

2018

**JOINT LEGISLATIVE
COMMISSION ON
GOVERNMENTAL
OPERATIONS –
ATLANTIC COAST
PIPELINE**

MINUTES

**JT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS
SUBCOMMITTEE ON THE ATLANTIC COAST PIPELINE
2018 MEMBERSHIP**

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**JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL
OPERATIONS, SUBCOMMITTEE ON ATLANTIC COAST PIPELINE
November 14, 2018
Room 643 of the Legislative Office Building**

The Joint Legislative Commission on Governmental Operations, Subcommittee on Atlantic Coast Pipeline met on Wednesday, November 14, 2018 at 1:00 PM. The meeting was held in Room 643 of the Legislative Office Building.

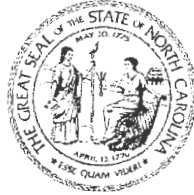
Senate members in attendance were: Senators Harry Brown, Joyce Krawiec, Floyd McKissick, and Paul Newton. House members in attendance were Representatives Dean Arp, Becky Carney, Ken Goodman, Jon Hardister, and John Torbett.

Senator Harry Brown presided. Senator Brown called the meeting to order at 1:06 PM and welcomed members, staff and visitors. He recognized and thanked Sergeants-at-Arms Terry McCraw, Jonas Cherry, Jim Moran, Billy Fritscher and Hal Roach.

Opening Remarks: Co-Chairman Senator Harry Brown

Senator Brown opened the meeting by providing the following background: Senator Brown said the committee began asking questions about the relationship between the governor's \$58 million discretionary fund and the Atlantic Coast Pipeline water quality permit earlier this year. He said that on February 8th, the committee asked questions of Lee Lilly at a joint meeting of the Appropriations Committee and Mr. Lilly could not answer the questions at that meeting. Mr. Lilly promised he would get the questions answered if the committee provided the questions in writing.

Senator Brown said that on February 12th, a letter was sent to Mr. Lilly asking 15 detailed questions about the relationship between the Memorandum of Understanding (MOU) and the Atlantic Coast Pipeline permits. On February 15th, the committee received a non-responsive reply from Kristi Jones. The committee resent their questions on February 16th along with new questions and asked for a complete response. On February 19th, Ms. Jones responded saying the whole matter is a "partisan charade." The committee picked the issue back up on August 29th at a meeting of the Joint Legislative Commission on Governmental Operations. At that meeting, Ms. Jones said the governor's office has no secrets. On September 7th, the committee sent another letter asking 20 detailed questions and also asking for documentation.



Senator Brown said the committee scheduled the original subcommittee meeting for October 4th, but DEQ secretary Regan asked for a delay due to Hurricane Florence. This was a reasonable request and the meeting was delayed until November 14th. In the response letter to Secretary Regan the committee said they hoped the delay would provide enough time to answer the questions and provide documentation. None of this was public. There was no public show made of this prior to the election because the committee simply wanted answers to the questions.

Senator Brown said the questions the committee is trying to get answered are serious and they get to the heart of honest government. He said the governor still refuses to answer the questions or provide the committee with the documents the committee has requested. The governor could have closed this months ago by answering the committee's questions.

Senator Brown stated that the committee sent a letter to the governor and Secretary Regan on September 28th saying the subcommittee would be meeting November 14th. Senator Brown said he is unaware if anyone from the governor's office or DEQ was sent over to make a statement or not.

Senator Brown went on to say that he will allow any administration representative to make any statement they would like. Senator Brown made it clear that any administration representative speaking before the subcommittee will be asked the questions to which they sought answers for, for 9 months. They will also be asked to produce the documents they have been requesting for just as long and explain the basis for their continued refusal to obey the law.

Senator Brown said the governor has stonewalled for nine months now and he has a legal obligation to answer the committee's questions and provide the requested documents. He said the governor has been given every opportunity to respond both privately and publicly. The committee is interested in whether or not the governor of North Carolina held a permit for one of the state's largest employers hostage. A permit for which Duke Energy met all the regulatory and legal requirements to obtain. A permit that had already been recommended for approval by technical staff at DEQ. Senator Brown said he wanted to know whether or not the governor held this permit hostage until Duke agreed to fund \$58 million into a slush fund under the governor's direct control. North Carolina cannot operate like that and expect to continue economic growth. That kind of government should be unacceptable to every member of this subcommittee. This subcommittee will uncover the truth and hold those responsible accountable, regardless of how big of a role they played in this matter.

Senator Brown then recognized Representative Arp for his presentation to the subcommittee.

Presentations:

1. ACP Permit and other information



- Representative Dean Arp. (See Attachment 1.) The presentation includes information about what is known so far about the process, background information on the Virginia agreement, information on the changes to the North Carolina agreement between the governor and the ACP and, finally, questions and concerns.

Senator Brown recognized Senator Newton for his presentation to the subcommittee.

2. Discussion of un-answered questions

- Senator Paul Newton (See Attachment 2.) The presentation is a continuation of Senator Newton's discussion from the full Joint Legislative Commission on Governmental Operations meeting in which he raised concerns about the Memorandum of Understanding that established the \$57.8 million discretionary fund under the governor's control in the approval of the ACP water quality permit.

Senator Brown mentioned at this point that he has not had anyone from DEQ or the governor's office approach him and asked if there was anyone in the audience from those respective offices that would like to make a comment or respond to the questions that had been raised. No one responded.

Public Comments:

Senator Brown recognized a public citizen for a comment. Therese Vick with Blue Ridge Environmental Defense League was recognized. Ms. Vick explained how the members of the committee are not the only ones who are struggling getting answers from Governor Cooper's administration. She said her organization has had a public records request since February 9, 2018 that has not been responded to appropriately. Their concern is that the permit had sufficient reasons to be denied and their concern is that the money was used to "sweeten the pot". She said that affected community leaders and landowners that are in the path of the pipeline demand answers and they deserve answers.

Committee Questions and Discussion:

Senator Brown recognized Senator McKissick. Senator McKissick asked what the motion to hire outside assistance entails, what kind of proposed budget is involved and what type of resources the committee would recommend to be allocated for the investigation.

Senator Brown responded that the motion is for the chairs to find someone who is right for that job. He said he wanted the process to be as open as possible and if Senator McKissick would like to volunteer to aid the chairs in that process Senator Brown said he would welcome it.

Senator McKissick clarified that he is trying to discern what capacity outside council has and can do that the committee cannot.



Senator Brown said the committee's attempts to get information have not been successful and it is up to the committee to decide on how to proceed. He said it seems the committee has no choice at this point but to find outside assistance to help them get the information they are seeking.

Senator McKissick said he would be happy to be part of the process and asked again what powers outside authority would have that this committee seeks. He said he is unaware of any additional authority they may have.

Senator Brown said he believes the individuals for the job are out there and the committee will do its best to find the most qualified person to help get that information.

Senator McKissick asked Senator Newton if he thought it was reasonable for somebody within an agency considering all options relating to a project to look at all the options on the table which he listed as "approval, denial, approval in part or denial in part so that everything of an evidentiary nature could be before the final arbiter to make a decision." Senator McKissick reiterated he would like to see all the options connected with a project and their factual basis for the decisions made so the arbiter can examine everything to make a final determination.

Senator Newton responded that as a concept he agreed with what he described. Senator Newton pointed out that the denial letter came weeks after the hearing officer had recommended approval of the pipeline permit, so there is no basis that is stated in the denial letter. He said this makes it appear it was a tool to be leveraged by the governor's office, not the agency which had already made its determination to approve the pipeline permit. The legal requirements for the permit were met and the hearing officer gave them approval and then weeks later the draft denial letter came with no substance and then several days later the ACP signed on to the terms and conditions demanded in the MOU demanded by the governor.

Senator McKissick followed up by asking if it was equally plausible that someone was examining all the options and we do not know what was in the minds of those involved in the process and if a different interpretation of the process could reveal the appropriate context of the decisions made.

Senator Newton agreed and said they would like to know the other side to the story.

Senator McKissick asked about the timing of the Virginia agreement and the possibility that their 57.85 million dollar fund needed in the agreement is comparable to the 57.8 million dollar fund in North Carolina.

Senator Newton said there are differences in the Virginia and North Carolina law and the Virginia MOU did not give the governor discretionary use over the funds. He said the dollar amount is the lesser issue to what is in the discretionary fund.



Representative Arp informed Senator McKissick on the Virginia agreement stating it went public January 25, 2018. Subsequent to that the final draft indicated an increase without regard to material facts other than Virginia's amount was 57.85 million.

Senator McKissick commented on how he doesn't necessarily see an attempt to gain leverage on partners in the ACP but he does see how North Carolina would have a desire to have comparability with Virginia. Senator McKissick also agreed that the questions should be answered and put into the public domain because it clarifies ambiguity and it can eliminate false perceptions.

Senator Brown commented that he thinks a key concern is in the MOU – how the money would be directed on requirements to get a permit. How the dollars were negotiated outside of the permit or if it were in order to get the permit is the question.

Representative Arp commented that a significant difference in the memorandum of agreement for Virginia was that it required mitigation in its statutory requirements and North Carolina does not.

Senator Newton commented on another difference between Virginia and North Carolina was that North Carolina required the applicants to establish an \$11 million mitigation fund that he believes did not exist in Virginia. The 57.85 million included what would have been the 11 million in NC. He said you cannot just say just because Virginia did it, we can do it too, and that's why this needs to be looked into further.

Senator McKissick agreed that there are questions to be answered.

Representative Goodman asked about the term "investigative assistance" saying the term is vague and wondered what it would consist of and then asked if the committee had subpoena power to require members of the executive branch to appear before the committee and answer their questions.

Senator Brown said in response he thinks we can get to that point.

Senator Newton said his understanding is that the subcommittee, with the approval of the chairs, would have subpoena power and at this stage we are trying to identify a compatible, capable, excellent investigator to help us get to the bottom of the things we are shining a light on here. In regards to subpoenas we will cross that bridge when we come to it and in the meantime the investigator would be able to take voluntary depositions if people are willing to give them.

Representative Carney asked if when HB 90 was passed and the money was directed to go to education, if this would dissolve the MOU because in the MOU it said the money would go to job development, job creation, economic development and environmental concern.



Representative Arp commented that the facts leading up to the permitting process and the association of the approval of a permit with a required payment is still left unanswered. The outcome of whether schools will get that money or not is a separate issue regarding the payment of the source of those funds. He said the committee is trying to investigate the integrity of the permitting approval process and whether violations have occurred.

Representative Arp commented that the question of whether the MOU was dissolved might not be in the purview for this subcommittee to answer.

Senator Brown said as this investigation proceeds that might be a question we get answered.

Representative Carney asked about the two payments that would have allowed the projects to move forward and said from her research the final notice to proceed was issued on July 24th and wanted to know if this was correct. Her question was whether the payment that was due has been paid and she wanted to know if we have received any money.

Senator Newton said there has been litigation filed so the final notice to proceed hasn't been effected yet and still needs to be resolved. He noted he expects the ACP partners will not make the first payment until they have a clean notice to proceed.

Representative Hardister asked if there has been a situation in the past in which the governor's office has created a discretionary fund of this nature.

Senator Brown said not to his knowledge and staff did not know of any such situation.

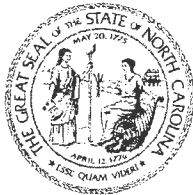
Representative Hardister said it was his understanding that the General Assembly is charged to raise, control and disburse funding and asked Senator Brown if this was his understanding as well.

Senator Brown said as appropriations chair that would be his understanding.

Representative Hardister asked to have explained the legal difference between an MOU and an MOA (Memorandum of Agreement).

Senator Newton said Memorandum of Agreement implies a contract and a Memorandum of Understanding generally is non-binding, it is more like a step to get to a binding agreement, however there can be terms and conditions in an MOU that could be binding. It would be a question of law.

Representative Torbett was recognized and made the following motion: "I would move that the Subcommittee on the Atlantic Coast Pipeline authorize the co-chairs of the subcommittee to employ an investigator to investigate the state's negotiations and activities concerning the Atlantic Coast Pipeline and the development of the execution of documents pertaining to the Atlantic Coast Pipeline."



Senator Brown asked if there was any discussion on the motion.

Representative Carney followed up on what Representative Goodman said about subpoena power from the committee. She asked do we move ahead to hire outside council to do some investigating for the committee, or do we go one more step and take the opportunity, before we go spending any more money, to subpoena someone from the executive branch to come and answer the questions. She commented that at that point she would prefer to come back to this mission, but first to exercise the subpoena power of the committee to have someone come answer questions first, then if it is necessary return to the motion.

Senator Brown responded saying Lee Lilley was before the committee before and basically refused to answer questions under perjury. Requests have been sent out and the committee has gotten no answers and others around the state, including the woman who spoke today, cannot get answers from the administration. He said the committee has been stonewalled and gotten no answers. He said we are to the point where we don't have much choice. We don't want to get to the point that members of the legislature are sending subpoenas to the governor's staff to get answers. He said he hopes an investigator can get some of those answers so they don't have to go to the point of issuing subpoenas.

Representative Arp pointed out that it is undesirable for politicians to be in the position of investigators and it would be wise to utilize the talents of an investigator to get to these questions without the appearance and taint of sitting elected officials doing that as a committee. He believes it is necessary to be cautious before issuing subpoenas so that it does not directly involve elected officials.

Representative Carney asked if the motion could be read again.

Representative Torbett re-read his motion.

Representative Carney asked how much the investigation will cost.

Senator Brown said he shared her concerns and said he promises to be as frugal as can be through the process.

Representative Carney asked if it would be appropriate to add into the motion that it is subject to the investigator's cost.

Senator Brown said he would be willing to give Representative Carney an idea on the cost after they have interviewed several candidates by the next meeting.

