



October 12, 2010

Ms. Coleen Sullins
Director, Division of Water Quality
NC DENR
512 N. Salisbury Street
Raleigh, NC 27604

Re: Comments on Draft NPDES Permit No. NC0088846

VIA U.S. MAIL

Dear Ms. Sullins:

My name is Christopher Brook, and I am an attorney at the Southern Coalition for Social Justice, representing the New Hill Community Association. I appreciated the opportunity to make public comments at the recent September 28, 2010 public hearing, as well as the opportunity to submit these supplementary comments on shortcomings in the NPDES permit. For the reasons stated below, DWQ should not issue an NPDES permit for the Western Wake Partners Regional Wastewater Management Facility.

Holly Springs is no longer a Western Wake Partner. Its departure from this project has substantial substantive and procedural repercussions.

First, parties requesting an NPDES discharge permit “must document the population to be served within the service area over a 20-year planning period.” The population projection included in the FEIS and serving as the justification for this project failed to provide the requisite, meaningful documentation. Specifically, the projections were not “described in sufficient detail to understand exactly how they were calculated.” Parnell, *Assessment of the Population Projections Used in the Environmental Impact Statement for the Proposed WWTFs*. The projections also failed to take into account impediments to continued exponential growth, including physical limitations on annexation, which has fueled Partner growth in the past, the politically fraught nature of future growth, and impacts from the recent recession. Instead of utilizing meaningful recent data, the projections relied upon information dating back to 1996. Even before Holly Springs abandoned the proposed wastewater treatment facility, the FEIS population data justifying this project was inadequate and invalid.

Now that Holly Springs is no longer a Western Wake Partner there are no projections documenting “the population to be served within the service area over a 20-year planning period.” The FEIS’s population projection was based on a partnership including Cary, Apex, Morrisville, and Holly Springs. There are no data claiming to “document the population” of Cary, Apex, and Morrisville, thus rendering the current population projections invalid.

Additionally, Holly Springs' decision to opt out of the Western Wake Partners highlights the myriad benefits associated with a Harris Lake discharge. In announcing its departure from the Western Wake Partners, Holly Springs noted that it considered Harris Lake an economically attractive and environmentally viable means of addressing its ongoing need to discharge wastewater. Specifically, Holly Springs Mayor Dick Sears said a Harris Lake discharge would save his town between \$30-40 million. The FEIS itself noted other non-financial benefits from a Harris Lake discharge, including fewer greenhouse gas emissions associated with pumping, "greater flexibility in managing water resources on a regional basis as the water would be stored in the lake" for drought management, fewer wetland and stream impacts, and fewer human impacts from pipeline, including no impacts in Chatham County. Further, discharging to Harris Lake would assist in protecting the already distressed aquatic habitat in the Cape Fear River below Buckhorn Dam and would constitute wise, cost-efficient regional management if Progress Energy proceeds with its plans to expand Harris Lake. Unfortunately, while Holly Springs is choosing the best option in terms of environmental impacts, regional planning, and expense, the remaining Partners and DWQ have continued to focus upon the more expensive, less environmentally-friendly discharge point into the Cape Fear River.

Finally, my clients learned on September 28, 2010 that the Town of Holly Springs was no longer a Western Wake Partner. This development fundamentally changes the scope and ramifications of the proposed wastewater treatment facility. For five years, federal, state, and local agencies, as well as the interested public, have weighed the impacts from a project featuring Holly Springs. Now the public only has two weeks to pivot and comment on a project that no longer features Holly Springs. The public cannot make educated comments under such an unnecessarily cramped deadline.¹

Documentation submitted by the applicant in support of proposed effluent limits is insufficient and contains serious omissions.

First, the modeling in support of the proposed discharge in the Cape Fear River below Buckhorn Dam was insufficient. The draft permit before DWQ was based upon only summer conditions modeling; no winter conditions were modeled. The modeling underpinning this permit shows no evidence that a seasonal model would "give equal or better protection for the water quality standards," as required by state regulations. 15A NCAC 02B.0206(a)(1).

Along the same lines, the modeling is based upon an incomplete draft report. For example, that draft report provides no documentation of the water temperature it used or how the temperature

¹ Similarly, the draft NPDES permit impedes informed public commentary by not including all requisite information. NCAC 02B.0201(c)(2) states, "Public Notices for NPDES permit shall list parameters that would be water quality limited and state whether or not the discharge shall use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for downstream dischargers." Yet the Public Notice for this NPDES permit does not contain statements regarding the available load capacity of the Cape Fear River, nor information on whether there will be effects on downstream dischargers. These omissions hinder comments from parties with an interest in the Cape Fear's assimilative capacity.

was determined. Draft Results for Evaluation of Assimilative Capacity of the Cape Fear River.² Accordingly, neither DWQ, nor members of the public, can determine whether the modeling used appropriate temperature values.

Finally, the NPDES permit is based upon modeling completed in 2007, and does not incorporate data from NCDENR's March 2008 *Cape Fear River Basin Hydrological Model*. Failing to incorporate the most recent data into modeling unnecessarily complicates efforts to protect the fragile Cape Fear ecosystem, as well as frustrating public comment.

DWQ should not issue the requested NPDES permit without a full accounting of Holly Springs' departure from the Western Wake Partners, as well as thorough documentation in support of proposed effluent limits. DWQ should also ensure the public has adequate time and resources to fully participate in this permitting process that features impacts throughout the Cape Fear River basin and beyond.

Sincerely,

Christopher A. Brook

cc: Paul Rawls, Hearing Officer, NCDENR, DWQ (via email)
Gil Vinzani, Surface Water Protection Section, NCDENR, DWQ (via email)

² DWQ's determination of effluent limits was based upon a 2007 document entitled *Draft Results for Evaluation of Assimilative Capacity of the Cape Fear River*. The permit's reliance upon a draft document is raises questions about whether it was properly vetted by appropriate DWQ staff.