

February 8, 2010

Mr. Henry Wicker
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Dear Mr. Wicker:

This letter is to summarize some of the many concerns I have regarding the decision making process used by the Western Wake Partners (WWP) in selecting "Site 14" for their sewage treatment plant, and with the resulting **final** environmental impact statement. **Note that some of these comments were provided by me previously but I feel the responses provided in the appendix to the final EIS were inadequate. Additional comments have been added. I am also reiterating some of the previous comments in case it is required they be included in responses to the final EIS to be used in any potential future litigation.**

Procedural Errors:

CFR 40 Part 1506.1 follows in italics. I would call your attention to the segments I've put in **bold** font. *1506.1 - Limitations on actions during NEPA process.*

(a) Until an agency issues a record of decision as provided in 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action: (1) Is justified independently of the program; (2) Is itself accompanied by an adequate environmental impact statement; and (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

Furthermore, in CFR 40, Part 6, subpart C, it states:

(d) If, prior to completion of the environmental review for a project, the Responsible Official receives notification, that the applicant is proposing to or taking an action that would result in significant impacts or would limit alternatives, the Responsible Official must notify the applicant promptly that EPA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved (see 40 CFR 1506.1(b)). Such actions may include withholding grant funds or denial of permits.

The has been no record of decision to date. Yet, on June 23, 2005, the Cary town council voted to condemn the Seymour property for the sewage treatment plant. On 8/11/2005, the land for site 14 was deeded to the City of Cary. I don't know the exact amount spent on this purchase, the county real estate database places it's value at \$2,476,450. This purchase severely prejudiced the rest of the site selection

process and the EIS itself. The only pipeline routes developed were from the towns to site 14. The pipeline routes shown for “alternative sites” in the EIS follow the same pathways as those for site 14, even though those routes are not the most logical ones for the alternative sites. The WWP have surveyed pipeline routes for site 14. They have also placed a water line from the town of Apex to New Hill, stating that the line was to provide water to the fire station in New Hill (which has been in place for years without the need for the additional water supply). In fact, the new water line is a feeder line for the proposed sewage plant at site 14. The water and electrical lines needed for the proposed WRF should have been included in the Final EIS. This concern was brought up during comments on the draft EIS. Numerous trees were destroyed in the process without their loss being addressed in the EIS.

The significant expenditure of funds to purchase site 14, as well as the expenditures necessary to survey the pipeline route to site 14 and to install the water line to site 14, “**limit the choice of reasonable alternatives**” and “**prejudice the ultimate decision on the program**”. Furthermore, the prejudicial effect of this behavior carried over to environmental justice analyses performed. If alternative pipeline pathways had been considered along with the alternative plant sites, it would have been possible to have much less of an effect on minority communities. However, because site 14 had already been condemned, only pipeline pathways that served site 14 were considered in the analysis. (See figures 2-8, 2-9 and 2-10, and the comments for each of the alternative sites that “much of the infrastructure is identical to the proposed project” (see page 2-23) The pipeline pathways given for alternative sites are basically extensions of the pipeline routes developed for site 14, and were not arrived at independent of the site 14 purchase, i.e. no “reasonable alternatives” are presented.

The prejudicial impact of the premature condemnation has carried through to many parts of the Final EIS. For instance, on page E-11, Table ES-1, Section 4. Land Use, subpart a. Zoning. It states that the proposed project impacts “mainly utility zoning” while all three alternatives impact “mainly residential zoning”. This would appear to make site 14 preferable from a zoning perspective. In truth, the land taken for the proposed project prematurely and before any Record of Decision, was not zoned as utility before being condemned by Cary for this project. Also, in the same table, Section 4.c. it states the post-condemnation proposed project site has no current agricultural activity. Of course it doesn’t since Cary took it years ago for the sewage treatment plant, **but it used to prior to the condemnation!** (This is confirmed on page 4-31 line 884). Thus, the premature and ill-advised action by Cary has resulted in an unfair comparison of site 14 to the three alternatives, and contaminated the rest of the analysis. It resulted in no alternative pipeline route analyses being considered, manipulated the zoning and agricultural production analyses and thus corrupted the entire EIS.

(NOTE that the EIS is inconsistent. While the table noted above states that the proposed site is zoned utility, section 4.5.1 states it is coded as residential-agricultural. I am assuming that the executive summary was written after section 4, and presents the current information.)