Representative Goodman asked why they might have changed the agreement from a MOA to an MOU.



Senator Brown said his take was that it was a way for the governor to move the money into an account that he could manage instead of going to the state.

Representative Goodman asked if under the MOA the money would go to the General Assembly instead of the governor's office.

Senator Newton responded by saying he does not want to leave the impression that just because they said it was an MOU, doesn't mean it was an MOU. He said we believe under the constitution, raising and appropriating funds is a legislative function only. Just because it is said in the document it is beyond the purview of the legislators doesn't make it true.

Representative Arp cautioned the committee about ascribing motives to others and this investigation is to determine what the facts are and what were the effects on the parties involved? Did they fear revocation of permit if the payments were not made? The original agreement identified the payment as a required mitigation payment, subsequently it was changed. He said we are trying to understand the thought process of the parties involved. He said speculation at this point was premature. Senator Brown agreed and said he should not have speculated earlier as to motive.

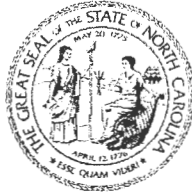
Representative Hardister spoke in favor of the motion. He emphasized that the committee is trying to ascertain facts and not to debate whether the permit should have been given, and an investigator would be a good way to do that.

Senator McKissick said it was his understanding that when the MOU was entered into it was a temporary tool/vehicle to state what the funds were supposed to be, but there would be greater specificity provided in a subsequent document or agreement that had not been worked out, but would be in a more formalized agreement. Senator McKissick said political drama should be avoided and he believes avoiding subpoenas at this point will accomplish this. He would like to leave that as a last resort and then raised questions about how much outside investigative support would cost, but understood that the cost would be presented before the committee before proceeding forward.

Representative Arp responded by saying as stipulated in the final MOU, "the funds shall be allocated pursuant to the guidelines and directions set forth in a subsequent executive order that would be issued prior to the completion of the state permitting for the ACP." In the agreement it ties the permitting process in the executive order directing the payment of those to the permitting process. The permitting process was concluded on January 26th. He said the committee raised questions about draft executive orders being composed or not and those questions still remain.

Senator McKissick said we need information to clarify ambiguity to understand what happened and how it happened.

Senator Brown commented that the committee has quietly tried to get the information throughout the process, the committee has tried working with the administration to get information and for



whatever reason they do not want to provide answers. The committee, in Senator Brown's opinion, has no choice but to move forward. The people of the state who are seeking answers demand them and we demand them. Senator Brown said he believes this reflects on all of the members who serve and puts into question the public's trust and this is an opportunity to provide transparency.

Senator McKissick asked if they would be coming back with the amount that would be spent.

Representative Carney raised her concern about not being able to know what an investigator will cost before proceeding forward.

Senator Brown said no interviews have been done and no one has been consulted so he has no numbers at that point to provide to Representative Carney, but he will be as transparent as possible moving forward and that Senator McKissick will be involved in the process.

Representative Torbett suggested that Representative Carney could support the motion here and then later she could offer a motion not to move forward.

The motion made by Representative Torbett was voted on and the motion passed.

Senator Krawiec emphasized the concerns her colleagues have brought up and asked to make a motion to facilitate the first motion.

Senator Krawiec made the following motion:

In order to facilitate Motion #1, move that the Clerks of the Co-Chairs of the Subcommittee on the Atlantic Coast Pipeline submit the following public records requests to the Department of Environmental Quality and the Office of the Governor, asking that responses be made within 5 business days after receipt of the requests; and further, that the Clerks compile the responses and forward them to the investigator:

1. All documents, correspondence, and e-mails from the Governor's Office related to the Atlantic Coast Pipeline (ACP) from July 1, 2017 to March 1, 2018, including all correspondence and e-mails with the Atlantic Coast Pipeline partners, all correspondence and e-mails to and from the Department of Environmental Quality (DEQ) related to the Atlantic Coast Pipeline, and any documentation regarding the times, dates, list of attendees, and subject matter of any meetings held between the Governor, any member of the Governor's Office, or his Cabinet and any representative of Duke Energy or the Atlantic Coast Pipeline between July 1, 2017 and March 1, 2018.
2. All e-mails from the Department of Environmental Quality pertaining to the ACP from July 1, 2017 to March 1, 2018.

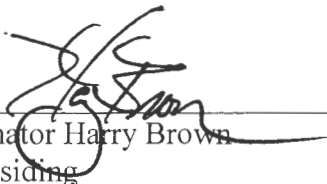


3. Unredacted copies of the documents present in the DEQ ACP Permit file as specified in the letter to Governor Cooper from Senators Brown and Newton on Sept 7, 2018.

4. Any drafts or work products related to the Executive Order that was to be issued prior to the completion of the state permitting for the ACP, as specified in the Memorandum of Understanding of Jan 25, 2018.

The motion was voted on and the motion passed.

There being no further business before the subcommittee, the meeting adjourned at 2:31 PM.



Senator Harry Brown
Presiding



Lorie Byrd, Committee Clerk

Attachments:

1. Agenda for November 14, 2018 meeting
2. Presentation titled "ACP Permit and other information"
3. Presentation titled "Serious Unanswered Questions"
4. February 12, 2018 Letter from Senator Rabon and Representative Lewis to Lee Lilley
5. February 15, 2018 Letter from Kristi Jones to Senator Rabon and Representative Lewis
6. February 16, 2018 Letter from Senator Rabon and Representative Lewis to Kristi Jones
7. February 19, 2018 Letter from Kristi Jones to Senator Rabon and Representative Lewis
8. September 7, 2018 Letter from Senator Brown and Senator Newton to Governor Cooper
9. September 19, 2018 Letter from Senator Brown and Senator Newton to Governor Cooper
10. September 28, 2018 Letter from Representative Arp and Senator Brown to Sec. Regan
11. November 9, 2018 Carolina Journal article titled "Atlantic Coast Pipeline committee will examine timing of MOU, permit
12. Visitor Registration Log
13. Public Comments Log

**Joint Legislative Commission on Governmental Operations
Subcommittee on the Atlantic Coast Pipeline**

Wednesday, November 14, 2018

1:00 PM

AGENDA

I. CALL TO ORDER

Chairs: Representative Dean Arp
Senator Harry Brown, Presiding

II. PRESENTATIONS

Opening Remarks by Chairs

Atlantic Coast Pipeline MOU Overview (20 min)

Rep. Arp

Unanswered questions raised by a review of the ACP Permit File (20 min)

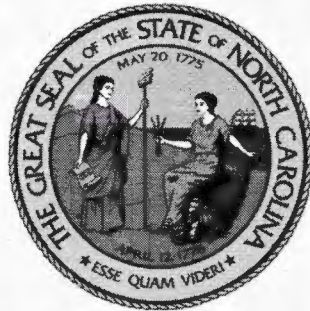
Sen. Paul Newton

III. Committee Discussion

IV. Adjournment



Atlantic Coast Pipeline: Permit Process and MOU Payments



Presented to the Joint Legislative Commission on Governmental Affairs,
Subcommittee on the Atlantic Coast Pipeline

November 14, 2018



Purposes of Committee Review

- Assuring the public:
 - *Of the integrity of the state environmental permitting process*
 - *That business and industry can continue to locate and expand in our state without concern of being subjected to payments of monies not prescribed by law or coercion of any type.*
- If there have been improprieties, make policy recommendations to preclude them from happening again.



Notable Quotes

- "The permits are not connected to that MOU."
—Assistant Secretary Sheila Holman, Department of Environmental Quality
- "...the permit, the 401 water permit is both separate and apart from the mitigation fund."
—Director of Legislative Affairs Lee Lilley, Governor's Office (February 8, 2018 Testimony)
- "I think that their subsequent actions [the General Assembly's passage of H.B. 90] bore out why we didn't want to involve the legislature,"
—Senior Advisor Ken Eudy, Governor's Office (RA)
- "In hindsight, we should have had more structure in the process. Clearly, we were going to put that structure in place when the fund arrived..."
—Governor Roy Cooper (RA)
- "Eudy said last week that the administration team 'had it in our heads' how the fund would actually work. But officials didn't put the board of experts, or other details, in writing."
—Travis Fain (RA) Statehouse Reporter (RA)



Background Information

- Memorandums of Understanding and Memorandums of Agreement are enforceable when other necessary elements of a contract are in place
- Understandings are generally **not** enforceable
- Gifts are **not** legally enforceable
- Funds and grants **are** legally enforceable when other necessary elements of a contract are in place



Virginia's Memorandum of Agreement

- The Virginia Secretary of Natural Resources has the authority:
 - *Va. Code 10.1104(A)(3) “to accept bequests and gifts of real and personal property as well as endowments, funds, and grants from the United State government, its agencies and instrumentalities, and any other source.” (Department of Conservation and Recreation)*
 - *Va. Code 10.1107(A) “...accept for state forest purposes gifts, devises and bequests of real and personal property as well as endowments, funds, and grants from any other source.” (Department of Forestry)*
- ACP Partners and VA signed an MOA citing the above authority providing the following:
 - *\$38.65M to two nonprofits and one NGO for forest conservation*
 - *\$19.2M to two nonprofits and the USGS for water quality*

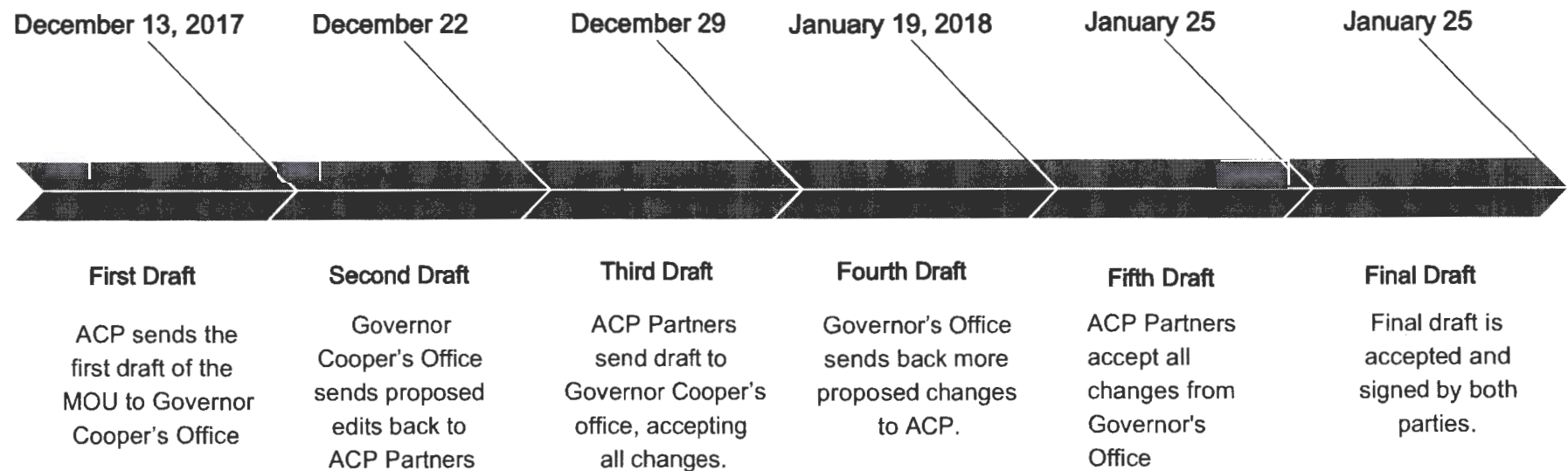


North Carolina Statutory Authorities

- North Carolina can require compensatory mitigation for impacts to:
 - Waters of the US
 - Waters of the State
 - Streams
 - Riparian buffers
 - Wetlands
- North Carolina agencies comparable to Virginia agencies that can receive gifts, grants, funds, etc.
 - Department of Environmental Quality
 - Department of Natural and Cultural Resources
 - Wildlife Resources Commission
 - Department of Agriculture and Consumer Services
 - Department of Administration



Memorandum of Understanding Timeline





December 13 First Draft: ACP to Governor

CONFIDENTIAL

MITIGATION PROJECT AGREEMENT

THIS MITIGATION PROJECT AGREEMENT ("Agreement") is made and entered into this day of December, 2011, by and between the STATE OF NORTH CAROLINA and ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company of 130 Front Street, Kansas, and Virginia 22101 ("Atlantic").

WITNESSETH:

WHEREAS, Atlantic is proposing to construct the Atlantic Coast Pipeline ("ACP") as a wide ground mineral gas transmission pipeline of approximately 600 miles from West Virginia through Virginia, North Carolina, and Georgia;

WHEREAS, the ACP will deliver up to 5 billion cubic feet per day of natural gas to meet the demand for electric generation, natural gas distribution, and use markets in North Carolina and Virginia;

WHEREAS, the ACP route was approved by the Federal Energy Regulatory Commission ("FERC") on October 13, 2012, and will involve acquisition of land in the State of North Carolina and will include a natural gas compressor station in Program in County and other related facilities along the route;

WHEREAS, the pipeline, access roads, and all associated aboveground facilities and compressor stations will result in total direct impacts of over 3,000 acres from construction activities and in significant reduction during operation; and

WHEREAS, while the ACP has been required to minimize impacts to migratory birds and federally listed species by setting preferred habitat, including wetland areas, riparian areas, and riparian vegetation to the extent practicable, there remain unavoidable impacts to over 100 acres of riparian forest habitat; and

WHEREAS, the ACP route and access roads would cross approximately 350 acres of riparian forest habitat in North Carolina;

WHEREAS, Atlantic has created riparian stream buffers, riparian forest buffers, and riparian forest buffers along the route, and Atlantic has provided information to the State of North Carolina and the State of Virginia regarding the riparian forest buffers and other considerations along the route; and

WHEREAS, Atlantic recognizes that construction of the ACP and maintenance of the riparian forest buffers for the ACP may result in temporary and/or permanent impacts to the riparian forest buffers which include forest wildlife species dependant;

WHEREAS, Atlantic desires to take all reasonable measures to comply with North Carolina and Virginia laws and to provide for the restoration and preservation of habitat for

Atlantic, including land conservation, stream riparian forest buffers, and riparian forest buffers, and Atlantic desires to provide for the restoration and preservation of habitat for

CONFIDENTIAL

interior forest wildlife in North Carolina where the ACP will be constructed, operated, and maintained; and

WHEREAS, the Director of the North Carolina Wildlife Resources Commission has authority and responsibility under NCWRS, Section 113.06(a) to act in the overall best interests of the conservation of wildlife resources; to accept gifts and grants on behalf of the State;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State of North Carolina and Atlantic, together, the "Parties," agree as follows:

1) Atlantic agrees to provide mitigation funding in the amount of \$55,000,000 to the State of North Carolina no later than before the time the ACP is placed in service. Such funding is being provided as required mitigation for the unavoidable effects of the ACP on interior forest habitat, open-space lands, watersheds, and natural resources of the State along the ACP's route.

