



North Carolina Department of Environment and Natural Resources

Division of Water Resources

Water Quality Programs

Thomas A. Reeder

Director

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

August 2, 2013

DWQ # 12-0900

Davidson, Davie, Montgomery,  
Rowan and Stanly Counties

**CERTIFIED MAIL: 7003 2260 0005 5380 8979**  
**RETURN RECEIPT REQUESTED**

Mr. E. Ray Barham  
Alcoa Power Generating, Inc. (APGI)  
293 Highway 740  
Badin, NC 28009

**Subject: DENIAL OF 401 Water Quality Certification**  
Yadkin Hydroelectric Project FERC P-2197

Dear Mr. Barham:

On September 28, 2012, the Division of Water Resources ("Division"), then operating as the Division of Water Quality, received Alcoa Power Generating Inc.'s ("APGI") application dated September 28, 2012, with additional information received on October 17, 2012; January 7, 2013; January 22, 2013; February 1, 2013; February 7, 2013; March 18, 2013; April 1, 2013; June 11, 2013; June 20, 2013; July 2, 2013 and July 3, 2013, requesting a 401 Water Quality Certification from the Division for the subject project.

Under 15A NCAC 02H.0502 (f) your signature on the certification application "certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a public entity and has the power of eminent domain." The required ownership certification ensures that the applicant owns the project's dams and powerhouses and is fully capable of implementing all protections of water quality that may be imposed as conditions in a 401 certification.

On August 2, 2013, the State of North Carolina, by and through its agency, the North Carolina Department of Administration, initiated a civil action in the Superior Court of Wake County, North Carolina, Case No. 13-CVS-10477 ("the pending lawsuit") seeking a judicial declaration that the State owns the submerged bed of portions of the Yadkin River located beneath the Yadkin Hydroelectric Project, Federal Energy Regulatory Commission Project No. P-2197 (the

1617 Mail Service Center, Raleigh, North Carolina 27699-1617  
Location: 512 N. Salisbury St. Raleigh, North Carolina 27604  
Phone: 919-807-6300 \ FAX: 919-807-6492  
Internet: [www.ncwaterquality.org](http://www.ncwaterquality.org)

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“project”). In the pending lawsuit, the North Carolina Department of Administration asserts that the State of North Carolina owns, and holds in trust for the people of North Carolina, the submerged bed of the Yadkin River and portions of the project’s dams standing on the State’s riverbed land.

Comments were received at a public hearing on May 14, 2013, and the hearing officer submitted a report on July 29, 2013, before the pending lawsuit was filed. A letter was received on August 1, 2013, from the Secretary of the North Carolina Department of Administration challenging the validity of APGI’s application and certification of ownership.

With the filing of the pending lawsuit and the issues of ownership raised, the Division cannot consider the application to be a valid application until the issues and conflicting claims of ownership are resolved by the parties or by a final order of the Court in the pending lawsuit.

In the event that ownership issues and claims involving the project’s dams are resolved by the parties or a final order is entered in the pending lawsuit declaring ownership, the owner or owners may submit a new application for a 401 Water Quality certification, and the Division is prepared to expedite the processing and review of the application.

**In accordance with 15A NCAC 02H .0507(e), APGI’s application for a 401 Water Quality Certification is hereby denied.**

This decision can be contested as provided in Articles 3 and 4 of 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):*

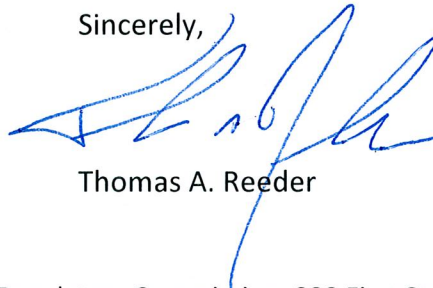
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, NC 27609-6285

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

Lacy Presnell, General Counsel  
Department of Environment and Natural Resources  
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. Please be aware that you have no authorization under Section 401 of the Clear Water Act for this activity and any work done within waters of the state would be a violation of North Carolina General Statutes and Administrative Code. Contact Karen Higgins at 919-807-6360 or [karen.higgins@ncdenr.gov](mailto:karen.higgins@ncdenr.gov) if you have any questions or concerns.

Sincerely,



Thomas A. Reeder

cc: Secretary Kimberly D. Bose, Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426  
Todd Bowers, EPA, Sam Nunn Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303  
Mike Parker, DWQ Mooresville Regional Office Supervisor  
Corey Basinger, DWQ Winston-Salem Regional Office Supervisor  
Belinda Henson, DWQ Fayetteville Regional Office Supervisor  
Ian McMillan, Division of Water Resources (via email)  
Chris Goudreau, North Carolina Wildlife Resources Commission (via email)  
Rob McDaniel, Division of Waste Management (via email)  
Sandy Mort, DHHS (via email)  
James D. Behmer, Salisbury-Rowan Utilities, PO Box 479, Salisbury, NC 28145  
DWQ Webscape Unit