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MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION
The Honorable Trudy Wade, Co-Chair
The Honorable Jimmy Dixon, Co-Chair
The Honorable Chuck McGrady, Co-Chair

FROM: Mollie Young, Director of Legislative Affairs

SUBJECT: Linear Utility Project Study Report

DATE: April 8, 2016

Pursuant to Section 4.21 of the Regulatory Reform Act of 2015, the Department is required to study whether and to what extent activities related to the construction, maintenance, and removal of linear utility projects should be exempt from certain environmental regulations and to report the results of this study, including any recommendation. The attached report satisfies these requirements.

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at mollie.young@ncdenr.gov.

cc: Tom Reeder, Assistant Director for Environment, DEQ
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N.C. Department of Environmental Quality Linear Utility Study Report

Section 4.21 of The Regulatory Reform Act of 2015 directed the N.C. Department of Environmental Quality to study potential impacts of deregulating construction and maintenance of linear utility projects as follows:

“SECTION 4.21. The Department of Environment and Natural Resources shall study whether and to what extent activities related to the construction, maintenance, and removal of linear utility projects should be exempt from certain environmental regulations. For purposes of this section, “linear utility project” means an electric power line, water line, sewage line, stormwater drainage line, telephone line, cable television line, data transmission line, communications-related line, or natural gas pipeline. For purposes of this section, “environmental regulation” means a regulation established or implemented by any of the following:

- (1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.
- (2) The Environmental Management Commission created pursuant to G.S. 143B-282.
- (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- (6) The Commission for Public Health created pursuant to G.S. 143B-298.
- (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- (8) The North Carolina Mining and Energy Commission created pursuant to G.S. 143B-293.1.
- (9) The North Carolina Oil and Gas Commission created pursuant to G.S. 143B-293.1

No later than March 1, 2016, the Department shall report the results of this study, including any recommendations, to the Environmental Review Commission.”

The following report details the various programs within the department that regulate linear utility projects, potential impacts of removing regulatory oversight, measures already taken to reduce regulatory burden and final recommendations from the divisions and department.

It should be noted that several divisions within the N.C. Department of Environmental Quality are currently in the process of reviewing rules associated with their respective programs with a goal of removing those that are outdated, redundant or deemed excessively burdensome.

N.C. Division of Coastal Management

Statutory and Regulatory Authority

Proposed development activities or proposed dredging or filling projects falling within a designated permit jurisdiction area (Area of Environmental Concern) within North Carolina’s 20 coastal counties fall under the regulatory authority of the N.C. Coastal Area Management Act (§ 113A-113-116) and the North Carolina Dredge and Fill Law (§ 113-229). The Coastal Resources Commission is responsible for enacting regulations to implement these laws, and the Division of Coastal Management is the State agency charged with implementing these regulatory programs. Under these authorities, all listed “linear

utility projects” require permits from the division if they fall within a defined Area of Environmental Concern.

Potential Impacts of State Deregulation

- Result in new stormwater outfalls discharging to the Atlantic Ocean. New ocean stormwater outfalls are currently not allowed under the rules of the Coastal Resources Commission. If the term “stormwater drainage lines” found in the study language are deemed to apply to oceanfront stormwater outfalls, the state would have no regulatory authority over these types of structures, leading to potential impacts to the public’s use of the beach and public health concerns relating to the discharge of potentially polluted stormwater within the dry-sand and nearshore zones of a public beach.
- Allow fiber optic cable lines, electric lines, or gas lines coming from offshore production facilities to cross our ocean beaches with no ability for the state to ensure that such activities do not endanger the public safety or limit beach access for beach-goers.
- Allow for significant utility infrastructure to be constructed within the state’s oceanfront setback limits, potentially increasing the cost to the public of protecting or replacing such structures in the future as they become threatened by oceanfront erosion.
- Allow utility lines to be built over navigable waterways, including tributaries, streams, and canals, with little consideration of the impact of such structures on the public’s ability to utilize the waterways (navigational clearances).
- Allow for utility lines to be trenched (as opposed to constructed by way of directional boring) through sensitive environmental areas (i.e., coastal wetlands or other wetland types, submerged areas such as primary nursery areas, productive shellfish beds, or shellfish leases), increasing impacts to these areas.
- Result in additional regulatory involvement by the U.S. Army Corps of Engineers under the Clean Water Act (for wetland impacts) and the Rivers and Harbors Act (for navigational impacts). Currently, the U.S. Army Corps of Engineers delegates many of its permit requirements to the Division of Coastal Management for these types of activities in the coastal zone. Elimination of state regulatory processes could require the U.S. Army Corps of Engineers to implement a more complex and lengthy permit process, which would not benefit the applicant.

Existing Measures Taken to Reduce Regulatory Burden

The majority of linear utility line projects falling under CAMA and Dredge and Fill regulatory jurisdiction are permitted by way of a General Permit (15A NCAC 07H .1600), which allows for permit issuance generally within 2-3 days. Currently, DCM issues approximately 20-25 such permits a year.

N.C. Division of Coastal Management Recommendations

For the public safety, environmental management and customer services reasons outlined above, the Division of Coastal Management does not recommend exempting linear utility line projects from the requirements of the Coastal Area Management Act and N.C. Dredge and Fill Law.