2) The State of North Carolina acknowledges that the mitigation funding will be used to address the effect on the landscape, natural resources, interior forest habitat, agricultural lands, and riparian areas of the communities caused by the pipeline, access roads, and riparian areas. The funding provided shall be allocated to the State of North Carolina and Atlantic in accordance with the ACP's route and the ACP's route. The funding provided shall be allocated to the State of North Carolina and Atlantic in accordance with the ACP's route and the ACP's route.

3) Nothing in this Agreement shall be construed as a flooring the authorities of any party or as binding them beyond their respective authorities or responsibilities.

4) The Agreement does not create any right of action for a third party and may not be the basis of any third party challenges or appeals.

STATE OF NORTH CAROLINA
ATLANTIC COAST PIPELINE, LLC.
Data were limited liability company

By: _____ Title: _____
Date: _____

34 Trustee



First Draft Overview

- Partners propose a binding agreement
- Intent appears to be, with the exception of "waterbodies," to address impacts identified in FERC EIS for which NC does not require compensatory mitigation
- Funds administered through Wildlife Resources Commission
- Agreement between ACP partners and State of North Carolina
- Funds to be paid before pipeline goes into service for stated environmental purposes
- Presumes traditional stewardship of state dollars through Treasury
- Funding level proposed at \$55M



December 22 Second Draft: Governor's Office to ACP Partners

NOW, THEREFORE, the State of North Carolina and Atlantic (together, the "Parties") endeavor to do the following:

- 1) Atlantic commits to providing funding in the amount of \$55,000,000 to the State of North Carolina as set forth below. The funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina ("the Escrow Account"). The funds are being provided as (i) mitigation for the unavoidable effects of the ACP on the interior forest habitat, open-space lands, waterbodies, and natural resources of the communities along the ACP's route (ii) support and funding for economic development in the counties that would be impacted by the ACP; and (iii) extension of renewable energy projects into certain local communities which may stand to be effected by the ACP's operation. Fifty per cent of the \$55,000,000 will be deposited in the Escrow Account and made available for disbursement for environmental mitigation immediately following the issuance by the Federal Energy Regulatory Commission of a Final Notice to Proceed for the ACP. The remaining balance of funds shall be deposited in the Escrow Account no later than upon the date the ACP is placed into service. In the event that Atlantic terminates the project before it is placed into service, whether in the unanticipated event that the project fails to obtain and maintain the state approvals or any other necessary permits, certifications, consents, authorizations, and other approvals or for any other reason in Atlantic's sole discretion, the State of North Carolina shall deliver the proportionate share of the mitigation funds as preserved in accordance with this paragraph to Atlantic within thirty (30) days of receipt of written notice of termination from Atlantic. Such proportionate share to be returned to Atlantic shall be calculated based upon the number of miles of the pipeline route in North Carolina for which tree clearing and grubbing

PRIVILEGED AND CONFIDENTIAL

MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING

THIS MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING ("Memorandum") is made and entered into this ____ day of December, 2017, by and between the **STATE OF NORTH CAROLINA BY AND THROUGH THE OFFICE OF THE GOVERNOR** and **ATLANTIC COAST PIPELINE, LLC**, a Delaware limited liability company of 120 Tredegar Street, Richmond, Virginia 23219 ("Atlantic").

WITNESSETH:

PRIVILEGED AND CONFIDENTIAL

activity remains to be performed compared to the total number of miles of the pipeline route requiring such activities in North Carolina as part of the project.

- 2) The State of North Carolina acknowledges that the funds are being provided for the purpose of (i) addressing the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities caused by ACP, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement; and (ii) expanding economic development opportunities and (iii) developing renewable energy projects in and around the ACP's route. The funds shall be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order that would be issued prior to the completion of state permitting for the ACP. Nothing in this Memorandum shall be construed as precluding or otherwise barring the State of North Carolina from recovering damages or equitable remedies from Atlantic for spills or leaks stemming from the ACP.



Second Draft Overview

- Governor's Office changed "Memorandum of Agreement" to "Memorandum of Understanding"
- The agreement would be with "the state of North Carolina by and through the office of the governor" rather than just with the state
- Amended language stipulates half of the \$55M would be paid as soon as the Federal Energy Regulatory Commission issued a final notice to proceed on the project; the other half would be due no later than when the pipeline goes into service
- The money would still go "to the state of North Carolina," but the Governor's Office added language allowing him to designate an account outside the state treasurer to hold the money
- New language describes forthcoming executive order directing disbursement of funds that would be issued prior to the decision on approval/denial of permits
- General Counsel McKinney's name was added at the bottom of the memo, making it clear that he would sign off on the agreement for the state



December 29 Third Draft: ACP Partners to Governor's Office

PRIVACY AND CONFIDENTIALITY

MITIGATION PROJECT MONITORING OF UNDERSTANDING

THIS NOTIFICATION PROJECT MEMORANDUM OF UNDERSTANDING ("Memorandum") is made and entered into this _____ day of December, 2017, by and between the STATE OF NORTH CAROLINA BY AND THROUGH THE OFFICE OF THE GOVERNOR AND ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company, at 1305 Trenchard Street, Richmond, Virginia 23219 ("Atlantic").

WITNESS ET AL.

WHEREAS, Atlanta is proposing to construct the Atlantic Coast Pipeline (ACP), an underground natural gas transmission pipeline of approximately 680 miles from West Virginia, through Virginia, and ending in North Carolina, and

WHEREAS, the ACE will deliver up to 1.5 billion cubic feet per day of natural gas to meet the demand for electricity around the Southwest, and such use is critical in North Carolina

WHEREAS the ACP will serve as a catalyst for economic development and job creation in Member Countries and

WHEREAS, the ACP will promote and facilitate the employment of new industries to North Carolina; and

WHEREAS, the pipeline will generate approximately \$40,000,000 in local property tax

WHEREAS, the Federal Energy Regulatory Commission ("FERC") approved the ACP program on October 13, 2017, awarding eight contracts in the State of North Carolina, and including

WHETHER, for ACP, access roads, and all associated structures at facilities and contractor yards will result in land filled impacts of over 100,000 square feet. The project will require the construction of new roads, drainage structures, and

WHILE, while the ACT has been rated to minimize disruption to migratory birds and federally listed species by avoiding protected habitats, including wetland areas, waterfowl and seasonal roosting sites, the project is not feasible. There are no wetlands, waterfowl or seasonal roosting sites on the project area. The project is not feasible.

WHEREAS, the ACP and associated world cross commodities for exports to over 300 areas of linear force impact, and

WHEELAB, Atlanta has conducted open houses, participated in public meetings held by the Georgia Department of Transportation, and held briefings with the House Committee on Transportation and the House Committee on the Environment.

MURVILBOED AND

informants: teachers with local governments, state-recognized Indian tribes, and culture stakeholders along the route; and

WHILEAS, Admits recognition that connections of the ACP and maintenance of the permanent right-of-way for the ACP may result in temporary and/or permanent impacts to the subjects upon which Insular Forest Wildlife Species depend; and

WHEREAS, Aside acknowledge the local communities existing population, and non-organised Indians who have a significant interest in preserving their traditions, history, and quality of life; and

WHEREAS, Atlanta represents that it has taken and will take all reasonable measures to comply with North Carolina natural resources laws and to provide for the acquisition and preservation of North Carolina historic forest lands before when the ACP will be completed;

WHEREAS, the Governor, through his agents and assigns, including but not limited to the Department of Environmental Quality, Department of Commerce, Wildlife Resources

Now, THEREFORE, the Sons of North Carolina and Alsace (together, the "Tudes")
 accomplished in this Memorandum of Understanding.

1) *Aid to economic development*—funding in the amount of \$53,000,000 to the State of North Carolina as set forth below. The funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina ("the Escrow Account"). The funds are being provided as (a) mitigation for the economic losses of the ACP's and its member states, (b) support for the ACP's and its member states' economic development efforts, and (c) support and funding for economic development in the countries that would be impacted by the ACP, and (iii) extension of membership among private law students and exam takers who may not be able to be effected by the ACP's expenditure. Fifty per cent of the \$53,000,000 will be allocated to the Escrow Account, with the remaining fifty per cent of the \$53,000,000 will be distributed to the member states following the settlement of the International Dispute Resolution Panel's decision in *Peabody v. the ACP*. The settlement of the International Dispute Resolution Panel's decision in *Peabody v. the ACP* is expected to occur within six to twelve months following the date the ACP is placed into service. In the event that Adkins' litigation against the project fails, it is planned that, whether in the eventuated event due to the project fails or the project fails to obtain and maintain the state approvals or any other reasons in Adkins' sole discretion, the State of North Carolina shall deliver the proportionate share of the settlement funds as determined in accordance with the proceedings in Adkins' sole discretion. The settlement of the International Dispute Resolution Panel's decision in *Peabody v. the ACP* shall be returned to North Carolina for its intended legal use and the number of jobs of the employees in North Carolina. Such other uses shall be subject to the

PERM. ACCTG. AND CONTROLLING

activity remains to be performed compared to the total number of miles of the pipeline work completed each calendar or March Calendar as part of the project.

[illegible]

Excellence in the workplace and the workplace in excellence. It is a challenge to the world of business. It is a challenge to the world of education. It is a challenge to the world of the future.

4) The Movement does not seem to offer a clear path for a third party and may not be the basis of any subsequent challenge or attempt to win Movement seats in state legislatures or Congress or in national, state, or local party systems.

[illegible]

Source: *Author's calculations*.

William C. Hoffmann
General Counsel, Office of the
State Comptroller, Connecticut

Change





Fourth Draft Overview

- Funding increases from \$55 million to \$57.8 million
- Money would now go to “the Governor of the State of North Carolina” rather than “the State of North Carolina.”
 - Numerous handwritten notes indicate the intended change

1. STATE: DELAWARE UNITED STATES OF AMERICA DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE

in favor of the

NOW, THEREFORE, the State of North Carolina and Atlantic together, the Parties, intend to enter the following:

to the State of North Carolina

Agreement, providing funding in the amount of \$37,800,000 to the State of North Carolina for the purchase of the funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina (the Escrow Account). The funds are being provided as (a) assistance for the immediate needs of the ACP on the interior farm habitation, open-space lands, waterways, and natural resources of the communities along the ACP's route (a) support and funding for economic development in the counties that would be impacted by the ACP and (2) economic or renewable energy projects and other local communities which may stand to be affected by the ACP's operation. Fifty per cent of the \$37,800,000 will be deposited in the Escrow Account and made available for disbursement for environmental restoration immediately following the issuance by the Federal Energy Regulatory Commission of a Final Notice in Proceed for the ACP. The remaining balance of funds shall be deposited in the Escrow Account no later than upon the date the ACP is placed into service. In the event that Atlantic terminates the project before it is placed into service, whether in the unanticipated event that the project fails to obtain and maintain the state approvals or any other necessary permits, certifications, consents, authorizations, and other approvals or for any other reason, in Atlantic's sole discretion, the State of North Carolina shall deliver the proportionate share of the mitigation funds as provided in accordance with this paragraph to Atlantic within thirty (30) days of receipt of written notice of termination from Atlantic. Such proportionate share will be returned to Atlantic, shall be calculated based upon the number of miles of the pipeline route in North Carolina for which new clearing and grubbing

- 2) The State of North Carolina acknowledges that the funds are being provided for the purpose of (i) addressing the effects on the landscape, natural resources, interior forest habitats, agricultural lands and lifestyles of the communities caused by ACP, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement; and (ii) expanding economic development opportunities and (iii) developing renewable energy projects in and around the ACP's route. The funds shall be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order that would be issued prior to the completion of state permitting for the ACP. Nothing in this Memorandum shall be construed as precluding or otherwise barring the State of North Carolina from recovering damages or equitable remedies from Atlantic for spills or leaks stemming from the ACP.



Factors Raising Concern

Governor Cooper:

- Repeatedly called \$57.8 MMOU payment voluntary
- Required 50 percent of the payment up front from ACP
- Attempted to circumvent the state budget process
- Switched to non binding agreement
- Proposed unnamed third party to escrow and manage funds
- Required funds for purposes outside of the FERC environmental impacts, such as economic development and expanding renewable energy
- Never issued executive order prescribed in MOU
- Could delay permitting until the executive order was issued
- Announced permit approval and MOU fund simultaneously



Unanswered Questions

- Was the integrity of the state environmental permitting process breached by mixing the MOU payments with permit approval?
- If governor's actions of associating MOU payments with a permit approval become the norm, will it have a chilling effect on business climate in North Carolina?
- What is the legal significance of modifying the document from "agreement" to "understanding"?
- Why did the MOU stipulate that an Executive Order would be issued prior to issuance/approval of final state permits?
- What criteria was used in arriving at the amount of the gift?
- Why was the document amended to reflect an agreement with the Governor rather than the State of North Carolina?



