



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

REPLY TO
ATTENTION OF:

April 17, 2013

Regulatory Division

Action ID No. SAW-2009-0876

Monroe Bypass, Turnpike Authority/North Carolina Department of Transportation STIP No. R-2559 and R-3329,
State Project No. 8.T690401

Mr. Terry Gibson, P.E.
NC Department of Transportation,
Division of Highways
1578 Mail Service Center
Raleigh, North Carolina 27699

Dear Mr. Gibson:

Please reference the Department of the Army (DA) permit issued to the North Carolina Turnpike Authority (NCTA) on April 15, 2011, for construction of approximately 20 miles of a four to six-lane controlled-access highway and service roads, the majority of which will be on a new location in Mecklenburg and Union Counties, North Carolina.

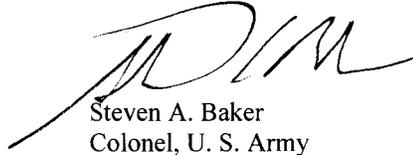
As you know the Southern Environmental Law Center (SELC) filed suit against the Federal Highway Administration (FHWA) and State of North Carolina, alleging that information provided in the Final Environmental Impact Statement (FEIS) was inadequate and incomplete, thereby invalidating FHWA's National Environmental Policy Act (NEPA) documentation and the NC Division of Water Quality's Section 401 Water Quality Certification issued for the project. A final decision on the federal complaint was rendered on October 25, 2011, by Chief, United States District Court Judge James Dever which denied the plaintiff's motion for summary judgment. In the case against the NC Department of Transportation (NC DOT) and NCTA, the court ruled in favor of NC DOT and NCTA by finding that their analysis complied with NEPA. The SELC immediately appealed this decision to the 4th Circuit Court of Appeals, which on May 3, 2012, vacated and remanded the lower court ruling by finding that NC DOT and FHWA "did violate NEPA by failing to disclose critical assumptions underlying their decision to build the road and instead provided the public with incorrect information."

By letter dated May 21, 2012, at the request of NC DOT, the Wilmington District, U.S. Army, Corps of Engineers, (District) suspended the 404 authorization for the Monroe Bypass pursuant to our regulations found at 33 CFR 325.7 (c). The NC Division of Water Quality withdrew the 401 Certification for the Monroe Bypass on June 8, 2012.

The District understands that you are presently reevaluating the data as part of the NEPA process associated with this project to make sure that you disclose critical assumptions underlying your decision to build the road and provide the public with detailed and accurate information. However, at this point the District believes that it is necessary to revoke your permit pursuant to 33 CFR 325.7 (d). When the permit was initially suspended, it was anticipated that the reevaluation would be limited and quickly finished. However, NC DOT has conducted a reevaluation that is more thorough than anticipated, and the process is not likely to be concluded until an indeterminate time in the future. As a decision cannot be made on the DA Permit until your reevaluation is concluded, we believe that it is not in the public interest to delay a decision until an indeterminate time in the future. Once your reevaluation is completed you may submit the updated information in a new application, and we will consider it accordingly. Please be aware that since your permit is revoked, no work in waters and wetlands should be under-taken.

Please feel free to coordinate with us as you continue your process. Questions or comments may be addressed to Mr. Henry Wicker at the Wilmington Regulatory Division, telephone number (910) 251-4930.

Sincerely,



Steven A. Baker
Colonel, U. S. Army
District Commander

Copies Furnished:

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