N.C. Division of Waste Management

Statutory and Regulatory Authority

The N.C. Division of Waste Management regulates the proper management of contaminated soil during linear utility projects (15A NCAC 13A .0106 and N.C.G.S. 130A-294(c) and 15A NCAC 2T .1500 and N.C.G.S. 143-215.1(a) (6)). The division implements the federal hazardous waste determination requirements, which apply to contaminated media. Analysis is conducted to determine if the contaminated media must be managed as a hazardous waste or if there are limitations on its use as backfill. Through N.C.G.S 143-215.85, the division ensures regulated entities properly notify the agency when petroleum contaminated soil is disturbed during installation, repair or removal of utilities. The Division of Waste Management also ensures the proper disposal of solid waste excavated during linear utility projects (15A NCAC 13B .0106; 15A NCAC 13B .0501; N.C.G.S. 130A-294). The division also enforces land use restrictions to protect people from exposure to contamination during linear utility projects (N.C.G.S. 143B-279.9 and N.C.G.S. 143B-279.10)

Potential Impacts of State Deregulation

- Result in measurable levels of contamination in drinking water because petroleum and other contaminants can permeate PVC waterlines. This can occur if the PVC line remains in contact with petroleum or other contaminants such as chlorinated solvents in soil and/or groundwater for an extended period of time.
- Lead to explosive vapors and/or contaminated water accumulating in storm or sewer lines when the lines are buried in areas near contaminated soil and groundwater. These impacts occur predominantly in the Coastal Plain, in areas with a shallow water table.
- Pose an environmental and human health risk if waste and contaminated soil is excavated and disposed of improperly.
- Expose utility workers to contaminated materials if land use restrictions are not followed.



Mooresville, N.C. site where a pre-regulatory landfill was discovered by a contractor installing a detention pond

Existing Measures Taken to Reduce Regulatory Burden

The Division of Waste Management's GIS database, which is publicly available, identifies the location of many of the division's sites. Through the database, utility installers are able to identify the intersection of their work corridors with sites regulated by the state Division of Waste Management. If sites are identified, the division should be contacted to determine if any actions are necessary to safely install the utility at the site. <http://ncdenr.maps.arcgis.com/home/>.

N.C. Division of Waste Management Recommendations

To protect public drinking water and the environment and minimize the impact to PVC waterlines and storm/sewer lines, the Division of Waste Management recommends retaining the regulation that prevents the unpermitted disposal of contaminated soil from being used as backfill in the utility trench during installation, repair or removal of a water line, stormwater drainage line or sewer line. For the same reasons, the Division of Waste Management recommends keeping in place the regulation requiring notification to the department when contaminated soil is disturbed during utility installation, repair or removal. The Division of Waste Management also recommends that solid waste excavated during linear utility projects be disposed of using a method approved by the division. The division also recommends that land use restrictions be retained to protect people from being exposed to contamination. The Division of Waste Management also recommends that utility installers attempt to identify the intersection of their work corridors with the division's sites, using the division's GIS database, and contact the division if sites are in the utility corridor in order to evaluate the potential hazards.

N.C. Division of Energy, Mineral, and Land Resources

I. Erosion and Sedimentation Control Program

Statutory and Regulatory Authority

The division's Erosion and Sedimentation Control Program is charged with enforcing the Sedimentation Pollution Control Act of 1973 (SPCA) and NCAC Title 15A Chapter 04. These regulations are designed to allow development within the state with the least detrimental effects from pollution by sedimentation.

Potential Impacts of State Deregulation

- Sedimentation damage to adjacent properties and waterways
 - Thousands of acres of disturbance by utility installation every year offer the same potential for erosion and sedimentation issues as any other land disturbance. In many cases, these projects can result in more serious concerns due to the number of times they cross streams and run adjacent to streams, as well as traverse sensitive terrain such as steep slopes, highly erodible soils or wetlands.
- Restriction of citizen rights to recover for damages to property caused by sedimentation
 - If state agencies no longer enforce environmental regulations regarding utility installation and maintenance, state Supreme Court precedence suggests that property owners would be severely limited in ways to collect for property or environmental damages caused by sedimentation from utility projects as no violation of the SPCA could be cited.

Existing Measures Taken to Reduce Regulatory Burden

- **Threshold for Plans:** The Sedimentation Pollution Control Act only requires an approved erosion and sedimentation control plan for land disturbing activities which affect more than one acre. Smaller disturbances remain subject to the Act and associated rules, but do not require an approved erosion and sedimentation control plan. However, delegated local programs may regulate sites less than one acre.
- **Express Reviews:** The Sediment Program offers express review of erosion and sedimentation control plans for an additional fee. This allows for more one-on-one communication between the applicant and reviewer, and typically results in a review of a complete plan submittal within 3-5 business days (as opposed to the statutory requirement of a 30 day plan review).
- **Buffer Requirements:** Utility projects, where they must cross waterways, are already exempted from certain buffer requirements of the Sedimentation Pollution Control Act and rules, which provide for concessions to "land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse."
- **Landowner Consent:** Linear projects involving the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service do not require landowner consent to be provided prior to submission of the erosion and sedimentation control plan, so long as the owner of the land has been provided prior notice of the project. Other projects (residential, commercial, etc.) require written consent from the landowner prior to submission and approval of an erosion and sedimentation control plan.