Unanswered Questions

- Why was MOU edited to state that half the money would be paid as soon as FERC issued a final notice to proceed?
- Why does it appear the partners accepted every request made by the Governor's Office without any negotiation?
- Was an Executive Order directing the disbursement of funds ever drafted, wholly or in part, within the administration?
- Does the lack of an Executive Order impact the validity of the agreement?
- Why does the document state: "Nothing in this Memorandum shall be construed as affecting the authorities of any party or as binding them beyond their respective authorities or responsibilities" if the entire MOU is non-binding?



Serious Unanswered Questions

RAISED FROM THE ACP PERMIT FILE



Draft Denial Letter



January XX, 2018

OWA # 14-0567 v2
Northampton, Halifax, Nash,
Wilson, Johnston, Sampson,
Cumberland and Robeson Counties

CERTIFIED MAIL: 10000 10000 10000 10000 10000
RETURN RECEIPT REQUESTED

Atlantic Coast Pipeline, LLC
Attn: Ms. Leslie Hartz
707 E. Main Street, 19th Floor
Richmond, VA 23219

DRAFT

Subject: DENIAL OF 401 WATER QUALITY CERTIFICATION AND TAR-PAMLICO/NEUSE RIPARIAN
BUFFER AUTHORIZATION CERTIFICATES
Atlantic Coast Pipeline
USACE Action ID: No. SAW-2014-01558

Dear Ms. Hartz:

On May 9, 2017, the Division of Water Resources (Division) received your application requesting a 401 Water Quality Certification and Tar-Pamlico and Neuse Riparian Buffer Authorization Certificates from the Division for the subject project. Pursuant to 15A NCAC 02H .0506, a certification shall be issued when the Director determines that water quality standards are met. Pursuant to 15A NCAC 02B .0233 (8) and .0259 (8), a Buffer Authorization Certificate shall be granted when the Division determines there is no practical alternative. The project has not met the following requirements:

- Rule Citation
"Rule text..."
Explanation...

In accordance with 15A NCAC 02H .0507(a), 15A NCAC 02B .0233(8), and 15A NCAC 02B .0259(8), your application for a 401 Water Quality Certification and Buffer Authorization Certificates are hereby denied.

This decision can be contested as provided in 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.

cc: [redacted] [redacted] [redacted] [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]



Screen Shot from ACP Permit File

Search - Laserfiche Web | x

Secure | https://edocs.deq.nc.gov/WaterResources/Search.aspx

Apps | Suggested Sites | Imported From IE

higgins

My Weblink | Help | About | Sign Out

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Records Management Search
General Search

Search terms

Search Reset

Name	Hits	Current Status
20140957 Ver 2 - DraftsGivenToLinda01-22-18_140957v2AtlanticCoastPipeline(Multi)_401_IC_NRB_TAR_DENIAL - 1/22/2018	1	Project in Review
20140957 Ver 2 - DEQ Press Release - 1/26/2018	1	Project in Review
20140957 Ver 2 - 01_2018 draft denial of 401 WQ cert. and Tar-Pamlico..... - 1/1/2018	1	Project in Review
20140957 Ver 2 - Updated DMS Letter - 11/29/2017	1	Project in Review
20140957 Ver 2 - Mail 2017 08 21 NC East Alliance ACP Letter - 8/22/2017	1	Project in Review
20140957 Ver 2 - Progress Energy Alt Clarification - 6/27/2017	1	Project in Review
20140957 Ver 2 - More Info Requested - 9/14/2017	1	Project in Review
20140957 Ver 2 - NCDEMLR_RRO_ReqForAddInfo_09-15-17 - 9/15/2017	1	Project in Review
20140957 Ver 2 - More Info Requested - 10/26/2017	1	Project in Review
20140957 Ver 2 - Mail 2017 08 14 Governor Cooper_Atlantic Coast Pipeline Letter - 8/14/2017	1	Project in Review
20140957 Ver 2 - Meeting Notes and Handouts - 3/23/2017	1	Project in Review
20140957 Ver 2 - ACP 401 Water Quality Certification Permit Comments - 8/14/2017	1	Project in Review
20140957 Ver 2 - Against Letters - 8/22/2017	1	Project in Review
20140957 Ver 1 - Approval Letter - 1/26/2018	1	
20140957 Ver 2 - 401_IC_NRB_TAR_bw edits - 1/19/2017	1	Project in Review



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Central OfficeID #
20140957Version
2Document Date
1/22/2018Facility/Project Name
Atlantic Coast Pipeline (ACP)County
MultiCurrent Status
Project in Review

1 / 2 Go PDF

View plain text 8.5 in x 11 in

707 E. Main Street, 19th Floor
Richmond, VA 23219

Subject: DENIAL OF 401 WATER QUALITY CERTIFICATION AND TAR-PAMLICO/NEUSE RIPARIAN BUFFER AUTHORIZATION CERTIFICATES
Atlantic Coast Pipeline
USACE Action ID. No. SAW-2014-01558

Dear Ms. Hartz:

On May 9, 2017, the Division of Water Resources (Division) received your application requesting a 401 Water Quality Certification and Tar-Pamlico and Neuse Riparian Buffer Authorization Certificates from the Division for the subject project. Pursuant to 15A NCAC 02H .0506, a certification shall be issued when the Director determines that water quality standards are met. Pursuant to 15A NCAC 02B .0233 (8) and .0259 (8), a Buffer Authorization Certificate shall be granted when the Division determines there is no practical alternative. The project has not met the following requirements:

- **Rule Citation**
"Rule text..."
Explanation...



Quote from WRAL Article posted on March 4, 2018

- ▶ "By mid-December, DEQ's review was wrapping up, and it had become clear the department would likely issue the needed permit, Eudy said. He recalled Regan saying that, if the consortium answered the department's final questions to satisfaction, there would be "no choice" under the law but to give approval."



Redacted Documents

ACP-El Follow-up ally
(MR, J Osborne, K. Meyer, S. Koo, E. Wagon)
9/1/17
J. Burck #

Santa Rosa - DC District



MR - uses may be push to ask about E. J.
↳ relates to people



Who is Doug?

1-3 ACP Call

update on Air

" " 401

update on ETC → still questions about
access roads → sending a disapproval
and other little things

stormwater → general + individual
notice → notice → maybe hearing

1-4

give NO Report / Draft decisions to Linda on Monday
Bridget will talk w/ Doug about news release of decision

1-5 Mtg. w/ JB

- double check impact #'s + buffer mit ✓
 - ↳ send to Spencer for review ✓
 - ↳ need open water impacts ✓
- WRC relocation plans ✓
- check NCGOI throughout □
- inundated wetlands - add curtains + monitoring ✓
- check all add info ^{making note} for other conditions ✓
- request variance from FERC to adjust route → email
↳ add info? □
- add date rec'd for DW impacts to letter ✓
- □



Website Inconsistencies

- ▶ Documents and notes obtained from DEQ website
- ▶ Letter sent to Governor on Sept 7
- ▶ Beginning Sept 10 documents could not be accessed
- ▶ Documents reappear on Sept 24 with some new info



Current Concerns

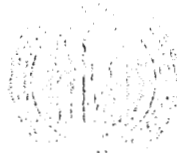
- ▶ Legal authority for discretionary fund
- ▶ Potential coercion of permit applicant
- ▶ Troubling lack of transparency
- ▶ Policy implications for job creation/economic development



Recommendation

- ▶ Hire outside investigatory assistance
- ▶ Obtain relevant documents and other evidence





NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE BUILDING

RALEIGH 27601

February 12, 2018

Mr. Lee Lilley
Director of Legislative Affairs
Office of the Honorable Roy A. Cooper
Governor of North Carolina
20301 Mail Service Center
Raleigh, N.C. 27699

Dear Mr. Lilley:

Thank you for attending the joint meeting of the House and Senate Appropriations/Base Budget committees this past Thursday on behalf of Gov. Roy Cooper. We understand you just recently started working as his lobbyist and felt you could not immediately answer a number of questions lawmakers had related to the roughly \$58 million he obtained from energy companies within hours prior to his administration's issuance of a major permit to advance the Atlantic Coast Pipeline. However, we are sure you can understand why many North Carolinians are concerned that it appears the governor obtained \$58 million for a personal "slush fund" as "a condition of getting the permit granted" (the latter are the words of Democratic Rep. Pricey Harrison.) This series of events has raised a number of serious ethical and constitutional questions across the political spectrum about potential pay-to-play or pay-for-permit, and deserve prompt answers.

We appreciate the commitment you made to get answers to questions raised by the committee in writing, and below are the ones we believe are most pressing at this time. While you may not personally have knowledge of all of these issues, we trust you will fulfill the responsibilities of your position as the governor's legislative liaison and as a member of his senior staff and obtain answers directly from Gov. Cooper and his general counsel.

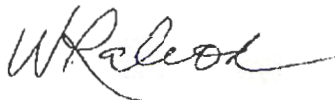
1. Please explain how the governor's office came to negotiate and obtain \$57.8 million from the energy companies seeking to build the Atlantic Coast Pipeline?
2. Who specifically in the governor's office and his administration was involved in negotiating the deal? Did Gov. Cooper personally bless the arrangement?
3. When and how did negotiations over what many are referring to as the governor's personal "slush fund" start? Were the negotiated offers made in writing or in person? Are there other drafts you can share?
4. Were other matters beyond the pipeline addressed during negotiations? If so, what matters?
5. How did the governor envision the extra-governmental fund working?



6. How did the governor plan to spend the money? Is he aware that state and federal law already require utilities building the Atlantic Coast Pipeline to meet environmental mitigation requirements before the project can receive approval?
7. Can you clarify your response to this question as it appears to conflict with reports in the *News & Observer*: Will the ratepayers and consumers or shareholders pay for this \$58 million extra-governmental fund?
8. Why does the governor's office call this a "voluntary contribution" when Democratic Rep. Pricey Harrison said it was "a condition of getting the permit granted" and the governor's own spokesman has called the arrangement "negotiations," which by definition are not voluntary?
9. Would the private parties involved in the negotiations agree with the governor's assertion that this was a "voluntary contribution" completely unrelated to the permitting process?
10. Does the governor's office think this type of activity – requesting large contributions from private businesses wanting to do business in our state – encourages economic development in North Carolina?
11. What other companies has the governor obtained "voluntary" \$50 million plus contributions to the state from? Is he currently or has he in the past solicited similar contributions from other businesses or individuals? Were these companies also seeking environmental permits?
12. Do you think the solicitation and acceptance of this money by the governor erodes the public's trust in the permit approval process?
13. Why does the governor's office compare this agreement to actions taken in Virginia when the Virginia agreement was signed by the Commonwealth's chief environmental regulator and went to specifically designated mitigation projects, while Gov. Cooper's deal gives him unfettered control of an extra-governmental fund outside of the normal appropriations process allowed by the North Carolina constitution?
14. Is this arrangement an illegal and unconstitutional violation of the separation of powers or a violation of due process?
15. Does this arrangement run afoul of state ethics law that prohibits elected officials from using their office and title to solicit funds for personal benefit?

Please send responses to us by 4:00 p.m. on Thursday, February 15. This will have given the governor and his office a full week from the committee meeting to contemplate responses.

Sincerely,



Sen. Bill Rabon
Senate Rules Chairman
Member, Senate Appropriations/Base Budget Committee



Rep. David Lewis
House Rules Chairman
Member, House Appropriations/Base Budget Committee



*Office of the Governor
State of North Carolina*

*Roy Cooper
Governor*



20301 Mail Service Center
Raleigh, N.C. 27699-0301

February 15, 2018

The Honorable Bill Rabon
The Honorable David Lewis
North Carolina General Assembly
16 W. Jones Street
Raleigh, NC 27601

Gentlemen:

I write to respond on behalf of the Office of the Governor to your questions about the Atlantic Coast Pipeline and Memorandum of Understanding regarding a mitigation fund and to express our office's concern that the General Assembly's actions have imperiled an agreement intended to support local economic development and environmental protection in eastern North Carolina.

As you know, the ACP agreed to provide funds to support economic development and additional environmental protection in the eight counties where the pipeline is being constructed. Specifically, these funds were intended to provide a public benefit by expanding access to the pipeline while mitigating the adverse environmental effects created by the pipeline.

As the MOU stated, an executive order would establish the fund and lay out the structure, process and rules for administering the fund. Before the fund could be established, however, the General Assembly chose to reallocate prospective funds to purposes outside those agreed to in the MOU.

As a result, it is unclear if North Carolina will receive these funds, denying businesses and farms in eastern North Carolina access to natural gas and much needed economic development.

Upon our office's receipt of your letter dated Feb. 12, 2018, I decided to respond on behalf of the office to provide you information leading up to the signing of the MOU.

Now, I will address the way the fund was established. In the Governor's office, discussions about the fund began in 2017, when eastern North Carolina economic developers and others expressed concerns about whether the pipeline would bring the economic growth it promised.

The Governor, his administration and many others were concerned about whether the pipeline would deliver on its promises of economic development to eastern North Carolina. Those promises of jobs and industry, which had been touted in television advertising and other media, had earned support for the project from local governments, economic developers and many of your caucus members.



Similarly, the administration was concerned about the environmental impacts of the pipeline on eastern North Carolina.

The Governor's Office, including Legal Counsel William McKinney and Senior Advisor Ken Eudy, worked with the ACP partners to establish the fund to lessen the impact and create jobs in the counties affected by the project.

The MOU, signed by a representative of the ACP and Mr. McKinney, was the first step in the fund's existence. The MOU identified the purposes for which the funding should be directed and the commitment to these purposes by both parties. As the MOU spells out, an Executive Order would be issued to direct the establishment of the fund and how it would operate.

