead?

I'll sign the document and send it to Linda, copying you and Jeff. Thanks for all of your help on this.

From: Higgins, Karen
Sent: Friday, January 19, 2018 9:26:01 PM **To:** Wrenn, Brian L
Cc: Poupart, Jeff
Subject: Re: ACP - Draft Decision Documents

Brian-

Attached are a revised 401 and HO report. I made the edits to the HO report based on your comments in the 401 and reviewed a couple other places as well. I used the HO report I sent yesterday with those track changes accepted, so the only track changes you see are those I made today.

I also made the recommended changes to the draft 401.
Please let me know if you have any further comments/changes for either document.

Thanks- Karen

Karen Higgins

401 & Buffer Permitting Branch Supervisor Division of Water Resources
Department of Environmental Quality

919 807-6360 office karen.higgins@ncdenr.gov

From: Higgins, Karen
Sent: Thursday, January 18, 2018 10:00 PM
To: Wrenn, Brian L <brian.wrenn@ncdenr.gov>; Poupart, Jeff <jeff.poupart@ncdenr.gov>
Subject: ACP - Draft Decision Documents

Attached please find the draft 401 certification for ACP as well as the draft denial letter. Please review and send me any edits/comments etc. If you make edits in the document(s) please use track changes so I can look at them easily.

Please send me comments tomorrow if possible, or at least Monday morning.

Thanks- Karen

Karen Higgins

401 & Buffer Permitting Branch Supervisor Division of Water Resources
Department of Environmental Quality

919 807-6360 office

From: Wrenn, Brian L

To: Culpepper, Linda
Cc: Poupart, Jeff; Higgins, Karen

Subject: ACP Hearing Officer"s report
Date: Monday, January 22, 2018 8:41:00 AM

Attachments: ACP_hearing officers rept_01222018.pdf

Linda,
Please find attached for your review the Hearing Officer's report for the Atlantic Coast Pipeline project. I am happy to discuss this with you if you have any questions or comments. Thanks!

Brian L. Wrenn
Ecosystems Branch Chief Water Sciences Section
NC Division of Water Resources 919-743-8409 (office) 919-491-2616 (cell)

From: Munger, Bridget

To: Holman, Sheila; Heyl, Douglas

Subject: Fwd: ACP Hearing Officer"s report

Date: Monday, January 22, 2018 2:51:28 PM

Attachments: ACP_hearing officers rept_01222018.pdf ATT00001.htm

Please see attached.
Sent from my iPhone Begin forwarded message:

From: "Higgins, Karen" <karen.higgins@ncdenr.gov> To: "Munger, Bridget" <bridget.munger@ncdenr.gov> Subject: FW: ACP Hearing Officer's report

FYI

Thanks- Karen

Karen Higgins

401 & Buffer Permitting Branch Supervisor Division of Water Resources
Department of Environmental Quality

(919) 807-6360 office

karen.higgins@ncdenr.gov https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater- branch/401-wetlands-buffer-permits

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From: Wrenn, Brian L
Sent: Monday, January 22, 2018 8:42 AM
To: Culpepper, Linda <linda.culpepper@ncdenr.gov>
Cc: Poupart, Jeff <jeff.poupart@ncdenr.gov>; Higgins, Karen <karen.higgins@ncdenr.gov>
Subject: ACP Hearing Officer's report

Linda,
Please find attached for your review the Hearing Officer’s report for the Atlantic Coast

Pipeline project. I am happy to discuss this with you if you have any questions or comments. Thanks!

Brian L. Wrenn
Ecosystems Branch Chief Water Sciences Section
NC Division of Water Resources 919-743-8409 (office)

From: Higgins, Karen

To: Culpepper, Linda

Subject: draft 401 decision documents

Date: Tuesday, January 23, 2018 1:22:54 PM

Attachments: 140957v2AtlanticCoastPipeline(Multi)_401_IC_NRB_TAR_2.docx
140957v2AtlanticCoastPipeline(Multi)_401_IC_NRB_TAR_DENIAL.docx

Linda-

Attached please find an electronic copy of the draft 401 decision documents for ACP. I'm working on the bullet points.

Thanks- Karen

Karen Higgins

401 & Buffer Permitting Branch Supervisor Division of Water Resources
Department of Environmental Quality

(919) 807-6360 office

Subject: DWR Discussion - ACP

Location: DENR_GS - Rm 5301 - 10 Seats - Morrow Mount

Start: Wed 1/24/2018 11:30 AM Wed 1/24/2018 12:15 PM Tentative
End:
Show Time As:

Recurrence: Meeting Status:

Organizer:
Required Attendees:

Linda-

(none)
Not yet responded

Higgins, Karen
Culpepper, Linda; Wrenn, Brian L; Poupart, Jeff

We wanted to block some time with you to go over the HO Report and 401 decision documents if you had any questions. I gave Bridgette a hard copy of the HO Report, draft 401 certification and draft denial.