Erosion and Sediment Control Program Recommendations

In the preamble of the Sedimentation Pollution Control Act, the General Assembly noted that "control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and

welfare.” The Division of Energy, Mineral and Land Resources believes that the regulations in place to deal with all land-disturbing activities are effective in accomplishing the purposes of the General Assembly to allow for continued development of the state while minimizing the effects of pollution by sedimentation. Utility installation and removal projects have been reviewed and inspected since the inception of the Act, and these activities have been observed and documented to have significant potential to cause sedimentation damage to adjacent properties and waterways if not adequately regulated.

Below are photos of erosion and sedimentation issues along a large linear project in Wake County, which included more than 200 acres of pipeline construction. The project had a total of five contracts, with plans for each submitted within three months of each other and all contracts/areas were active and under construction simultaneously. This project had multiple notices of violation of the Sedimentation Pollution Control Act and lost sediment onto adjacent property and into streams at several locations.



Pipeline project had offsite sediment at multiple locations and times to adjacent property and streams due to poor site management and benched staging of pipe that was not shown on the approved plan.



Flooding of project area due to adjacent streams delayed establishment of groundcover, construction, and led to sediment being deposited offsite.



Upstream runoff, poor site management, and lack of groundcover at this aerial utility crossing contributed to offsite sedimentation.



Perimeter silt fence was breached by contractor in effort to dewater the site, resulting in offsite sedimentation.

II. Dam Safety Program

Statutory and Regulatory Authority

The state Dam Safety Program operates under the authority of the Dam Safety Law of 1967, S.L. 2009-390, S.L. 2015-7, the Coal Ash Management Act of 2014 and NCAC Title 15A Subchapter 2K: Dam Safety. The program, which provides oversight of more than 3,000 dams statewide, works to prevent property damage, personal injury and loss of life from dam failures.

Potential Impacts of State Deregulation

- Excavation to install, repair or remove utilities through a dam embankment could reduce the stability of the dam to a point that it could cause failure of the dam.
- Excavation on dams could intercept a filter system that serves as the seepage collection system on the dam and, therefore, could damage that system. This impact could reduce the stability of the dam to a point that it could cause failure of the dam.
- Linear utilities should be designed and constructed in a manner that if the waterline or gas line ruptured, damage to the dam would be minimized.
- Ruptured waterlines could saturate the toe of a dam to a point that failure of a dam could occur.
- Excavation on dams could intercept a seepage diaphragm, or one of its components, or a principle spillway pipe adversely impacting the stability of the dam.
- Excavation on dams could intercept an old drawdown pipe that was historically buried to prevent vandalism and, if ruptured, could cause the reservoir to be drained or the dam to be breached.
- Installation of utility lines across emergency spillways could reduce spillway capacity.
- Anything buried in the dam creates a discontinuity within the embankment material that can work in concert with other factors (overtopping, seepage/internal erosion) to create or exacerbate other problems the dam may have.

- If the nature of the utility is that it is a pressurized line (gas or water), a rupture could cause significant damage to the dam. This is typically remedied by providing a larger diameter carrier conduit of equal or better pressure rating that extends beyond the ends of the dam embankment.
- If the installation is not performed under the oversight of someone knowledgeable regarding dam construction, decisions may be made and actions taken that are detrimental to the long term performance of the dam.
- For buried utilities, it is good practice to insure they are installed well above the phreatic surface within the embankment and preferably above the normal pool elevation. Also, any crossing of a channel emergency spillway should be done well away from the control section.
- Above-ground utility poles and other support structures may pose potential problems that result from their placement in (or adjacent to) spillways, excavations associated with their installation, and damage to the dam embankment if the support structure fails.

Existing Measures to Reduce Regulatory Burden

To summarize, the general provisions of NCGS 143-215.25A of the Dam Safety Law do not apply to any dam: (a) constructed by federal government agencies, or with financial assistance from the Natural Resource Conservation Service, when the agency designed or approved plans and supervised its construction, (b) licensed by the Federal Energy Regulatory commission or used in connection with electric generating facilities regulated by the Nuclear Regulatory Commission, (c) under a single private ownership that provides protection only to land or other property under the same ownership and is not classified high hazard (Class C) structure, (d) that is not classified high hazard (Class C) and is either less than 25 feet in height or has an impoundment less than 50 acre-feet, and (e) that is not classified high hazard (Class C) and constructed for the purpose of providing agricultural irrigation water when an employee of the NRCS or professional engineer designs and supervises construction.

It is often the case that dams meet the criteria summarized above and are not subject to the Dam Safety Law. In these cases, the Dam Safety Program has no authority to require prior approval for utility work at these exempt dams. In cases where dams are subject to the Dam Safety Law, linear utility work in dams typically requires a minimal and relatively informal submittal of descriptive matter pertaining to the proposed work to insure the work is performed in a manner that will not negatively impact the proper operation and long-term stability and safety of the dam.

Dam Safety Program Recommendations

In NCGS 143-215.24, the General Assembly stated that the purpose of the Dam Safety Law is “to provide for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams; to prevent injuries to persons, damage to downstream property and loss of reservoir storage; and to ensure maintenance of minimum stream flows of adequate quantity and quality below dams.” As noted in previous sections, if adequate oversight of the installation of linear utilities across dams is not provided, there will be significant short- and long-term impacts to the proper operation and safety of dams, which may negatively impact the public health, safety and welfare. As the current Dam Safety Law and applicable sections of the North Carolina Administrative Code provide for sufficient oversight in these areas and are necessary to safeguard the public, the Division of Energy, Mineral, and Land Resources recommends no changes to the existing law and rules.