At the time that you chose to intervene, the Governor's office was working to finalize the process that would be utilized to effectuate the MOU. Our expectations and plans have been that decisions about the distribution of the fund were to be made after a review of applications from qualified government entities and non-profits.

The Rural Infrastructure Authority and the Clean Water Management Trust Fund are examples of two grant-makers operating under these guidelines that could fulfill the administrative process and accomplish the goals. The executive order setting up the fund would direct that it operate subject to the state's Public Records and Open Meetings laws, the State Ethics Act and additional provisions preventing conflict of interest or duplication of efforts.

We anticipated the designation of subject matter experts who would serve as trustees or directors. Never was the Governor contemplated to be the decision maker as to which projects would be funded.

It is important to note that the state does not have the money, nor has the fund been established. The MOU states that the first half of the money would not come in until final FERC approval of the ACP and the second half would come in once the pipeline is completed. It is possible that the legislature's action in House Bill 90 diverting the anticipated funds will imperil the agreement.

Eliminating funding for job creation and environmental protection in the pipeline's path undoes the fund's purpose. The fund was intended to bring jobs to communities and lessen the environmental impact for those most affected.

As to whether shareholders or ratepayers would cover the cost of the fund, that is a decision for the utilities developing the pipeline.

This pipeline meets an energy need for our state and moves us away from coal-fired power plants. It would be preferable if North Carolina could move immediately to electricity produced 100% by renewable sources, but the state and country aren't there yet. Getting to no-carbon electricity will take years to achieve, after battery storage becomes more affordable and the electric grid is upgraded. Meantime, the state can't risk jobs and the economy by failing to have an adequate supply of reliable electricity.

The mitigation fund was established independently of the DEQ permitting process, which is still underway. The state DEQ continues to conduct a rigorous analysis. At the end of its water permit review, DEQ had exhausted its inquiries and addressed mitigation concerns allowed by law, and thus issued the water permit. You can be sure that DEQ will continue in its role as a regulator to make sure that ACP construction and operation complies with the permit's mitigation requirements.



The DEQ also will hold the pipeline accountable for complying with the permit requirements and environmental protection rules. Separately, the mitigation fund would provide additional resources to help offset the impact of the pipeline as well as to provide investments in renewable energy and economic development in the counties along the pipeline. Extending gas lines is an expensive process and the fund could help offset some of it.

The ACP permitting process was extraordinarily thorough. It was important for DEQ to make its permit decision based solely on whether the ACP met regulatory requirements. There is substantial mitigation required within the 401 water permit. However, the administration also wanted to help make sure that the natural gas that the ACP touted in its advertising could be extended to create jobs in the eight pipeline counties.

Clearly the fund's goals are tailored to North Carolina, and so is the impact and promise of the pipeline construction project. No similar discussions regarding other construction projects have occurred in North Carolina, nor has a project of this scope been proposed.

Finally, it is the administration's belief that a project of this magnitude should serve to bring economic growth to rural areas of our state.

In closing, you should understand that Governor Cooper will continue to use all of the power and authority inherent in his office to try and improve the lives of North Carolinians. Creating jobs and protecting our environment are among the most important responsibilities assigned to a Governor and, indeed, all of state government.

While this General Assembly may be willing to put power, partisanship and politics before the needs of the people of North Carolina, Governor Cooper will continue to fight for them each and every day. It is what the people of North Carolina elected him to do.

Sincerely,

A handwritten signature in black ink that reads "Kristi Jones". The signature is written in a cursive, flowing style.

Kristi Jones
Chief of Staff





NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE BUILDING

RALEIGH 27601

February 16, 2018

Ms. Kristi Jones
Chief of Staff
Office of the Honorable Roy A. Cooper
Governor of North Carolina
20301 Mail Service Center
Raleigh, N.C. 27699

Dear Ms. Jones:

Thank you for your partial response to our February 12 letter to Gov. Roy Cooper's lobbyist, Lee Lilley, regarding the roughly \$58 million Gov. Cooper obtained from energy companies within hours prior to his administration's issuance of a major permit to advance the Atlantic Coast Pipeline. Unfortunately, an incomplete response does not satisfy the concerns of North Carolinians who are troubled by the appearance of potential pay-to-play or pay-for-permit this Memorandum of Understanding created. For this reason, we are resubmitting our list of questions to you, and have taken the liberty to fill in the partial responses from your previous letter. These are not difficult or complex questions, so hopefully, the third time will be the charm.

1. Please explain how the governor's office came to negotiate and obtain \$57.8 million from the energy companies seeking to build the Atlantic Coast Pipeline?

In the Governor's office, discussions about the fund began in 2017, when eastern North Carolina economic developers and others expressed concerns about whether the pipeline would bring the economic growth it promised.

2. Who specifically in the governor's office and his administration was involved in negotiating the deal?

The Governor's Office, including Legal Counsel William McKinney and Senior Advisor Ken Eudy, worked with the ACP partners to establish the fund to lessen the impact and create jobs in the counties affected by the project.

Did Gov. Cooper personally bless the arrangement?

3. When and how did negotiations over what many are referring to as the governor's personal "slush fund" start?



In the Governor's office, discussions about the fund began in 2017, when eastern North Carolina economic developers and others expressed concerns about whether the pipeline would bring the economic growth it promised.

Were the negotiated offers made in writing or in person? Are there other drafts you can share? [Were they submitted via email or hand delivery? Please share the times and list of participants in each negotiating session and all other drafts of the proposal with us.]

4. Were other matters beyond the pipeline addressed during negotiations? If so, what matters?
5. How did the governor envision the extra-governmental fund working?

As the MOU stated, an executive order would establish the fund and lay out the structure, process and rules for administering the fund...

The MOU, signed by a representative of the ACP and Mr. McKinney, was the first step in the fund's existence. The MOU identified the purposes for which the funding should be directed and the commitment to these purposes by both parties. As the MOU spells out, an Executive Order would be issued to direct the establishment of the fund and how it would operate.

... the Governor's office was working to finalize the process that would be utilized to effectuate the MOU. Our expectations and plans have been that decisions about the distribution of the fund were to be made after a review of applications from qualified government entities and non-profits.

The Rural Infrastructure Authority and the Clean Water Management Trust Fund are examples of two grantmakers operating under these guidelines that could fulfill the administrative process and accomplish the goals. The executive order setting up the fund would direct that it operate subject to the state's Public Records and Open Meetings laws, the State Ethics Act and additional provisions preventing conflict of interest or duplication of efforts.

We anticipated the designation of subject matter experts who would serve as trustees or directors. Never was the Governor contemplated to be the decision maker as to which projects would be funded.

6. How did the governor plan to spend the money?

...the ACP agreed to provide funds to support economic development and additional environmental protection in the eight counties where the pipeline is being constructed. Specifically, these funds were intended to provide a public benefit by expanding access to the pipeline while mitigating the adverse environmental effects created by the pipeline...

Separately, the mitigation fund would provide additional resources to help offset the impact of the pipeline as well as to provide investments in renewable energy and economic development in the counties along the pipeline. Extending gas lines is an expensive process and the fund could help offset some of it.

Is he aware that state and federal law already require utilities building the Atlantic Coast Pipeline to meet environmental mitigation requirements before the project can receive approval? [Is he aware of recent reports from WBTV indicating the pipeline companies made additional payments totaling \$11 million for mitigation purposes?]



7. Can you clarify your response to this question as it appears to conflict with reports in the *News & Observer*: Will the ratepayers and consumers or shareholders pay for this \$58 million extra-governmental fund?

[The February 1, 2018 News & Observer report that rate-paying customers would be asked to foot the bill for the fund also appears to contradict Mr. Lilley's committee testimony that the pipeline's shareholders would pay for the fund.]

As to whether shareholders or ratepayers would cover the cost of the fund, that is a decision for the utilities developing the pipeline.

8. Why does the governor's office call this a "voluntary contribution" when Democratic Rep. Pricey Harrison said it was "a condition of getting the permit granted" and the governor's own spokesman has called the arrangement "negotiations," which by definition are not voluntary?
9. Would the private parties involved in the negotiations agree with the governor's assertion that this was a "voluntary contribution" completely unrelated to the permitting process?
10. Does the governor's office think this type of activity – requesting large contributions from private businesses wanting to do business in our state – encourages economic development in North Carolina?
11. What other companies has the governor obtained "voluntary" \$50 million plus contributions to the state from? Is he currently or has he in the past solicited similar contributions from other businesses or individuals? Were these companies also seeking environmental permits?

No similar discussions regarding other construction projects have occurred in North Carolina, nor has a project of this scope been proposed.

12. Do you think the solicitation and acceptance of this money by the governor erodes the public's trust in the permit approval process?
13. Why does the governor's office compare this agreement to actions taken in Virginia when the Virginia agreement was signed by the Commonwealth's chief environmental regulator and went to specifically designated mitigation projects, while Gov. Cooper's deal gives him unfettered control of an extra-governmental fund outside of the normal appropriations process allowed by the North Carolina constitution?
14. Is this arrangement an illegal and unconstitutional violation of the separation of powers or a violation of due process?
15. Does this arrangement run afoul of state ethics law that prohibits elected officials from using their office and title to solicit funds for personal benefit?

In addition, your partial responses have raised some follow-up questions. Would you please also respond to these questions?

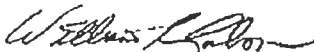
1. You stated that *discussions* about the fund "began in 2017." When in 2017? And when, specifically, did the actual *negotiations* take place? Did Gov. Cooper personally participate in and/or sign off on the negotiations?



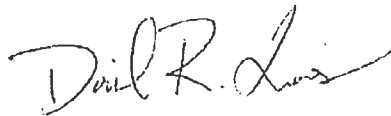
2. Your statement, "never was the Governor contemplated to be the decision maker as to which projects were funded," directly contradicts the last whereas clause of the MOU, which states "the Governor, through his agents and assigns... has the authority to direct the disbursement of funds contemplated in the MOU." Please explain this inconsistency.
3. You stated the governor's deal with the Atlantic Coast Pipeline's builders may now be in peril. Have you heard this from the pipeline builders, or are you implying the governor will no longer accept the funds if they are used to help poor, rural Eastern North Carolina schools?
4. Why doesn't the governor believe investing \$58 million in our children's public education in the eight poor, rural Eastern North Carolina counties impacted by the pipeline will help economic development and job creation in that region?
5. Did anyone in the executive branch or governor's office, or with direct ties to the governor directly or indirectly ask Rep. Pricey Harrison to retract her statement that the fund was "a condition of getting the permit granted?"
6. You mentioned "the Rural Infrastructure Authority and the Clean Water Management Trust Fund are examples of two grantmakers operating under these guidelines that could fulfill the administrative process and accomplish the goals." Aren't these entities the subject of a lawsuit filed by Gov. Cooper claiming they are unconstitutionally constituted because he lacks sufficient dominance of the board appointments to exercise real control over the boards' actions? Why would he support these funds being administered by two entities he is challenging in court? And why does he claim these boards are independent at the same time he is seeking complete control of them from the Democratic-controlled Supreme Court?
7. Your response, "as to whether shareholders or ratepayers would cover the cost of the fund, that is a decision for the utilities developing the pipeline," contradicts the *News & Observer* report that "Duke and other utilities will seek to recover the full cost of the pipeline - which includes construction, permitting and environmental compliance - from their customers through their utility bills." Why did Gov. Cooper fail to negotiate a requirement that these payments come out of corporate profits, rather than from rate-paying customers?

For the sake of clarity, and to avoid having to go through this exercise yet again, please send complete responses to these questions in the format they have been resubmitted to you by 1:00 p.m. on Monday, February 19.

Respectfully,



Sen. Bill Rabon
Senate Rules Chairman
Member, Senate Appropriations/Base Budget
Committee



Rep. David Lewis
House Rules Chairman
Member, House Appropriations/Base Budget
Committee



*Office of the Governor
State of North Carolina*

*Roy Cooper
Governor*



*20301 Mail Service Center
Raleigh, N.C. 27699-0301*

February 19, 2018

The Honorable Bill Rabon
The Honorable David Lewis
North Carolina General Assembly
16 W. Jones Street
Raleigh, NC 27601

Gentlemen:

Our office is in receipt of your Feb. 16, 2018 letter responding to our response to your inquiry regarding the Atlantic Coast Pipeline fund for eastern North Carolina.

It is shameful, but unsurprising, that you have turned a fund that provided such promise for North Carolina into political theater.

North Carolina faces many challenging issues that legislators have failed to address that deserve the energy and focus you have instead devoted to this partisan charade. Examples include a comprehensive public-school fix that provides school buildings and more teachers for smaller class sizes; clean water action to detect and stop GenX and other emerging compounds; securing good health care for low-income, working people plus the jobs that would be created through Medicaid expansion.

The pipeline fund was established to provide economic development opportunities and environmental protection along the path of the pipeline, simply put.

While the legislature has voted to redirect the proceeds away from economic development and environmental projects, we remain hopeful you will recognize the great need for good jobs and a vibrant economy in eastern North Carolina.

Since you have already decided where this money should go, your new questions appear to be political in nature, as well as moot, and as such our office lets the previous letter stand as its answer.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Jones".

Kristi Jones
Chief of Staff





NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE BUILDING
RALEIGH 27601

September 7, 2018

The Honorable Roy A. Cooper
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699

Dear Governor Cooper:

To start, we would like to thank Ms. Kristi Jones for speaking before the Joint Commission on Governmental Operations on August 29th. We appreciated her input as we continue to exercise our oversight obligations.

In responding to the information presented by members of the Joint Commission, Ms. Jones stated that the Governor's Office has "no secrets." Additionally, a Democratic member of the Joint Commission inquired as to whether we had resubmitted to your office our unanswered questions regarding the Atlantic Coast Pipeline (ACP) permitting process.