Within the EIS, public participation is found in Appendix A6. Pages 15-17 summarizes door-to-door surveys conducted in December 2007 and January 2008. This is 2 ½ YEARS after condemnation of the Seymour tract and indicates the partners did not involve the minority community, or any of the community for that matter, in its deliberations regarding site selection. Illustrative of the impact of early condemnation is the comment found on page 17 of this appendix, “Comments varied throughout communities, however, residents were primarily concerned about odor and were unclear as to why other sites were being considered for the water treatment **facility if Site 14 was already purchased**” (emphasis added). (Note: The same information is found in Attachment A of Appendix H.) If people think the decision has already been made (which would be a logical conclusion if land has already been taken by eminent domain for a project), they are less likely to participate in subsequent public outreach activities. North Carolina General Statutes list the reasons local public entities can use to condemn property (See NCGS 40A, and NCGS 160A-311). The town can’t condemn property just because it may have some use

for it sometime in the future. The town of Cary HAD to have a legitimate reason to condemn the property and the reason they used was for the waste treatment plant. In

AppA_PublicInvolvementApp_A12bSummary_of_comments_responses.pdf Page 71 of 189 it is stated “*information related to how the Partners selected Site 14 for their proposed project is not relevant to this NEPA EIS*” However, the fact that Cary used eminent domain to condemn the property indicates they made their decision long ago, and have done everything possible to make the outcome of the EIS agree with their plan. There has not been a fair, unbiased, evaluation of the potential alternative sites. Once the WWP's condemned the land they were too invested in the outcome.

In addition to the obvious bias the early condemnation created in the evaluation process, the towns then capitalized on their errant behavior by stating the sewage plant would be built in “the New Hill portion of Apex.” The only “New Hill portion of Apex” is the land taken for the plant. However, by stating it in the way they did, they tried to impact public perception that the plant was actually within Apex, thus blunting public recognition of the fact that it was actually planned to be built on land taken from New Hill.

Note that the WWP's were so fixed on using site 14, that they included it as the site for Apex to use if the “independent” option was used (Apex and Cary each building their own WRF - see figure 2-4 of EIS, with the site labeled as “Western Apex WRF even though it is not in Apex or part of their ETJ). They did not consider a true independent option because they had already condemned the property. (I disagree with the response provided to my earlier submission of this comment (see II.63) that this site was a logical one for Apex to use as an independent option).

It appears that rather than following the regulation that “*EPA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved*” including notification that “*Such actions may include withholding grant funds or denial of permits*” the ACE is now willing to say that it doesn't matter how the proposed site was obtained or how that condemnation prevented a fair comparison of the proposed site with the alternatives.

Errors in Analysis:

Section 5, Cumulative impacts, page 34, states the amount of forested land that will be lost, but limits the discussion to the land lost at the sewage treatment plant. It does not address the many acres of forest that will be lost on the pipeline routes. Table 4-7 on page 4-30 is supposed to compare the forested acres lost to the various alternatives, but the alternatives aren't labeled (at least in the version I downloaded) so they cannot be compared. The table indicates “Temp” and “perm” losses. What is not addressed is that the “temp losses” will not be replaced with similarly aged trees. (I will lose 2-3½ acres of 30 year old pines on my property alone. While some of the loss may be “temporary”, it will be another 30 years before the trees are actually “replaced”. The total acreage lost on my property will depend on if the WWP's use the power line easement as their construction easement or un-necessarily clear an additional 20 feet x ~2400 feet of forest for a temporary construction easement. Note that the forest loss could be much less if the two utilities shared an easement that was less wide than the sum of what they need with an independent option. However, this option is not ever addressed in the EIS.

It should also be noted that on page 4-3 it indicates that the pipelines designs have not been finalized. If the designs have not been finalized, how can the public reasonably comment on them and their potential environmental impacts?

In response to a question I asked regarding detection of leaks as the pipelines cross miles of countryside, the partners responded (See response III.30) that a “supervisory control and data acquisition (SCADA) system to continuously monitor flow is planned: the flow balance would be checked daily. If the flow

balance indicates that one or more leaks are occurring, further monitoring would be performed to identify the problem and repair it.” However, in section 4 of the EIS, environmental consequences, page 4-7, it states that “Monitoring *may* also include a series of permanent and/or portable flow meters installed throughout the system in order to perform a flow balance”. “May” is not good enough. Cary has not been able to adequately contain leaks within the town, and some have gone for days before being discovered. How are they going to discover leaks in the countryside when the pipeline easement is far from any roads if they are not REQUIRED to do daily flow analyses. Even if they find leaks, the clay soils in the New Hill area will provide poor support to the equipment they propose to use to contain leaks, particularly if the leaks occur during periods of soil saturation (heavy rains, melting snow, etc.). How will they even get heavy equipment to the sites?

In section 4, line 1221-1222 it states that “Odors are not associated with health and safety impacts to the surrounding community; odors are an aesthetic issue”. It fails to address that odors can, in fact, be both a physical and mental health issue. Odors need not be bad to create health problems, as evidenced by those with perfume allergies. The continuous inability to enjoy one’s home can certainly lead to mental health issues.

ADDITIONAL CONCERNS REGARDING LANDOWNER RIGHTS AND USE OF PROPERTY WHICH THEY WILL CONTINUE TO OWN:

I PROVIDED THE FOLLOWING COMMENT AND RECEIVED THE RESPONSE INDICATED: (I’ve added bold font to areas of concern).

Comment 290: The proposed sewage pipelines to site 14 go through land that is in timber production. Will the pipes sustain the pressure of tractor trailers full of trees or commercial timber equipment? What about the pressure valves in the pipeline? Will they be clearly marked and protected. Assuming the gas is flammable, what will occur if gas is being vented during our routine silvaculture burns?