III. Stormwater Permitting Program

Statutory and Regulatory Authority

The division's Stormwater Permitting Program is charged with implementing state and federal programs to control the water quality impacts of stormwater runoff from industrial activities and urban and developing areas. These programs include the federal National Pollutant Discharge Elimination System program (40 CFR 122.26) for stormwater discharges that requires permits for point source discharges of stormwater from industrial activities and from certain municipal areas in urbanizing and developing areas, which is a requirement of the federal Clean Water Act. In addition, the program implements state stormwater permitting that is designed to control stormwater runoff from new development and redevelopment activities occurring near sensitive areas (15A NCAC 2B .0100 and .0200, 2H .1000). These state stormwater programs may be implemented on the state level or on the local level by cities and counties. These programs are designed for the protection of surface waters and their uses.

Potential Impacts of State Deregulation

- Result in uncontrolled stormwater runoff to surface waters and adjacent properties.
- Impact adjacent properties and waters. A large amount of land area is disturbed each year as part of linear utility construction. Sediment and other pollutants from these projects can damage streams, wetlands and other properties through stormwater runoff. Due to the linear design of such projects, construction activities can result in impacts across a number of different properties and impact multiple surface waters.
- Without proper control, the ability of surface waters to meet their intended uses can be impacted.
- Without regulatory review to assure proper control measures are implemented, impacts to surface waters can occur as noted above. These impacts would need to be corrected or mitigated. Responding to problems of this type after the fact can be much more costly than following the appropriate measures to avoid the impacts from the beginning.
- Projects must still meet federal NPDES construction permit requirements.
- Construction projects that disturb one acre or more of land have to meet state erosion and sedimentation control requirements and also have to be permitted under the federal NPDES stormwater permitting program. In North Carolina, this process is currently handled in one process where the permittee applies for state erosion and sedimentation control plan approval and gets both approvals at the same time. Deregulation of linear utility projects on the state level would not change the need for federal NPDES coverage. Without the state erosion and sedimentation control coverage, these entities may have to apply for individual NPDES permit coverage and go through a more lengthy review and public notice process to obtain the required federal permits.

Existing Measures Taken to Reduce Regulatory Burden

- Threshold for Review: As noted above, approval processes are only tied to projects that disturb one acre or more of land. This lessens the regulatory burden for the industry.
- Combined review for Sediment Program and NPDES Construction Stormwater: As noted above, construction projects apply for and receive coverage under both programs through one application review process.
- Post construction stormwater control programs only apply to developed areas. The state post construction stormwater requirements generally apply where an activity is adding to or modifying built-upon area. Often linear utility projects result in land disturbance, but not

expansion of the built-upon area. In those cases, long-term post construction stormwater control measures are not required.

Ongoing Regulatory Review

Program staff has worked with stakeholders to draft new stormwater rules that reflect the recently developed “Minimum Design Criteria” and Fast-Track Permitting Process required by S.L. 2013-82. At the same time, all of the stormwater rules have been updated in accordance with G.S. §150B-21.3A, which directs state agencies to review and update their rules every 10 years. The proposed stormwater rules have been reorganized and, in some cases, rewritten. Some of the benefits of the new organization and rule rewrites include decreasing repetition from rule to rule, clarifying unclear requirements, incorporating current technology and design standards, and improving consistency between the stormwater programs.

Stormwater Permitting Program Recommendations

The division has reviewed linear utility projects over a long period of time and has seen the ongoing impact of these activities. The large amount of disturbed area has enormous potential for environmental impact and is similar to the impacts from other construction projects. Allowing these projects to move forward without proper control and agency review will have a negative impact on the environment. It may also create a process where the utilities will have to follow a more burdensome path to achieve approval of federally mandated permits through the Environmental Protection Agency. The division recommends that current requirements remain in place.

N.C. Division of Water Resources

I. Public Water Supply Program

Statutory and Regulatory Authority

The Public Water Supply Section is responsible for implementing the *Rules Governing Public Water Systems* (NCAC 15A Subchapter 18C) as authorized by the North Carolina Drinking Water Act (G.S. 130A-311- 328). Based on these authorities, the program is also charged with implementing the National Primary Drinking Water Regulations as authorized by the federal Safe Drinking Water Act.

Potential Impacts of State Deregulation

- Public Health Impacts
 - Potentially weaken measures to protect public health.
 - Loss of the ability to ensure that design, construction and major modifications of public water system facilities, including water transmission and distributions lines, comply with federal drinking water regulations.
 - If the state does not satisfy federal requirements, delegated authority will be lost and the Environmental Protection Agency could take over the North Carolina public drinking water program.
 - Loss of oversight of water line construction including plans, materials of construction, installation methods and future capacity for expansion.
 - Loss of oversight of water line operation, service and maintenance to ensure compliance with current national standards, while protecting public health.

- Loss of oversight that ensures water lines have the capability to connect with expanding municipal, county or regional water systems.
- Funding Impacts
 - Under the federal Safe Drinking Water Act, states may receive only 80 percent of the allotment the state is otherwise entitled to from the Drinking Water State Revolving Fund program if the state is not implementing a program to evaluate the “technical capacity” of new and expanding public water systems. The existing program for the review and approval of engineering reports, plans and specifications for public water system facilities, including water transmission and distribution lines, is the basis of the state demonstration of compliance with this federal law.
 - Based on past grants, a 20 percent reduction in this funding would represent a loss of approximately \$5 million annually in funds for improvements to public water system infrastructure.