In keeping with Ms. Jones' transparency pledge, and in the spirit of again granting you the opportunity to provide full and complete information about the ACP permitting process, we are respectfully submitting our questions below.

Please be advised that the Subcommittee on the Atlantic Coast Pipeline will convene its first hearing on or after Tuesday, September 18, 2018. We acknowledge that some of our questions and documentation requests may require significant time to fulfill. To provide you ample opportunity to respond to our questions—many of which you have known about for seven months, but some of which are new—we have presented reasonable timelines for response. We respectfully request responses from you on some questions by Friday, September 14, 2018 which is one full week from today. For the other questions, we respectfully request full and complete responses by Tuesday, September 25, 2018.

Please provide responses to the following questions by Friday, September 14, 2018:



- Why did the Governor renegotiate the original Memorandum of Understanding (MOU) from the ACP Partners so that instead of the \$57.8 million "contribution" going to the Director of the Wildlife Resources Commission (WRC) for environmental mitigation purposes, the funding was instead directed to an account controlled by the Governor for extension of renewable energy projects, funding for economic development, and environmental mitigation?
- Why was an MOU similar to the one executed between the ACP Partners and the Commonwealth of Virginia unacceptable to the Governor?
- The Governor leased a portion of his property, which lies close to the projected path of the ACP, to a renewable energy company in a potentially lucrative arrangement. The Governor negotiated an MOU to grant himself control over funding that would benefit renewable energy companies. Does the Governor believe that there are any conflicts of interest or ethical issues raised by this?
- Why did the Governor repeatedly refer to the \$57,800,000 in the MOU as a "voluntary contribution?"
- Does the Governor believe that negotiating MOUs to place large sums of money in accounts under his direct control will encourage business development in North Carolina?
- Why does the Governor believe that the North Carolina Constitution permits him to execute an MOU with a person or company doing business in North Carolina to place \$57,800,000 in an account under his control?
- Please describe any coordination between the Governor's Office and the Department of Environmental Quality (DEQ) regarding the issuance of the 401 Certification for the ACP, which is a critical water quality permit necessary for the project to advance. Please also include any coordination relevant to the press releases for the ACP MOU and for the ACP 401 Certification issuance.
- Please explain why the Director of the Division of Water Resources (DWR), Mr. Stanley "Jay" Zimmerman, was relieved of his duties as Division Director in November 2017 when, according to notes in the permit file for the ACP 401 Certification dated Nov 1, 2017, Mr. Zimmerman appeared to be making significant progress in the final issuance of the permit.
- Please provide an explanation for the composition of the attached Draft Denial Letter for the ACP 401 Certification, dated January XX, 2018 (Attachment 1). Please explain why this document was drafted, the date that it was drafted, who requested that it be drafted, and what purpose it served. Please also explain if it is a normal process for DWR to compose a draft denial letter when reviewing an application for a 401 Certification. If not, please explain why this draft denial letter was composed in this specific instance. Please provide examples of other instances where a draft denial letter has been composed for a 401 Certification while undergoing application review.
- Please provide the earliest date that Mr. Brian Wrenn, the DWR Hearing Officer for the ACP 401 Certification, submitted a draft Hearing Officer's Report to the Director of DWR. Please describe any changes to the Hearing Officer's Report that were enacted in the final Hearing Officer's Report between the date of this first submission and the date



of the submission of the final Hearing Officer's Report on January 22, 2018. Please provide a detailed explanation of what was discussed between Mr. Wrenn and DEQ Secretary Regan in their meeting on January 12, 2018 and, specifically, if Secretary Regan, or anyone else in attendance, made any suggestions or comments at this time that ultimately delayed the issuance of the 401 Certification.

- Please provide the name of the individual who rejected the initial draft Hearing Officer's Report submitted by Mr. Wrenn for further revisions and for what reasons the draft report was rejected.
- Why are the attached redacted documents present in the official permit file for the ACP 401 Certification (Attachments 2, 3, and 4)? Please provide unredacted copies of these documents. Who redacted these documents and why? Is it a normal practice for DEQ to redact official public documents?
- Please provide copies of the additional information that was received from the ACP Partners on January 17 and 18, 2018. Please provide the request to which this additional information responded.
- Please explain why on December 6, 2017, at a weekly meeting on the ACP 401 Certification, DEQ employees were told that they had to "notify the Department before sending communications to the Company" while these employees were still actively engaged in requesting additional information from the ACP Partners. Is it a normal process at DEQ to restrict communications between a permit applicant and the DEQ regulators while a permit application is under review? If so, please provide other instances during your administration when this has occurred. Please explain why it is conducive to government business to restrict communications between a permit applicant and public employees.
- What interactions have you or your staff had with the ACP Partners about next steps for payment of the \$57,800,000 fund?
- Please affirm that all employees of DEQ and the Executive Branch are free to discuss any and all aspects of this issue with the General Assembly Subcommittee on the Atlantic Coast Pipeline, or their representatives, at the convenience of the Subcommittee with no fear of retribution or reprisal.

Please provide responses to the following questions by Tuesday, September 25, 2018:

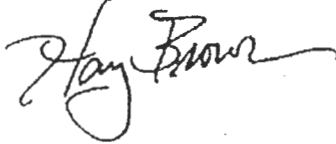
- Please provide a listing of every instance when the Governor, or someone from the Governor's Office, met with any representative from Duke Energy or any representative of the ACP from July 1, 2017 to February 1, 2018. Please provide a list of the date and time of these meetings, a list of all attendees for each meeting, and an explanation of what was discussed at each meeting.
- Please provide a listing of every instance when the Governor, or someone from the Governor's Office, discussed the Atlantic Coast Pipeline 401 Certification with a



representative of DEQ, including the DEQ Secretary. Please provide a list of the date and time of these discussions, a list of the participants in these discussions, and an explanation of what was discussed.

- Please provide all documents, correspondence, and e-mails from the Governor's Office related to the ACP, including all correspondence and e-mails with the ACP Partners and all correspondence and e-mails to and from DEQ related to the ACP.
- Why did senior leadership at DEQ implement a weekly meeting with the individuals working on the ACP 401 Certification beginning in September 2017? Please provide any other instances when senior leadership at DEQ implemented a weekly meeting regarding the review of a permit application.

Sincerely,



Senator Harry Brown
Co-Chairman
Subcommittee on the Atlantic
Coast Pipeline



Senator Paul Newton
Advisory Member
Subcommittee on the Atlantic
Coast Pipeline



ATTACHMENT 1



State of North Carolina
Department of Environment and Natural Resources

January XX, 2018

DWR # 14-0957 v2
Northampton, Halifax, Nash,
Wilson, Johnston, Sampson,
Cumberland and Robeson Counties

CERTIFIED MAIL: XXXX XXXX XXXX XXXX XXXX
RETURN RECEIPT REQUESTED

Atlantic Coast Pipeline, LLC
Attn: Ms. Leslie Hartz
707 E. Main Street, 19th Floor
Richmond, VA 23219

DRAFT

**Subject: DENIAL OF 401 WATER QUALITY CERTIFICATION AND TAR-PAMLICO/NEUSE RIPARIAN
BUFFER AUTHORIZATION CERTIFICATES**
Atlantic Coast Pipeline
USACE Action ID. No. SAW-2014-01558

Dear Ms. Hartz:

On May 9, 2017, the Division of Water Resources (Division) received your application requesting a 401 Water Quality Certification and Tar-Pamlico and Neuse Riparian Buffer Authorization Certificates from the Division for the subject project. Pursuant to 15A NCAC 02H .0506, a certification shall be issued when the Director determines that water quality standards are met. Pursuant to 15A NCAC 02B .0233 (8) and .0259 (8), a Buffer Authorization Certificate shall be granted when the Division determines there is no practical alternative. The project has not met the following requirements:

- Rule Citation
"Rule text..."
Explanation...

• ...

In accordance with 15A NCAC 02H .0507(e), 15A NCAC 02B .0233(8), and 15A NCAC 02B .0259(8), your application for a 401 Water Quality Certification and Buffer Authorization Certificates are hereby denied.

This decision can be contested as provided in 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.nciah.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 DuQ:

William F. Lane, General Counsel
Department of Environmental Quality
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 and the Neuse and Tar-Pamlico Riparian Buffer Protection Rules. Please be aware that you have no authorization under Section 401 of the Clean Water Act or the Neuse/Tar-Pamlico Riparian Buffer Protection Rules for this activity and any work done within waters of the state may be a violation of North Carolina General Statutes and Administrative Code. Contact Karen Higgins at 919-807-6360 or karen.higgins@ncdenr.gov if you have any questions or concerns.

Sincerely,

Linda Culpepper, Interim Director
Division of Water Resources

cc: Richard Gangle, Dominion Resources Services, Inc. (via richard.b.gangle@dom.com)
Spencer Trichell, Dominion Resources Services, Inc. (via spencer.trichell@dom.com)
USACE Raleigh Regulatory Field Office
USACE Wilmington Regulatory Field Office
Todd Bowers, EPA (via bowers.todd@epa.gov)
DWR 401 & Buffer Permitting Branch file



HIGGINS Phone LOG

Date	Day	Name	Phone	Notes	Date	Notes
12-Dec	M	Elizabeth Ootz	919-672-9803	reporter - working on a story re Atlantic Coast Pipeline (left message Thursday)	12-Dec	sent to Maria
11-Jan	M	Hope Taylor	919-401-9600	Clean Water for North Carolina - have changed our address (would like to update name and 3326 guess road, suite 105, durham, nc 27705)	17-Jan	sent email
26-Apr	M	Sheila		go ahead and call ACP; no press release	-	
8-May	M	Hope Taylor		calling re ACP	8-May	spoke 5-8
10-May	M	Mark McIntyre	919-302-2448	did we get what we wanted with ACP app	-	JB is talking with ACP
19-Jun	M	Hope Taylor		just got PN - is it a 20 in or 36 in pipe?	-	JB sent email
29-Aug	M	Spencer	804-273-3472	Dominion - putting together a meeting with all the Corps districts - VA requested to be included, extending invitation to us as well	-	JB spoke with Spencer
9-Jan	M	Spencer	804-263-5980	Dominion - just touching base	-	
26-Jan	M			calling re pipeline coming through - have some questions about EIS; wondering if there are going to be more hearings		
29-Jan	M	Amy Bircher	919-917-3920	get some info for a memo about ACP	1-Feb	spoke on 2/1
1-Feb	M	Spencer	804-263-59_0	want to set up preconstruction meeting per.401	5-Feb	



ACP - EJ Follow-up Mtg
(MPK, J Osborne, B. Munger, S. Rice, B. N/ean)

7/1/17
J. Burdette

Sierra case - DC. District



MPK - uses may be path to ask about E.J.
↳ relates to people



ATTACHMENT 4

DATE		NAME		MESSAGE	DATE
6	23			Fee ?s	Ans
11	09		828-386-1920		
6	23	Gabe		Mobile ?	11
2	30	WR			6/29
6	23	Rolin M. H.			N/A
2	29				
6	26	Julie Teal		Rec'd 4/17 - 7/10/00 - 4/01	LM
1	53	Black SW Survey			6/29
		980-250-9511			2:42
6	27	Bradley - GA		Steve	EM
3	09	912 262 3196			6/20
6	27	Chris Flowers - Unique Places	meeting for buffer rest proj		3:27
2	53	919 724 6676	in Orange Co. - need contact person		
6	27	Alexis Kaiser	SW in to need for IP app		6/29
2	10	K-H			2:51
		919-653-6657			
6	26	Andrew Moore	Tyson - touching base		4/2
3	49	ARO			
		828-296-4684			
6	26	Math Rutledge	hiking trails in Wake Forest		6/27
3	46	Triangle Land Cons	BA		3:21
		919-468-0057			
6	29	Dr. J. Madden	Steve to NCB		6/29
3	02	Davis Aggon	get paper for proj		
		919 236 1130	get first information		



September 19, 2018

The Honorable Roy A. Cooper
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699

Dear Governor Cooper:

We appreciate your administration's ongoing efforts to respond to Hurricane Florence's devastation. We of course understand that protecting life and property takes precedence over everything else in this difficult time.

In light of the disaster, we write simply to extend the deadline for our questions regarding the Atlantic Coast Pipeline permitting process. Our previous letter, dated September 7, 2018, requested responses to some questions by September 14, 2018, and others by September 25, 2018.

We now respectfully request responses to our questions by October 2, 2018, although if you believe that date to be unreasonable, we are happy to work with your staff to settle on a more appropriate deadline. Immediate disaster response is of course the most important priority right now.

Sincerely,



Senator Harry Brown
Co-Chairman
Subcommittee on the Atlantic
Coast Pipeline



Senator Paul Newton
Advisory Member
Subcommittee on the Atlantic
Coast Pipeline





North Carolina General Assembly
State Legislative Building
Raleigh, North Carolina 27601

September 28, 2018

VIA HAND DELIVERY

Hon. Michael S. Regan
Secretary
North Carolina Department of Environmental Quality
217 W. Jones Street
Raleigh, NC 27603

Dear Secretary Regan:

We write in response to the Cooper Administration's request to delay the planned October 4, 2018 Subcommittee on the Atlantic Coast Pipeline hearing. This request came as a verbal reply to the September 19, 2018 letter from Senators Brown and Newton extending the deadline for response to the General Assembly's questions regarding the Atlantic Coast Pipeline.

We understand that Governor Cooper, you, and your respective staffs have considerable time constraints right now given Hurricane Florence's devastation. We agree that our fellow North Carolinians struggling in the storm's aftermath are the top priority.

We plan to postpone the hearing to Wednesday, November 14, 2018. We will also extend the deadline to Wednesday, November 7, 2018 for response to the questions posed in the September 7, 2018 letter to Governor Cooper. We believe this extension provides more than enough time, but please contact us if you disagree.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean Arp".