*Response III.17: The pipe will support the weight of equipment crossing over the easement, but logging mats or bridging the easement may be necessary depending on field conditions at the time of crossing. **The Partners do not intend to grant access for commercial loggers within the pipeline easement. A crossing at a specified location could be granted in the event that the loggers provided a feasible approach to bridging the easement area. A specific request would be considered in more detail during the encroachment authorization process and would be dependent upon review of the encroachment provisions in place at the time of the request.***

Air release valves are planned to be installed inside concrete vaults that will be discernible along the pipeline route.

Hydrogen sulfide gas in raw sewage conveyance systems is anticipated to be less than 20 ppm. Hydrogen sulfide gas at or below the anticipated levels is not flammable and is not a spontaneous ignition risk. Its autoignition temperature (or the lowest temperature at which it will spontaneously ignite in a normal atmosphere without an external source of ignition, such as a flame or spark) is 260 degrees C. Temperature, sulfate, BOD, time of year, length of line, etc. all impact hydrogen sulfide production. Effluent water contains little or no sulfur compounds and sufficient dissolved oxygen and as such is not anticipated to produce any hydrogen sulfide gas for release from the effluent conveyance facilities.

With respect to controlled burns within the easement, these procedures would be subject to the encroachment authorization process of the Town of Cary, serving as the Lead Agency for the Western Wake Partners and would likely not be allowed within the utility pipeline easement, since burning would remove needed vegetative cover that controls erosion.

Silviculture burns are a routine forest management practice. They remove fuel that could otherwise support wildfires, remove competitive vegetative growth, and improve conditions for wildlife. It is an important enough practice that I receive federal cost share funding to carry it out. Carrying out controlled burns not only protects my own property from potential wildfires, it also helps protect my community. It should not be stopped because of a sewer line. The Progress Energy power line easement now serves as one of the firebreaks on my property. The lane is tilled to bare earth adjacent to the timber before burning, and is re-seeded afterwards. The sewage line easement will run parallel to the power line easement for part of its course through my property. Ideally, the segment closest to the timber could be tilled to bare earth prior to burns and reseeded afterwards, just as occurs with the power line easement.

The fact that the partners do not intend to grant access for commercial loggers means that part of my property will be cut-off from normal production practices that improve production (commercial thinning) as well as final harvesting. I have worked diligently to improve commercial timber productivity on my property. My family and I won the Wake County Forest Stewardship Award because of our efforts. The partners should not be able to prevent normal production practices or harvesting of timber crops that we have managed for 25 years. Nor should we have to undergo an “encroachment authorization process” to access our own property.

The course of the sewer line easement does not make optimal use of the pre-existing power line easement. There is no reason the two easements couldn't overlap. This would save costs to the partners (land in the power line easement is not as valuable as adjoining land) and would be preferable to the property owners.

There is a certain arrogance of the towns throughout this process that appears in the EIS. They indicate noise levels will meet the town of Apex's noise standards. The people who live in New Hill made a choice not to live in Apex. Stating that the noise level at the plant would be comparable to “typical suburban noise level” misses the point that we are a rural, not a suburban, community. There is also an error in the EIS when it states in section 4, lines 1312 and 1313, that after construction “noise levels would largely return to existing levels along pipeline corridors and be considered negligible”. Unfortunately, removal of all the forested land necessary for the pipeline easement and construction easement will remove a substantial sound buffer. Sound will then flow down these corridors, disturbing what used to be the peaceful quiet of the forest. I can attest this is true from my personal experience before and after the power line construction.

In section 4, following table 4-12, the EIS states that the impact of a WRF on property values is negligible and may be positive. (lines 1749-1750) That conclusion is reached by comparing the value of homes near WRF's in Cary with homes in Southwest Wake county. The comparison is not a valid one. What should be compared is homes near the WRF in Cary with similar homes with access to similar amenities in similar neighborhoods in Cary. Because the comparison is invalid, the conclusion is invalid as well. Table 4-15 lists potential adverse impacts and benefits of the WRF on EJ groups 1 and 2. As noted above, the comment on property devaluation near site 14 is invalid.

Environmental justice issues:

It is completely amazing to me that the environmental justice issues can be swept under the rug as appears to be happening in this analysis. Comment III.128 does not respond to my comment #263 focusing on environmental justice, specifically that 2 all white town councils decided to place the sewage plant in an 83% minority community. As mentioned previously, alternate pipeline alignments for the alternative WRF sites, which could have avoided impacts on minority communities, were not considered. The proposed location on site 14 is the one site that has tremendous impact on a minority community. The WWP's have continuously tried to hide this fact. First by using a much larger geographic area for their analysis in an attempt to “dilute” the minority community, then by keeping all pipeline alignments the

same for all four alternatives in order to be sure the alternatives impact communities similar to their chosen sight.

I appreciate your consideration of these concerns, and look forward to a response to them.

Sincerely,

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