Existing Measures Taken to Reduce Regulatory Burden

In accordance with G.S. 130A-317(d) and Rule .1800 – Local Plan Approval of the *Rules Governing Public Water Supply Systems*, units of local government may establish and implement, within their utility service areas, a local approval program for water distribution lines, in lieu of the Public Water Supply Section approval program. Currently, 16 units of local government are implementing a local approval program.

Public Water Supply Program Recommendations

The Division of Water Resources believes the existing rules and approval process for water lines are important public health protection standards that should not be eliminated.

II. Wetlands, Buffer and 401 Permitting Program

Statutory and Regulatory Authority

Section 401 of the Federal Clean Water Act requires state certification for any activity “including but not limited to, the construction or operation of facilities, which may result in any discharge into waters of the United States.” 15A NCAC 02H .0500 establishes the authority for the division to issue certifications as required by the Federal Clean Water Act. Statute 15A NCAC 02B .0233, .0243, .0250, .0259, .0267 and .0607 establishes Rules for the Protection and Maintenance of Riparian Buffers for various watersheds and river basins within the state. These rules establish the authority for the division, or delegated local government, to issue approvals for impacts to protected riparian buffers as specified in the individual rules.

Potential Impacts of State Deregulation

The division has concerns in regards to regulatory exemptions for linear utility projects when these projects include impacts to regulated streams, wetlands or riparian buffers.

- Section 401 of the federal Clean Water Act requires applicants to receive a state certification. It is possible that without state certification, authorization from the U.S. Army Corps of Engineers would be a longer and more difficult process, and could result in denial of the project by the U.S. Army Corps of Engineers.

- In addition, these projects have potential to result in a significant loss of streams, wetlands and buffers throughout the state if avoidance and minimization of resources is not addressed or if proper construction methods are not utilized.

Existing Measures Taken to Reduce Regulatory Burden

Most utility projects are covered by Nationwide Permit #12 at the federal level and General Certification #3884 at the state level. Most projects will fall below the thresholds identified within these permits to notify the U.S. Army Corps of Engineers or the N.C. Department of Environmental Quality prior to conducting the work, provided that standard methods and techniques are used. This greatly reduces the regulatory burden on permittees. In addition, all of the riparian buffer rules provide for “exempt” categories of utility work, which also allows a project to proceed without notification to the department or other delegated program.

Ongoing Regulatory Review

The division is currently involved in reviewing existing regulations that govern the 401 certification process and various riparian buffer protection rules. This is in accordance with G.S. 150B-21.3A, and will take into account public comments from various stakeholders. Draft revisions include numerous steps to reduce regulatory burden. The division believes that the current regulations and the draft proposed changes underway through the rules re-adoption process are essential in providing a balanced approach to protecting public and environmental health and reducing regulatory burden.

Wetlands, Buffer and 401 Permitting Program Recommendations

The Division of Water Resources recommends retaining oversight of linear utility projects when such projects include impacts to regulated streams, wetlands or riparian buffers.



Without regulatory oversight, installation of linear utility projects could cause negative impacts to streams and wetlands.

III. Wastewater Collection System (Sewage Line) Permitting Program

Statutory and Regulatory Authority

General Statute 143-215.1(a)(2) establishes the authority for the division's ability to issue permits for the construction of "any sewer system, treatment works, or disposal system with the State." Furthermore G.S. 143-215.1(a)(3) requires a permit for an entity to "alter, extend, or change the construction or method of operation of any sewer system..." Regulations related to the construction of wastewater collection systems are contained in 15A NCAC 02T.0300. General Statute 143-215.9B establishes the division's authority to implement a permitting program for the operation and maintenance requirements for wastewater collection systems. Regulations related to operation and maintenance is contained in 15A NCAC 02T.0400.

Potential Impacts of State Deregulation of Construction of Linear Sewage Lines

The division has concerns in regards to exemptions for regulations related to "linear utility projects," which would presumably include segments of wastewater collection systems. Potential issues involve the proper construction and continuous maintenance that current statutes and regulations provide.

Removal of the regulatory provisions cited above yield:

- Concerns with Construction Exemptions for Sewage Lines
 - Current regulations, design and construction requirements provide accepted and consistent installation, materials, and testing requirements for wastewater collection systems. If certain sewage line projects were exempt from regulations, it is foreseeable that some projects would be constructed or tested inadequately, potentially leading to failure of the infrastructure and potential discharge of raw wastewater.
 - Current regulations provide separation requirements between sewage lines and other types of infrastructure and environmental features. Examples would include the separation between sewage lines and public or private drinking wells, public water lines, drinking water reservoirs, building foundations, etc. If exempt, it's unclear if these separations would be maintained.
 - Current regulations require that application submission include a downstream capacity analysis. This ensures new wastewater added to the wastewater collection system will not lead to capacity issues downstream (pump stations, downstream gravity lines, wastewater treatment plants, etc.) Exemptions for linear projects may lead to no downstream analysis, which could overwhelm downstream components leading to sanitary sewage overflows or raw wastewater backing up into individual service connections (homes, businesses, schools, etc.).