Representative Dean Arp
Co-Chair
Subcommittee on the
Atlantic Coast Pipeline

A handwritten signature in black ink, appearing to read "Harry Brown".

Senator Harry Brown
Co-Chair
Subcommittee on the
Atlantic Coast Pipeline



NEWS: CJ EXCLUSIVES

Atlantic Coast Pipeline committee will examine timing of MOU, permit

Don Carrington
in CJ Exclusives

November 9, 2018
1:09AM

Did state approval of the North Carolina segment of the 600-mile Atlantic Coast Pipeline depend on Gov. Roy Cooper's administration securing a \$57.8-million discretionary "mitigation fund" with the pipeline operators?

Documents obtained by *Carolina Journal* suggest it did.

The federal government approved the pipeline in October 2017, but the state did not sign off on a critical water quality permit until the end of January 2018. During that time, state Department of Environmental Quality staff seemed ready to issue a critical 401 Water Quality Permit to move the project forward. But as staff prepared documents to OK the permit, separate documents denying the permit and rejecting the project had been drafted.

A special legislative committee investigating all aspects of the pipeline and the mitigation fund will meet Wednesday. Republicans say the fund appears to be part of a "pay to play" scheme because it is tied to the environmental permit ACP was trying to obtain from the governor's administration.



One issue the committee will explore is the reason for the draft permit denial letters found in the DEQ's ACP project file. Those letters were prepared in January. The 401 permit was announced a day after a memorandum of understanding was signed between the governor and utility companies building the pipeline. The MOU gives Cooper control of the \$57.8 million fund.

The ACP is an underground natural gas transmission pipeline originating in West Virginia, traveling through Virginia, and terminating in Robeson County. The project is a partnership among Richmond, Virginia-based Dominion Energy; Duke Energy; Piedmont Natural Gas; and Southern Company Gas. Gas from the ACP will supplement existing gas resources and fuel new electricity generation plants.

Cooper's Chief of Staff Kristi Jones has told legislators the "mitigation fund was established independently of the DEQ permitting process." Republicans have sought answers from Cooper about the arrangement, but they haven't been satisfied with the administration's responses.

During December 2017, Cooper's general counsel William McKinney and senior adviser Ken Eudy were quietly negotiating with the ACP for a discretionary fund ACP would pay to the governor. McKinney and ACP Vice President Leslie Hartz signed the final agreement titled "Mitigation Project Memorandum of Understanding" on Jan. 25. To date, there had been no media reports about the MOU. The following day, DEQ announced it had issued the 401 permit to ACP's Hartz — the same executive who signed the MOU. Cooper's office announced the MOU immediately after DEQ announced it had granted the permit to ACP.

Approve? Deny?

In a draft document produced on Oct 11, 2017, DEQ hearing officer Brian Wrenn recommended approving the water quality permit. Revised reports were entered into the DEQ document system Jan. 4, 5, 16, and 19. The final version



was issued Jan. 22. In every version Wrenn concluded, "It is my recommendation that the 401 Water Quality Certification and Buffer Authorization Certificates be issued. ..."

Identical draft letters denying the permit were addressed to ACP's Hartz and entered into the project document files Jan. 1 and 22.

The subject line stated: "Denial of 401 Water Quality Certification and Tar-Pamlico/Neuse Riparian Buffer Authorization Certificates." The letters were drafted for the signature of Division of Water Resources Director Linda Culpepper. A space to cite the rule justifying the denial and an explanation were blank.

Legislative oversight

The special legislative committee was created after an August presentation by Sen. Paul Newton, R-Cabarrus, to the Joint Legislative Commission on Governmental Operations, that led to creation of the special committee.

At the time Newton, a former president of Duke Energy North Carolina, said a special committee was needed for seven reasons: The timing of the permit and the MOU; a lack of transparency by the Cooper administration; conflicting reasons for the MOU payment; the governor's control of the fund; the frequency of DEQ requests for additional information from ACP; anomalies in the permit file; and the protection of the state's business climate.

Newton told *CJ* the committee will address the draft denial letters. "It is one of the items we expect to focus on," he said. He also reiterated the purpose of the committee's work. "Our goal is not to embarrass the current administration, it is to get answers. We owe it to the public," he said.

DEQ spokeswoman Megan Thorpe told *CJ* that DEQ has prepared draft denial letters for other projects but offered just one example involving the Alcoa



Yadkin River Project. *CJ* was unable to find other examples.

CJ sent the draft denial letter to ACP spokesman Aaron Ruby and asked if he or anyone from ACP negotiating the MOU had seen it. "No one from ACP, Dominion, or Duke has seen this letter until you sent it to me," he said.

Evolution of the MOU

ACP prepared the first version of the MOU in mid-December. The payment to the state was contingent on the project receiving the necessary permits. The agreement focused on wildlife habitat and it was designed to be signed by the ACP and by the Director of the North Carolina Wildlife Resources Commission, representing the state.

Cooper's office made several changes and prepared a second version between the "State of North Carolina by and through the Office of the Governor," to be signed by the governor's legal counsel. The funds would be used for mitigating all damage caused by the pipeline, economic development opportunities, and developing renewable energy projects.

For the final version, Cooper's team made additional changes making the agreement between "Roy Cooper, Governor of North Carolina, in his official capacity," and ACP.

That version made it clear Cooper would be in charge of spending this new revenue. "Whereas, the Governor, through his agents and assigns, including but not limited to the Department of Environmental Quality, Department of Commerce, Wildlife Resources Commission and their respective leaders, has the authority to direct the disbursement of funds contemplated in this Memorandum of Understanding," the signed document stated.

The final version also said if the ACP failed to receive necessary permits or



terminates the project, the governor would refund a prorated portion of the \$57.8 million to ACP.

After the fund was announced, Republican leaders said the deal was illegal. The constitution gives the legislative branch the sole power to collect and appropriate money. In February, they voted to direct the \$57.8 million to the school systems in the eight counties along the ACP route. ACP construction is under way, but no ACP funds have been sent to North Carolina.

Committee members

Speaker Tim Moore appointed Rep. Dean Arp, R-Union, co-chair; Rep. John Torbett, R-Gaston; Rep. Pat McElraft, R-Carteret; Rep. Becky Carney, D-Mecklenburg; Rep. Ken Goodman, D-Richmond; and Rep. Jon Hardister, R-Guilford.

Sen. Phil Berger, R-Rockingham, appointed Senate Majority Leader Harry Brown, R-Onslow, co-chairman; Sens. Kathy Harrington, R-Gaston; Joyce Krawiec, R-Forsyth; Ben Clark, D-Hoke; Floyd McKissick, D-Durham; and Paul Newton, R-Cabarrus.

series: **2017 General Assembly, Atlantic Coast Pipeline**

categories: **CJ Exclusives**

tags: **Gov. Roy Cooper, Sen. Paul Newton**



VISITOR REGISTRATION SHEET

JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS
Subcommittee on the Atlantic Coast Pipeline

DATE: November 14, 2018

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Therese Vick	Blue Ridge ^{Defense League} Environmental
Tom Clark	APPDL - 4643 Goldsboro Rd. ^{Wake} NC
Marla Lee Ashill	SELL
Lisa Song	NC policy watch
BRENN LANE	UNC-CH
NICK OGBURN	WRSTV
Jenna Calderone	RFNC
Tiffany Gladney	NC Rural Center
Derrick Hunter	Senator Dan Blue
Taylor Williams	Rep. Butler
Ray McKinnon	NC
J. C. Perry	CS
Cassie Canni	Stena club
Ken Burke	MWC
David Collins	White West
Elizabeth Ouzts	Southeast Energy News



JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS
Subcommittee on the Atlantic Coast Pipeline

DATE: November 14, 2018

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LISA SORG	NC policy watch
Don Carrington	Carolina Journal
Don Way	"
Joe Kolotak	INTERSTAR PARTY
Tyler Ford	MWC
Michelle Frazier	NCSA
Rachel Bealin	PBla
JW Joyner	NewFrame
Chuck Stuber	Financial Forensic LLC
Leah Byers	Cintas Institute
Starnes	OJT
Grigg	NCGA





PUBLIC COMMENT Sign-in

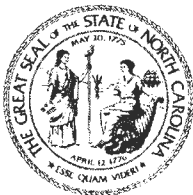
JOINT LEGISLATIVE COMMISSION
ON GOVERNMENT OPERATIONS
ACP SUBCOMMITTEE

11/14/2018

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY / BILL No.</u>
Therese Vick	Environmental Blue Ridge Defense League





**JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL
OPERATIONS, SUBCOMMITTEE ON ATLANTIC COAST PIPELINE
December 12, 2018
Room 643 of the Legislative Office Building**

The Joint Legislative Commission on Governmental Operations, Subcommittee on Atlantic Coast Pipeline met on Wednesday, December 12, 2018 at 9:00 A.M. The meeting was held in Room 643 of the Legislative Office Building.

Senate members in attendance were: Senators Harry Brown, Joyce Krawiec, Floyd McKissick, House members in attendance were Representatives Dean Arp, Jon Hardister, Pat McElraft, and John Torbett.

Representative Dean Arp presided. Representative Arp called the meeting to order at 9:07 A.M. and welcomed members, staff and visitors. He recognized and thanked Sergeants-at-Arms, Russell Salisbury, Bill Bass, David Leighton, Terry Edmonson, and Linda Matthews.

Opening Remarks: Co-Chairman Representative Dean Arp.

Representative Arp opened the meeting by asking for the committee to approve the minutes from the November 14, 2018 meeting. Senator Krawiec made a motion to approve the minutes, and Representative Torbett seconded the motion.

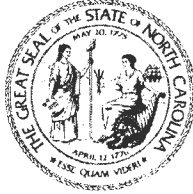
Representative Arp told the committee that the Governor's Office sent a letter to him and Sen. Brown that morning, requesting information. The Governor's office still has not responded to the subcommittee's information request. Representative Arp recognized Senator Brown for opening comments.

Senator Brown spoke on the letter from the Governor's Office and said the subcommittee will fully comply with the records request in a timely manner.

Introduction of Investigators: Co-Chairman Senator Harry Brown

Senator Brown introduced the three investigators, who were interviewed by himself, Representative Arp, and Senator McKissick. Several investigators were interviewed to assist the





subcommittee. Eagle Intel Services, LLC, was chosen to conduct the investigations. The three partners in Eagle Intel Services are Frank Brostrom, Tom Beers, and Kevin Greene. All three gentlemen are retired special agents. Senator Brown explained to the committee that the three investigators were there to answer questions on their background and how they might conduct the investigation. Senator Brown said the committee was trying to be transparent in everything they do, and that a contract will be finalized in the coming days. The contract will be public information once it is signed by all parties. Once the contract is completed, the gentlemen will begin their investigation.

Investigator Thomas Beers introduced himself first. Mr. Beers is a retired IRS Special Agent. He worked twenty-nine and a half years as a special agent. He spent 15 years in New York in various types of financial investigations, organized crime, and drug enforcement task force investigations. Mr. Beers transferred to North Carolina in 2003 where he worked various types of investigations. The past twelve years he spent working in organized crime and drug task force investigations. Mr. Beers retired in 2018 and lives in Pinehurst, North Carolina.

Investigator Frank Brostrom is a retired FBI Agent. He began his career in 1990 with the FBI and spent his first 17 years in St. Louis, Missouri. Mr. Brostrom investigated various crimes such as corruption, violent crimes, kidnapping and murders. After 17 years he was transferred to Fayetteville, NC at Ft. Bragg to investigate violent crimes and terrorism. In 2010 he was transferred to Wilmington, NC where he specialized in human intelligence operations. Mr. Brostrom retired in 2017 and has been a private investigator since then.

Investigator Kevin Greene began his career in Greensboro, NC, in 1988 with the IRS. He moved to Raleigh in 1991 and began his career with the criminal investigation division. His investigation experience is in money laundering, financial crimes, tax evasion, conspiracies, and public corruption. Mr. Greene retired in 2017.

Representative Arp opened the floor for the subcommittee to ask the investigators questions.

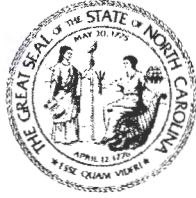
Committee Questions and Discussion:

Senator McKissick asked the investigators how they can assure that they will approach the investigation with objectivity.

Mr. Beers responded that they have worked for years in federal investigations and that they have to approach the investigation with no bias. He said that they gather the facts and follow where the facts lead them. If there is a crime, they make a recommendation to the attorney's office. Mr. Beers said they are paid to be objective fact finders and that they are not political people. Mr. Beers assured the subcommittee that they will be objective and only deliver facts to the subcommittee.

Senator McKissick followed up and asked whether or not the investigators were viewing this as a criminal investigation or a civil investigation.





Mr. Beers said this matter was not criminal, and that they are just finding facts with transactions related to the pipeline.

Representative Arp stated that this investigation was not a criminal investigation and that it was a part of the subcommittee's legislative oversight.

Senator McKissick asked the investigators what their methodology or approach to this investigation would be, along with the budget.

Mr. Greene responded and said that the first step would be to review any records made available, and follow the leads the documents may show. He stated they were approaching this with an open mind and that there were a couple of questions to be answered.

Senator McKissick said there were subcommittee members who were concerned with how much something like this might cost and the work anticipated. He stated that some parameters had to be attached.

Mr. Greene said that it is a limited scope they're looking at, and that there are key questions to answer, but that the scope could extend further. Mr. Greene said their fees were market-related fees, and that they don't expect it to be long. There will be multiple interviews and analysis. Mr. Greene said it would be difficult to give an exact estimate. Their current rates are \$100 per investigative hour, and it is up to the committee how they will use their time.

Mr. Brostrom added that the quicker that they can locate the people to interview, the faster the process will go.

