



Thomas J. Regan, Jr.  
President, PCS Phosphate and PCS Nitrogen

*Via FedEx Overnight Delivery and Email (Giattina.Jim@epamail.epa.gov)*

April 3, 2009

Mr. Jim Giattina  
Director  
Water Protection Division  
U. S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

Re: PCS Phosphate Company, Inc.  
Mine Continuation Permit

Dear Mr. Giattina:

Our company was completely surprised by the new NGO Line Alternative that EPA presented for our consideration on the afternoon of March 24, 2009.

The highest quality ore reserves the Company owns are located on the NCPC Tract. These reserves were purchased by NC Phosphate Corporation (later merged into PCS) in the mid-1960s for the sole purpose of recovering the ore for on-site processing. Texasgulf (predecessor to PCS) applied to mine these reserves in 1987. After an EIS, we obtained a permit to mine a portion of this property after mining an area south of the plant but north of State Highway 33. Our experience mining this southern area confirmed our prior geological analysis showing that, as we mine further south, the quantity, quality, and accessibility of the ore diminishes considerably and costs of mining per ton escalate dramatically. Therefore, in 2000 we again proposed to mine our high quality ore reserves on the NCPC Tract.

The phosphate mining industry is cyclic and highly volatile and cost of mining is extremely important. In the 1990s many phosphate mining operations failed. PCS's Preferred Alternative that was the subject of our currently pending 2001 permit application sought to mine 15 years in the NCPC Tract, but left un-mined more than 3 years of ore reserves. After the DEIS, the Corps requested we analyze Alternative L which substituted the Bonnerton ore reserves in the first 15 years of mining and reduced ore recovery from the NCPC Tract to 7.5 years, leaving un-mined more than 11 years of ore reserves. We do not believe Alternative L is a practicable alternative, but we were convinced by the Corps to accept this modification because it allowed our mining activities to proceed uninterrupted.

Mr. Jim Giattina  
April 3, 2009  
Page 2

EPA's proposed new NGO Line Alternative was not presented or studied in the EIS process. It would take two to three months to prepare a mine plan for EPA's new alternative upon which a financial analysis could be based. But even without a mine plan and financial analysis, it is clear that the new alternative would remove 4 more years of mining from the NCPC Tract and 1.5 more years of mining from the Bonnerton Tract. This would reduce mining in the NCPC Tract to about 3 years and leave PCS with only about 8 years of mining north of State Highway 33.

In addition to leaving un-mined more than 15 years of NCPC Tract ore reserves and forcing PCS to mine more costly ore, EPA's new alternative would require PCS to move a large section of a State road at a cost of \$90,000,000 (beginning in year 5 of the permit). The combination of these factors, as the Corps' analyses make abundantly clear, makes the NGO Line Alternative not practicable.

Furthermore, EPA's surprising requirement that we completely abandon more than 18 years of ore reserves in exchange for a permit is unwarranted. Although Alternative L, as modified by the 401 Certification, would take about 35 years to complete, the Company and the United States likely will need this high quality ore in the future. Preventing the future recovery of these important reserves would be contrary to the wise management of our economy and the wise management of an important natural resource.

PCS will mitigate any loss of wetlands as required by state and federal regulations and we will reclaim the mined land in a responsible manner. But we are not aware of any reasonable study or evidence that indicates our mining in accordance with modified Alternative L would have unacceptable adverse effects on fish or wildlife resources. In fact, after 40 years of mining in this same area, numerous studies prove the opposite. The N.C. Division of Water Quality spent years analyzing this very issue and concluded that mining in accordance with its 401 Water Quality Certification would protect aquatic life, biological integrity, fishing, fish, functioning nursery areas, wildlife, and recreation.

We request you not elevate this matter under CWA § 404(q) or give notice of intent to veto under CWA § 404(c).

Very truly yours,

  
Thomas J. Regan, Jr.

Cc: Ross Smith  
Karin S. Torain, Esq.  
George House, Esq.