Potential Impacts of State Deregulation of Maintenance of Linear Sewage Lines

- Issuance of permits by the division defines who the responsible entity is for the construction, operation, and maintenance of a line. If certain sewage lines were exempted and a sanitary sewer overflow or line failure occurs, it may be difficult to determine who is responsible for correcting the issue and who is responsible for potential enforcement actions.
- Current regulations and permits require the proper operation and maintenance for wastewater collection extensions. This would include periodic cleaning to remove settled solid, periodic inspections for high priority lines (e.g., lines crossing streams), maintenance for easements to ensure access to infrastructure, etc. Exemption of linear sewage lines could potentially lead to

less maintenance and thus, lead to public and environmental health problems such as sanitary sewer overflows and backups.

- Current regulations and permit conditions require notification requirements for issues associated with wastewater collection extensions. This would include notification for sanitary sewer overflows, line breakages or other system failures. Exemption from regulations could eliminate the requirement to notify the Division of Water Resources of these issues. The division uses this information in a variety of ways, most importantly to assist in resolving the issue and to contact potentially affected communities, such as downstream water intakes and swimming areas.

Existing Measures Taken to Reduce Regulatory Burden

Current permitting programs offer a fast-track (expedited) review program for review and permit issuance of the majority of sewage line extension projects. The division also delegates permitting responsibility to units of local governments that can approve projects within their own service area. The division maintains oversight and performs periodic audits, however permits are issued by the entity (city, county, utility, etc.) with limited review by the division. There are currently 14 entities implementing an approved delegated, local program. In addition, current regulations (15A NCAC 02T.0303) allow exemptions for a variety of wastewater collection extension projects. This would include exemptions for rehabilitation and replacement work, line relocations, certain types of parallel line installation in the same right-of-way or any work that is potentially covered under a local ordinance or state plumbing code.

Ongoing Regulatory Review

In accordance with GS 150B-21.3A, staff is currently reviewing existing regulations that govern sewage lines. Input from a variety of stakeholders will be included in this process. Draft revisions include measures to reduce potential regulatory burden, including reducing separation requirements for certain features (wetlands, other types of utilities, etc.) and further exempting certain minor infrastructure projects that pose minimal public or environmental health issues.

Wastewater Collection System Permitting Program Recommendations

Current regulations and draft changes proposed in accordance with the rules re-adoption process are essential in providing a balanced approach to protecting public and environmental health and reducing regulatory burden.

Linear Wastewater Utility Projects and Associated Failures



Joint separation from exposed line causing direct discharge to stream



Aerial line failure



Sewage overflowing from manhole due to line failure



Aerial line collapse due to lack of easement/line maintenance



Sewage line interceptor failure and replacement area

N.C. Division of Air Quality

Statutory and Regulatory Authority

Under the authority of 15A NCAC 02D .1903(b)(2), the Division of Air Quality regulates open burning for land clearing or right-of-way maintenance activities, which could include the installation and maintenance of linear utility projects. Such open burning is permissible if a number of criteria are met, including setbacks from certain structures.

Potential Impacts of State Deregulation

Open burning is not a typical method for maintaining right-of-ways for linear utility projects; however, if such projects were exempted from environmental regulations, potential impacts include:

- Loss of the 500-foot setback requirement when burning near any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure.
- Negative impacts to air quality, which could affect nearby neighbors or communities.

N.C. Division of Air Quality Recommendations

The N.C. Division of Air Quality recommends continued regulatory oversight of the installation and maintenance of linear utility projects.

The Energy Group

I. Linear Utility Projects for Offshore Oil & Gas Operations

Statutory and Regulatory Authority

Authority over state territorial waters from the shoreline to three miles offshore is granted to states by the federal government via the Submerged Lands Act of 1953 - 43 U.S. Code Chapter 29, 1301 – 1356.

However, no state regulations exist for oil and gas drilling or production activity in state territorial waters. Thus, the Oil and Gas Commission and DEQ's Oil and Gas Program currently have no jurisdiction over offshore activities; however, other DEQ environmental regulatory agencies (i.e. Division of Coastal Management) have jurisdiction out to three nautical miles from the NC coastline.

Regulatory Implementation

The N.C. Oil and Gas Commission, formerly known as the Mining and Energy Commission, in conjunction with Department of Environmental Quality's Oil and Gas Program, is responsible for facility-related matters on or around onshore oil or gas sites. As a result, neither the Oil and Gas Commission nor the Oil and Gas Program has regulatory jurisdiction over lines located within a marine environment or on land areas which are outside of an onshore oil or gas drilling unit.

If the Legislature decides to amend current statutes and grants offshore authority to the Oil and Gas Commission, jurisdiction would be restricted to within the state's "Territorial Seas" boundary. This would mean that respective wells and production lines, which directly collect hydrocarbons from wellheads for eventual transport to processing facilities, would be subject to Commission rules. However, authority over the larger "gathering" and "distribution" lines connected down flow of the initial production lines would not be regulated by the Oil and Gas Commission, but would instead be regulated by the Division of Coastal Management, the Public Utilities Commission, and other state entities. Additionally, if production were to occur outside of the state's "Territorial Seas" boundary, any pipelines coming ashore in North Carolina would likely be regulated by the Federal Energy Regulatory Commission or the federal Pipeline and Hazardous Materials Safety Administration.

Potential Impacts of State Deregulation

If offshore linear production lines were under the Oil and Gas Commission's authority, but exempted from an offshore environmental permitting process, the Oil and Gas Program would have no ability to ensure that:

- Proper pressure ratings of the production lines were employed;
- Line placement would be properly geo-referenced to allow for DEQ or emergency management spill response;
- The distance from where lines were placed to sensitive maritime protection areas was sufficient;
- The placement of lines would occur in a manner so as not to interfere with the marine fisheries industry;
- The placement of the lines was done so to avoid onshore areas with previous contamination;
- The placement of lines within geologically unstable submarine substrate would either occur properly or not at all; and
- Coastal wetlands, cultural or historic resources, or endangered species would not be impacted.

