



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: May 8, 2015  
Comment Deadline: June 8, 2015  
Corps Action ID Number: SAW-2002-31111

The Wilmington District, Corps of Engineers (Corps) received an application from Republic Services of North Carolina, LLC seeking Department of the Army authorization to impact 661 linear feet of stream channel and 0.075 acre of wetland, associated with the continued operation of the existing Foothills Environmental Landfill (Foothills) in the Abingdon community, west of Lenoir, in Caldwell County, North Carolina.

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

**Applicant:** Republic Services of North Carolina, LLC  
Drew Isenhour  
1220 Commerce Street SW  
Box 1  
Conover, North Carolina 28613

**AGENT:** Michelle M. Brown, Environmental Consultant  
Agent, Republic Services of North Carolina, LLC  
1910 Halifax Court  
High Point, North Carolina 27265

## Authority

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

- Section 404 of the Clean Water Act (33 U.S.C. 1344)
- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

## Location

The site is located at 2800 Cheraw Road, within the existing Foothills Environmental Landfill, in the Abingdon community, west of Lenoir, in Caldwell County, North Carolina. It is approximately 2.3 miles northwest of the intersection of US Highway 64 and NC Highway 18. The facility is located north of the intersection of SR 1310 and SR 1301.

Project Area (acres): approximately 139 acres  
Nearest Town: Lenoir  
Nearest Waterway: Abingdon Creek  
River Basin: Upper Catawba/03050101  
Latitude and Longitude: 35.91749° N, -81.59929 °W

## Existing Site Conditions

The site contains the active Foothills Environmental Landfill with associated infrastructure. The Foothills facility is depicted on the U.S. Geological Survey (USGS) Lenoir, NC, 7.5-minute topographic quadrangle map. Elevations within the proposed project areas range from a low of approximately 1,380 feet above mean sea level to a high of approximately 1,602 feet above mean sea level. The principal mapped soil types within the three areas include: Chestnut-Buladean complex (ChF), Evard-Cowee complex (EvE), Hayesville loam (HeD), Tate-French, occasionally flooded complex (TfC), and Udorthents, sanitary landfill (UdE). Review of the soil survey indicates that the Tate-French complex, which is located in the central western portion of Area A, is listed as partially hydric. The proposed project areas are located within sub-basin 03-08-31 of the Catawba River Basin and are part of USGS hydrologic unit 03050101. The streams that are present within the proposed project areas are unnamed tributaries to both Abingdon Creek and Greasy Creek. These stream channels are classified as “C” waters. Vegetation onsite include the following species American elm (*Ulmus americana*), cinnamon fern (*Osmunda cinnamomea*), Christmas fern (*Polystichum acrostichoides*), giant cane (*Arundinaria gigantea*), American sycamore (*Platanus occidentalis*), red maple (*Acer rubrum*), tulip poplar (*Liriodendron tulipifera*), microstegium (*Microstegium vimineum*), spotted touch-me-not (*Impatiens capensis*), green ash (*Fraxinus pennsylvanica*), silky dogwood (*Cornus amomum*), stinging nettle (*Urtica dioica*), false-nettle (*Boehmeria cylindrical*), and soft rush (*Juncus effusus*).

## Applicant’s Stated Purpose

The purpose of the proposed project is to better control stormwater runoff from the Foothills Landfill facility and to establish a source of suitable borrow material that can be used for daily waste cover purposes at the landfill to ensure a seamless operation for at least the next 30 years. The need for this project is rooted in the existing capacity of soil borrow material currently available to the landfill facility; currently soil borrow material is being excavated from areas that will ultimately be needed for structural fill purposes.

## **Project Description**

Republic Services of North Carolina, LLC (Republic), in cooperation with Caldwell County, is proposing to develop soil borrow areas and perform improvements to the stormwater management system at the existing Foothills Environmental Landfill, located near the City of Lenoir, in Caldwell County, North Carolina. Project planners approximate that for the foreseeable future of landfill operations (contractually the next 30 years), the landfill will consume about 70,000 cubic yards of borrow (soil) material a year. In order to manage the operations of the facility in consideration of its projected life span, project planners need to identify the next 30 years' of borrow material supply. Historically, approximately 71,000 cubic yards of suitable material is mined per acre of borrow area footprint within this portion of North Carolina. Therefore, a location of adequate size to generate at least 2.13 million cubic yards is required, which translates into a parcel that will accommodate at least a 30-acre physical area footprint. Republic plans to impact approximately 661 linear feet of stream channel and 0.075 acre of wetland, associated with the continued operation of the existing Foothills Environmental Landfill. The applicant proposes to phase the project. Phase I impacts are located in Area C which include 0.053 acre of wetland and 473 linear feet of stream channel. These impacts are associated with construction of a wet detention basin and will be constructed in 2015. Phase II located in Area A which include 0.022 acre of wetland and 188 linear feet of stream channel. These impacts are associated with two road crossings and will be constructed in 2019.

## **Avoidance and Minimization**

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

The applicant has performed an extensive alternative analysis that included an evaluation of stream and wetland impacts at each offsite alternative and for numerous configurations of feasible onsite design plans. Given the commonality of streams and associated wetlands within western North Carolina and the steep hill and valley landscape of the project area, particularly streams, the applicant determined that avoiding stream and wetland impacts for an expansion of borrow material mining of this magnitude was not feasible.

## **Compensatory Mitigation**

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

Foothills proposes to mitigate for unavoidable impacts 0.075 acre of wetland and 661 linear feet of stream channel through payment into the North Carolina Division of Mitigation Services (NCDMS) in-lieu fee program. The applicant proposes a mitigation ratio of 1:1 for phase I impacts located in Area C which include 0.053 acre of wetland and 473 linear feet of stream channel and a mitigation ratio of 2:1 for phase II located in Area A which include 0.022 acre of wetland and 188 linear feet of stream channel. The applicant also proposes to phase credit purchase in conjunction with the development. At this time the Corps has not received a letter

from the NCDMS indicated they are willing to accept payment for impacts associated with development at Foothills.

### **Essential Fish Habitat**

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

### **Cultural Resources**

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

- Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.
- No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the

National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

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

### **Endangered Species**

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

- The Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- The Corps is aware of the presence of the federally threatened Dwarf-flowered heartleaf (*Hexastylis naniflora*) pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

### **Other Required Authorizations**

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

**North Carolina Division of Water Resources (NCDWR):** The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by June 8, 2015 to:

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

Or,

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

**North Carolina Division of Coastal Management (NCDCM):**

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

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

**Evaluation**

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

**Commenting Information**

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this

proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

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

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, June 8, 2015. Comments should be submitted to Tasha Alexander, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, or by phone at (828) 271-7980, extension 226.