Thanks- Karen

127

Subject: Location:

Start:
End:
Show Time As:

Recurrence: Meeting Status:

Organizer:
Required Attendees:

(none) Accepted

Canceled: ACP Team Meeting
DENR_GS - Rm 5212 - 14 seats - Bodie Island Lighthouse

Mon 1/22/2018 1:00 PM Mon 1/22/2018 1:30 PM Free

Lucey, John D
Heyl, Douglas; Kritzer, Jamie; Jill Warren Lucas; Munger, Bridget; Leonard, Laura

From: Higgins, Karen

To: Morris-McLawhorn, Bridgette R
Culpepper, Linda

Cc:
Subject: ACP - word document

Date: Thursday, January 25, 2018 3:40:34 PM

Attachments: 140957v2AtlanticCoastPipeline(Multi)_401_IC_NRB_TAR_3.docx

Bridgette-

I put a paper copy of the 401 certification for ACP on your desk today – there are two places for Linda to sign. I will not be in the office tomorrow, so if Linda wants any changes to the 401, I've attached the word document to this email so you can edit as needed. If you do make any changes to the word document, will you please send me the final word version document for our records?

Also, on the bottom of page two you'll see email addresses for Richard Gangle and Spencer Trichell. Once (if) Linda signs the 401, will you please email them a scanned copy of the signed document, and cc me as well?

Thanks- Karen

Karen Higgins

401 & Buffer Permitting Branch Supervisor Division of Water Resources
Department of Environmental Quality

(919) 807-6360 office

karen.higgins@ncdenr.gov

https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401- wetlands-buffer-permits

EXHIBIT

E

Water Resources
ENVIRONMENTAL QUALITY

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

LINDA CULPEPPER
Interim Director

January XX, 2018

DWR # 14-0957 v2
Northampton, Halifax, Nash,
Wilson, Johnston, Sampson,
Cumberland and Robeson Counties

CERTIFIED MAIL: xxxx xxxx xxxx xxxx xxxx
RETURN RECEIPT REQUESTED

Atlantic Coast Pipeline, LLC
Attn: Ms. Leslie Hartz
707 E. Main Street, 19th Floor
Richmond, VA 23219

DRAFT

Subject: DENIAL OF 401 WATER QUALITY CERTIFICATION AND TAR-PAMLICO/NEUSE RIPARIAN BUFFER AUTHORIZATION CERTIFICATES
Atlantic Coast Pipeline
USACE Action ID. No. SAW-2014-01558

Dear Ms. Hartz:

On May 9, 2017, the Division of Water Resources (Division) received your application requesting a 401 Water Quality Certification and Tar-Pamlico and Neuse Riparian Buffer Authorization Certificates from the Division for the subject project. Pursuant to 15A NCAC 02H .0506, a certification shall be issued when the Director determines that water quality standards are met. Pursuant to 15A NCAC 02B .0233 (8) and .0259 (8), a Buffer Authorization Certificate shall be granted when the Division determines there is no practical alternative. The project has not met the following requirements:

- **Rule Citation**
  "Rule text..."
  Explanation...

- ...

In accordance with 15A NCAC 02H .0507(e), 15A NCAC 02B .0233(8), and 15A NCAC 02B .0259(8), your application for a 401 Water Quality Certification and Buffer Authorization Certificates are hereby denied.
This decision can be contested as provided in General Statute 150B by filing a written petition for an administrative hearing to the Office of Administrative Hearings (hereby known as OAH) **within sixty (60) calendar days**.

A petition form may be obtained from the OAH at http://www.ncoah.com/ or by calling the OAH Clerk's Office at (919) 431-3000 for information. A petition is considered filed when the original and one (1) copy along with any applicable OAH filing fee is received in the OAH during normal office hours (Monday through Friday between 8:00am and 5:00pm, excluding official state holidays).

The petition may be faxed to the OAH at (919) 431-3100, provided the original and one copy of the petition along with any applicable OAH filing fee is received by the OAH within five (5) business days following the faxed transmission.

Mailing address for the OAH:

If sending via US Postal Service:
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

If sending via delivery service (UPS, FedEx, etc):
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285

One (1) copy of the petition must also be served to DEQ:

William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

This completes the review of the Division under section 401 of the Clean Water Act and 15A NCAC 02H .0500 and the Neuse and Tar-Pamlico Riparian Buffer Protection Rules. Please be aware that you have no authorization under Section 401 of the Clean Water Act or the Neuse/Tar-Pamlico Riparian Buffer Protection Rules for this activity and any work done within waters of the state may be a violation of North Carolina General Statutes and Administrative Code. Contact Karen Higgins at 919-807-6360 or karen.higgins@ncdenr.gov if you have any questions or concerns.

Sincerely,

Linda Culpepper, Interim Director
Division of Water Resources

cc: Richard Gangle, Dominion Resources Services, Inc. (via richard.b.gangle@dom.com)
Spencer Trichell, Dominion Resources Services, Inc. (via spencer.trichell@dom.com)
USACE Raleigh Regulatory Field Office
USACE Wilmington Regulatory Field Office
Todd Bowers, EPA (via bowers.todd@epa.gov)
DWR 401 & Buffer Permitting Branch file

DRAFT