Existing Measures Taken to Reduce Regulatory Burden

15A NCAC 05H has already established a "one-stop-shop," wherein a well permit is issued that covers all aspects of onshore well site construction, including, but not limited to drilling, wellhead installation, erosion and sedimentation control, storm water control, waste management, water use management, etc. As a result, industry does not have to request separate permits or approvals from multiple state agencies. Thus, if the Legislature were to grant authority to the OGC for offshore oil and gas operations, a similar

“one-stop-shop” permitting process could be implemented. In this case, an oil or gas company would have the opportunity to submit plans for installing production lines within the same application package it submits for obtaining a well permit. As a result, production line installation would be “implicitly permitted” as part of the overall offshore well permit.

Recommendations

The Oil and Gas Program recommends retaining regulatory authority over linear utility projects. Eliminating regulatory oversight of linear utility lines could lead to undesirable health and safety risks from improper line design, placement or operation as well as negative environmental impacts from improper line installation practices. Additionally, improper design, placement, installation or operational practices that might occur outside the Oil and Gas Program’s jurisdiction could still reflect negatively on the Oil and Gas Program.

II. Linear Utility Projects for Onshore Oil & Gas Operations

Statutory and Regulatory Authority

Session Law 2012-143, Session Law 2013-365, Session Law 2014-4, and NCAC 15A NCAC 05H, “Oil and Gas Conservation Rules.”

Regulatory Implementation

The N.C. Oil and Gas Commission (OGC), formerly the Mining and Energy Commission (MEC), in conjunction with DEQ’s Oil and Gas Program, is responsible for facility-related matters on or around oil or gas sites. This responsibility includes ensuring compliance with North Carolina’s erosion and sedimentation control rules, as related to land disturbing activities resulting from production line installation on the well pad site. (The production lines are those lines that initially collect gas from wellheads and then transport it to the “gathering lines,” which subsequently move raw hydrocarbons to processing facilities.)

Although land disturbance within a drilling unit resulting from production line placement is under the authority of the OGC and DEQ, other types of lines and related land disturbance is not. The MEC submitted its “Midstream Infrastructure Study Group Report,” to the Legislature on March 1, 2015. This study identified various pipeline types, and respective state and federal regulatory authorities. The following pipelines were determined as not typically being subject to MEC, OGC or Oil and Gas Program rules:

- Gathering Pipeline: A pipeline that transports gas from a current production facility to a transmission line or processing facility (49CFR 192.3);
- Distribution Pipeline: A line used to supply natural gas to a consumer;
- Interstate Pipeline: A pipeline that extends beyond the boundaries of one state and is used in transportation of hazardous liquids or natural gas in interstate or foreign commerce; and
- Intrastate Pipeline: A pipeline that is entirely contained within a state's borders and is transporting gas to regional areas within a state boundary.

Potential Impacts of State Deregulation

If linear production lines were to be exempted from permitting, the Oil and Gas Program would have no ability to ensure:

- Proper pressure ratings of the production lines were employed;
- The distance from buildings which the lines were placed was sufficient;
- Proper erosion and sedimentation control practices were followed;
- Placement of lines avoided previously contaminated sites;
- Placement of the lines under roads and streams occurred properly; and
- That wetlands, cultural or historic resources, or endangered species were not impacted.

Existing Measures Taken to Reduce Regulatory Burden

15A NCAC 05H has already established a “one-stop-shop,” wherein a well permit is issued that covers all aspects of well site construction, including, but not limited to drilling, wellhead installation, erosion and sedimentation control, storm water control, waste management, water use management, etc. As a result, industry does not have to request separate permits or approvals from multiple state agencies. This means that an oil or gas company has the opportunity to submit plans for installing production lines within the same application package it submits for obtaining a well permit. As a result, land disturbance associated with line installation will be “implicitly permitted” as part of the overall well permit.

Recommendations

The Oil and Gas Program recommends retaining regulatory authority over linear utility projects. The 15A NCAC 05H Oil and Gas rules were designed to ensure proper health and safety measures are employed and to ensure minimal impact to the environment for land disturbing activities within permitted oil and gas drilling units. These rules were developed after review of other oil and gas producing state’s rules. Eliminating regulatory oversight of linear utility lines could lead to undesirable health and safety risks from improper line design and placement as well as negative environmental impacts from improper line installation practices. Additionally, improper design, placement, installation or operational practices that might occur outside the Oil and Gas Program’s jurisdiction could still reflect negatively on the Oil and Gas Program.

III. Linear Utility Projects for Onshore and Offshore Wind Energy Facilities

Statutory and Regulatory Authority

Permitting requirements for onshore wind energy facilities and wind energy facilities located in state territorial waters are designated in S.L. 2013-51 and codified in NCGS 143-212 and 143-215.115-126. The Bureau of Ocean Energy Management (BOEM) has regulatory authority over wind energy facilities located in federal waters as authorized by the 2005 Energy Policy Act (EPAAct) and 30 CFR 585.