Representative Torbett asked the investigators if they could search, find, and present the committee the truth.

Mr. Greene responded and said they can find the facts and they are hopeful that they get the truth.

Senator McKissick asked Representative Arp and Senator Brown if there could be a real budget and where will the funds come from. He asked the committee chairs if there has been parameters set for the first phase of work, and added that as the investigation moves forward, there might be a need to supplement the budget.

Senator Brown responded by saying that if the Governor had come forth, this would cost nothing. He stated that they have been asking for information for almost over a year but they have been completely stonewalled. The subcommittee chairs received a letter several weeks ago saying that the information was forthcoming. Senator Brown explained that the chairs received a letter that morning doing the exact opposite. He stated that the Governor continues to ignore our requests and that we have not got one single request back from the Governor. Senator Brown





said we have done everything they have asked us to do, and that we will complete the records request they sent in a timely manner.

Senator McKissick followed up by saying that the Governor's Office was intending to produce documents on or about December 20, 2018. He stated he had not seen the letter received that morning, and asked if it had a timeline for when the records would be produced.

Representative Arp responded that the letter references December 20, 2018 as the date we would receive responses. The subcommittee has voted to move forward with the investigation, and if the Governor's Office produces information, it will be a short investigation.

Senator McKissick said he understood that the request to the Governor's Office was very voluminous, and that it would be challenging for anyone to produce. He again asked how much we were prepared to spend at this time. Senator McKissick stated that taxpayers should be aware of how much we will spend, rather than just having an open-ended account.

Representative Torbett asked Senator McKissick whether or not his communication with the Governor's Office was written or verbal.

Senator McKissick said that he had conversations with representatives from the Governor's Office and was told the date would be sooner rather than later, and that it was completely verbal discussion.

Representative Torbett stated that the subcommittee chairs do not have access to an unlimited budget and that they do not plan to exceed that.

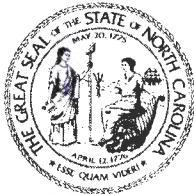
Senator Brown responded to Senator McKissick that he was very cognizant of how much the subcommittee will spend, and he hopes the cost is very minimal once the documents are shared from the Governor's Office.

Senator Krawiec asked Senator Brown if this morning was the first time the chairs had received a date of when the documents would be presented.

Senator Brown said that December 20, 2018 was the only response date they have received. He reminded the subcommittee that the Governor's Office asked the chairs to postpone the meeting after the hurricane, and that the subcommittee granted that request. He stated that a month later when they met, they still had not received any documents from the Governor's Office.

Senator Krawiec told Senator McKissick that she was delighted to see him worrying about tax payers money. She said she found it interesting that after so many requests, when the subcommittee announced it was doing an investigation, that they got a response on the request for information. Senator Krawiec said maybe if we had done this sooner that we would probably be finished by now.





Representative Hardister commented that he didn't know why we haven't received information, but that we haven't. He said he shares Senator McKissick's notions that he doesn't want to spend an exorbitant amount of taxpayer dollars, but that these are questions that need to be answered. Representative Hardister wanted to reiterate that if those involved cooperated, the investigation wouldn't take very long.

Representative Torbett asked what happened if we ask questions to those involved and continue to get stonewalled. He asked whether or not they were compelled to give answers.

Representative Arp responded that the chairs would be involved with the investigators and would have constant communication. He stated that the subcommittee has subpoena power, but that it prolongs the cost and investigation.

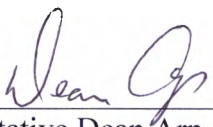
Representative Torbett asked Senator McKissick if he had any prior knowledge about the subcommittee receiving answers on December 20, 2018.

Senator McKissick stated that he was made aware that there would likely be a letter forthcoming on December 20, 2018. He stated that he understood there were concerns about the volume of documents requested, but that it was his understanding in the last 24 hours that the information would be presented on December 20, 2018.


Representative Torbett asked if Senator McKissick had communicated that information to Chairman Arp or Chairman Brown.

Senator McKissick said he had a multitude of communications every day, and that he doesn't typically communicate about his communications to respect confidentiality.

There being no further business before the subcommittee, Representative Arp adjourned the meeting at 9:42 A.M.



Representative Dean Arp
Presiding

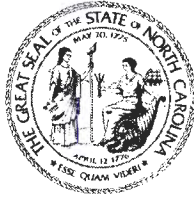


Katie Stanley, Committee Clerk

Attachments:

1. Agenda for December 12, 2018 meeting
2. Eagle Intel Services CV





3. November 15, 2018 letter from Senator Brown and Representative Arp to Governor Cooper and Secretary Regan
4. November 27, 2018 letter from Secretary Regan to Senator Brown and Representative Arp
5. November 27, 2018 letter from Kristi Jones to Senator Brown and Representative Arp
6. Attendance sheet
7. Visitor log
8. Sergeants at Arms list



**Joint Legislative Commission on Governmental Operations
Subcommittee on the Atlantic Coast Pipeline**

Wednesday, December 12, 2018

9:00 A.M.

AGENDA

I. CALL TO ORDER

Chairs: **Representative Dean Arp, Presiding**
Senator Harry Brown

II. APPROVAL OF MINUTES

III. PRESENTATIONS

Opening Remarks by Chairs

Introduction of Investigators
Senator Harry Brown

IV. Committee Discussion

V. Adjournment





Eagle Intel Services LLC is a North Carolina based company specializing in discrete and timely private investigations into internal fraud, misappropriation of funds, embezzlement and brand and trade channel integrity. Eagle Intel Services LLC utilizes a wide range of investigative techniques to collect evidence and intelligence that is analyzed and summarized in concise reports to be utilized by clients to make informed decisions regarding the matter being investigated.

The partners of Eagle Intel Services LLC are retired Federal Law Enforcement Agents with over 85 years of combined experience.

Frank R. Brostrom

Frank is a retired FBI Special Agent and seasoned federal investigator with over 27 years of experience in high risk and complex federal law enforcement operations. His responsibilities included work in International Terrorism and Intelligence environments. Frank has expertise in Human Intelligence, Intelligence Operations, Evidence Collection and Preservation. During his career, he investigated Public Corruption, Mortgage Fraud, Bank Fraud, Money Laundering, Conspiracy, Interstate Fraud/Major Theft and International Art Crime. Frank has provided training to International law enforcement agencies during several seminars in Kosovo and Greece. He has testified in numerous federal and state court proceedings to include testifying as an expert witness on several occasions. Frank has consistently received Awards and Commendations related to the above investigative activities including FBI Special Agent of the Year in 2017.

S. Kevin Greene

Kevin is a retired Special Agent from the Internal Revenue Service, Criminal Investigation Division. During his 29 years of service he has investigated criminal violations of the Internal Revenue Code, Money Laundering, Public Corruption and various Fraud Schemes. From 2003 until his retirement in 2017, Kevin worked with multiple agencies through the Joint Terrorism Task Force (JTTF) with assignments in Greensboro, Raleigh, Fayetteville and Wilmington NC to investigate funding of terrorism through illegal trade practices. Kevin has also served as a longterm acting Supervisory Special Agent and as an Electronic Surveillance Tech Agent. Kevin is a Federal Judicial Court recognized Expert in Money Laundering and has testified and presented evidence in numerous Grand Jury and Trial proceedings.

Thomas Beers

Thomas is a retired Special Agent from the Internal Revenue Service, Criminal Investigation Division, with 29 ½ years of service. During his career, he has investigated numerous federal

violations related to Tax Evasion, Drug Distribution, Money Laundering, Fraud Schemes, Organized Crime and Public Corruption. These investigations involved various evidence collection techniques, complex financial analyses, forensic accounting, asset seizure and forfeiture. From 2009-2018 Thomas provided training in money laundering investigations to police and prosecutors during international training seminars in Kosovo, Trinidad, Indonesia and in North Carolina at the Annual OCDETF Conference. In 1999 Thomas was named IRS Special Agent of the Year by the New York Federal Law Enforcement Foundation for his work in "Operation Untouchable", an investigation into a "bust-out" scheme in the greater NYC area. In 2009 Thomas received the "Director's Award", presented by the US Attorney General, for work in OCDETF Operation "Tarnished Badge", an investigation into corruption within the Robeson County, NC Sheriff's Office. In 2017 Thomas received the OCEDTF Case of the Year Award for "Operation Old El Paso", an investigation into a Mexican Cartel Drug and Money Laundering Organization.



ATTACHMENT # 3

North Carolina General Assembly
State Legislative Building
Raleigh, North Carolina 27601

November 15, 2018

Via Hand Delivery

Governor Roy Cooper
116 West Jones Street
Raleigh, NC 27603-8001

Secretary Michael Regan
Department of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

Dear Governor Cooper & Secretary Regan:

As Co-Chairs of the Joint Legislative Commission on Governmental Operations Subcommittee on the Atlantic Coast Pipeline, we submit the following public records request to the Department of Environmental Quality and the Office of the Governor under N.C. Gen.Stat. §120-19 and the North Carolina Public Records Act, codified at N.C. Gen.Stat. §132-1 et seq.

We request the following:

1. All documents, correspondence, and e-mails from the Governor's Office related to the Atlantic Coast Pipeline (ACP) from July 1, 2017 to March 1, 2018, including all correspondence and e-mails with the Atlantic Coast Pipeline partners, all correspondence and e-mails to and from the Department of Environmental Quality (DEQ) related to the Atlantic Coast Pipeline, and any documentation regarding the times, dates, list of attendees, and subject matter of any meetings held between the Governor, any member of the Governor's Office, or his Cabinet and any representative of Duke Energy or the Atlantic Coast Pipeline between July 1, 2017 and March 1, 2018.
2. All e-mails from the Department of Environmental Quality pertaining to the ACP from July 1, 2017 to March 1, 2018.

Governor Roy Cooper
Secretary Michael Regan
November 15, 2018
Page 2

3. Unredacted copies of the documents present in the DEQ ACP Permit file as specified in the letter to Governor Cooper from Senators Brown and Newton on Sept 7, 2018.
4. Any drafts or work products related to the Executive Order that was to be issued prior to the completion of the state permitting for the ACP, as specified in the Memorandum of Understanding of Jan 25, 2018.

We request that responses be made within 5 business days after receipt of this request electronically via email to harry.brown@ncleg.net and dean.arp@ncleg.net and via mail to Senator Harry Brown, 300-B Legislative Office Building, 300 N. Salisbury Street, Raleigh NC 27603 and Representative Dean Arp, 529 Legislative Office Building, 300 N. Salisbury Street, Raleigh NC 27603.

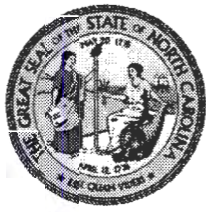
Sincerely,



Sen. Harry Brown



Rep. Dean Arp



NORTH CAROLINA
Environmental Quality

ATTACHMENT # 4

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

November 27, 2018

Via Hand Delivery

Senator Harry Brown
300-B Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603

Representative Dean Arp
529 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603

Dear Senator Brown & Representative Arp:

This letter confirms receipt of your letter dated November 16, 2018, requesting records related to the Atlantic Coast Pipeline, LLC (ACP).

DEQ has received several public record requests for documents related to ACP and we are diligently working to complete those requests. We believe the records produced in response to those requests will encompass many records you have requested.

The requests we have received, including yours, are quite broad and the number of records are considerable, but we will provide responsive documents to you as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "John Nicholson".

John Nicholson
Chief Deputy Secretary





*Office of the Governor
State of North Carolina*

*Roy Cooper
Governor*



*20301 Mail Service Center
Raleigh, N.C. 27699-0301*

November 27, 2018

The Honorable Harry Brown
Legislative Office Building
Room 300-B
Raleigh, NC 27603-5925

The Honorable Dean Arp
Legislative Office Building
Room 529
Raleigh, NC 27603-5925

Dear Senator Brown and Representative Arp:

This letter confirms receipt of your letter dated November 16, 2018, requesting records relating to the Atlantic Coast Pipeline, LLC.

The Governor's Office has previously received several public records requests for related documents, and it is working on responding to those requests. We believe the records produced in response to those requests will encompass any records you have requested. Accordingly, and without waiver of any argument with respect to your request, we plan to provide you with copies of any records the Governor's Office produces in response to the pending requests.

Several of the pending requests are quite broad, and we expect the number of records to be substantial, but we will provide responsive documents to you as promptly as possible.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Jones".

Kristi Jones,
Chief of Staff



ATTACHMENT # 6

ATTENDANCE

Committee: Joint Legislative Commission on Governmental Operations, Subcommittee on the Atlantic Coast Pipeline

[illegible]



VISITOR REGISTRATION SHEET

JT Legislative Comm on Governmental Operation Sub 12/12/2018

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Cassie Gavin	Sierra club
George Smith	Nexen Pinet
Tom BEAN	EDF, NCW5
McNeil Autum	Attgo Lan
Fred Boggett	Police chiefs Assn
Sarah McQuillan	Kansas Gov Affairs
Jh P... ..	NCAD



VISITOR REGISTRATION SHEET

JT Legislative Comm on Governmental Operation Sub 12/12/2018

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BRENT LANE	UNC-CH
Therese Vick	BREDL
JACKSON JAVIER	JSC
Don Carrington	Circling Journal
Victoria Gordon	.
Chris EMANUEL	EMANUEL GROOT
PRESTON HOWARD	NICMA
Tiffany Gladney	NC Rural Center
Demetrius Debat	TS



Committee Sergeants at Arms

NAME OF COMMITTEE JT Legislative Comm on Governmental Operation/Sub

DATE: 12/12/2018

Room: 643

House Sgt-At Arms:

1. Name: Russell Salisbury

2. Name: Bill Bass

3. Name: David Leighton

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: Terry Edmondson

2. Name: Linda Matthews

3. Name: _____

4. Name: _____

5. Name: _____