Regulatory Implementation

The State Energy Program under the Energy Group is responsible for facility-related permitting matters on wind energy facilities onshore and within state territorial waters within three miles of the coastline. The N.C. Utilities Commission would have regulatory authority over the power lines and their operation. The environmental regulatory divisions with the Department of Environmental Quality (DEQ) and the Environmental Management Commission would have regulatory authority over environmental issues related to the installation of the power lines.

Should a wind energy facility be located offshore within three miles of the coastline in N.C. Territorial Seas or anywhere in Albemarle or Pamlico Sounds, the Utilities Commission would have regulatory authority over power line installation and operation. The Division of Coastal Management and the Coastal Resources Commission would have authority over environmental issues related the installation until those lines came far enough onshore to fall under the authority of the environmental regulatory divisions of DEQ. The Sediment Program under the Division of Energy, Mineral, and Land Resources would then be involved to address erosion and sedimentation control related issues and the Division of Water Resources would be involved to address wetland impacts, among other potential agencies and requirements. Additionally, if the facility were to be constructed outside the N.C. Territorial Seas boundary, any power lines coming ashore would be regulated by the Bureau of Ocean Energy Management in the U.S. Department of Interior (DOI) with DOI providing proper coordination with relevant federal and state agencies on issues not under DOI's direct authority.

Potential Impacts of State Deregulation

If offshore wind power lines were exempted from an offshore wind environmental permitting process, the Department would have no ability to ensure that:

- The distance from buildings which the lines were placed was sufficient;
- Proper erosion and sedimentation control practices were followed;
- Placement of the lines over or under roads and streams occurred properly;
- Wetlands, cultural or historic resources, or endangered species were not impacted;
- Placement of the lines was done so to avoid onshore areas with previous contamination;
- Placement would be properly geo-referenced to allow for repair and maintenance;
- Placement of lines would occur in a manner so as not to interfere with marine fisheries industry;
- Placement of lines within geologically unstable submarine substrate would either occur properly or not at all.

Existing Measures Taken to Reduce Regulatory Burden

Permitting requirements for wind energy facilities are designated in S.L. 2013-51 and were codified in NCGS 143-212 and 143-215.115-126. As such, the authority to alter permitting requirements rests with the legislature.

Recommendations

The State Energy Program recommends retaining regulatory authority over linear utility projects to ensure utility lines associated with wind facilities are properly designed, installed and operated.

N.C. Wildlife Resources Commission

Statutory and Regulatory Authority

The N.C. Wildlife Resources Commission does not have environmental regulations specific to linear utility projects. However, NCWRC does have commenting authority specific to wildlife resources within the authority of several state agencies contained within in this report, including Division of Coastal Management and Division of Water Resources.

The N.C. Wildlife Resources Commission has the authority to comment on permit applications with potential impact to public trust resources in land and water areas specific to WRC's management duties (G.S. 113-131 (b) (1)). The commission was given the responsibility for stewardship and jurisdiction over all activities connected with the conservation and regulation of wildlife resources (G.S. 113-131 through 132). This regulatory authority has been further described to include the take of wildlife (G.S. 113-291; 15A NCAC 10 B), fish (G.S. 113-292; 15A NCAC 10 C), and prohibits take of protected species (G.S. 113-337 (a); 15A NCAC 10 I). Take has been defined as "...an attempt...to [intentionally] capture, kill, pursue, hunt, or otherwise harm ... any fisheries resources or wildlife resources." (G.S. 113-130)

Potential Impacts of State Deregulation

- Result in loss of opportunity to minimize potential impacts to public trust resources and public access. WRC coordinates and oversees the management of over 2 million acres of conservation lands, 236 boating access areas and 196 public fishing areas. The game lands program and wildlife conservation areas have a large infrastructure of conservation lands across North Carolina that provides wildlife habitat, corridors and foraging opportunities. Without the ability to comment on projects through other state agency permits, WRC would be unable to point out these impacts and thus, minimize impacts to access and wildlife resources.
- Result in loss of opportunity to provide comments on project alternatives during project scoping and during permitting. The construction, maintenance and removal of linear utility lines can have direct impacts to wildlife resources. Project scoping allows all parties to meet and discuss known occurrence of high priority wildlife and habitats along with alternatives to minimize impacts to these public trust resources.

Existing Measures to Reduce Regulatory Burden

The N.C. Wildlife Resources Commission is an active participant in the scoping of projects to ensure wildlife resource information is considered before projects are proposed for permitting. The commission utilizes its comment authority to directly conserve priority habitats or state listed species with the goal of preventing species from being federally listed and triggering the Federal Endangered Species Act (ESA) which can be more burdensome. Commission staff has provided quick turnaround on its review comments to agencies by developing standard comment guidelines, including standard comments for utility projects. The Wildlife Resources Commission has a triage process to quickly identify projects with minimal to no wildlife resource impact, such as 1) no state listed or high priority habitats within the proposed project boundary; 2) project has no open cut for construction or maintenance of a utility line; and 3) project utilized Best Management Practices as recommended by Erosion and Sedimentation Program guidelines. Additionally, commission staff provides applicants advice on how to meet nationwide and general permit provisions to minimize project review time.

N.C. Wildlife Resources Commission Recommendations

As mentioned above, the N.C. Wildlife Resources Commission does not have environmental regulations specific to linear utility projects. For the conservation of public trust resources and wildlife resource reasons noted above, the N.C. Wildlife Resources Commission supports the recommendations made by the state regulatory agencies, including the Division of Coastal Management and Division of Water Resources.