



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 19 2009

The Honorable Kay R. Hagan
United States Senate
Washington, D.C. 20510

Dear Senator Hagan:

Thank you for your February 20, 2009, letter to Mr. Tom Welborn, Chief of the Wetlands, Coastal and Oceans Branch, Water Protection Division of the U.S. Environmental Protection Agency (EPA) concerning the U.S. Army Corps of Engineers (Corps) Clean Water Act (CWA) Section 404 (404) permit application from PCS Phosphate (PCS). The PCS permit application is for an expansion of mining activities at the company's facility in Aurora, Beaufort County, North Carolina.

The PCS permit application represents an 11,909 acre mine advance and would impact wetlands adjacent to the Pamlico River, South Creek and Durham Creek over a 37 year mining span. The impacts of the PCS application would be 4,115 acres of wetlands and 29,288 linear feet of perennial and intermittent streams. The project would impact wetlands and streams considered to be aquatic resources of national importance. If constructed as proposed, this would be the largest wetland impacts of all proposed or formerly permitted projects under the Clean Water Act for the State of North Carolina.

This proposed project also required evaluation by the North Carolina Department of Environment and Natural Resources (DENR) for a Clean Water Act Section 401 Water Quality Certification (401). The North Carolina DENR issued its 401 certification on January 15, 2009, based on a reduction of the above impacts to 3,953 acres of wetlands and 25,727 linear feet of perennial and intermittent streams. The state issuance of a 401 certification certifies that a given project will not degrade Waters of the State or otherwise violate water quality standards. On March 12, 2009, the Pamlico-Tar River Foundation, North Carolina Coastal Federation, Southern Environmental Law Center and Sierra Club submitted a Petition for a Contested Case Hearing to formally object to DENR's approval and issuance of the 401 certification.

EPA has been actively involved in the permit review process during the eight year period since PCS submitted its original mining expansion permit application to the Corps.

During this period of time, EPA has worked with PCS and an interagency working group called the Project Development Team (PDT), which is composed of other state and federal agencies and private stakeholders. The PDT formally met over 20 times during this time period. During this time PCS and the Corps collected data and generated maps representing a range of alternatives, the cost model, and drafted the extensive Draft Environmental Impact Statement (EIS), the Supplemental EIS (which included two additional alternatives), and the Final EIS.

As the different documents were completed, EPA generally had three to four weeks in which to review the various documents, and has responded to all requests in a timely manner. During the review period, EPA has consistently raised concerns to the Corps on the magnitude of the impacts and the location adjacent to the nationally significant Albemarle Pamlico Estuary system and whether the permit application represents the Least Environmentally Damaging Practicable Alternative as required by the CWA. We believe the project can be both economically practicable and provide more avoidance to wetlands and streams supporting environmentally sensitive areas adjacent to the nationally significant Albemarle Pamlico Estuary system. These areas include streams and supporting wetlands which have been designated by the state as primary nursery areas and a portion of a state designated Significant Natural Heritage Area determined to be "nationally significant."

On February 24, 2009, the Corps sent EPA a letter advising the Agency of its Notice of Intent to issue the permit. On March 17, EPA Region 4 responded to the Corps that it intended to elevate the permit to the EPA Assistant Administrator for Water, according to the 1992 Memorandum of Agreement (MOA) between EPA and the Department of the Army, Part IV, Elevation of Individual Permits under CWA Section 404(q). The MOA establishes policies and procedures to elevate issues related to specific individual permit cases that involve aquatic resources of national importance. The MOA also establishes a specific process and timeline for agency interaction in order to "minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the issuance of permits."

Under the Section 404(q) MOA, EPA's Assistant Administrator for Water has 20 days from receipt of the March 17, 2009, letter to decide whether to seek Department of Army Headquarters review of the permit. If EPA makes that request, the Assistant Secretary of the Army has 30 days from receipt of EPA's request for review to inform EPA of its decision to either proceed with the permit as noticed, proceed with the permit with specific guidance related to that permit, or withdraw the permit. If the Corps proceeds with a permit, EPA then has 10 days from receipt of the notice from the Assistant Secretary of the Army to initiate the Section 404(c) process.

To continue our discussions, an interagency meeting with the Corps, EPA, National Marine Fisheries Service, and the U.S. Fish and Wildlife Service has been scheduled for March 24, 2009, in Raleigh, North Carolina, for the purpose of examining options regarding the different proposed mining scenarios.

EPA and the other federal agencies on the PDT will work expeditiously to reach a permit decision that will address the applicant's proposed scenarios for their mining expansion and will also be protective of the aquatic environment as required by Section 404 of the CWA.

If you have any questions or need additional information, please contact me or the Region 4 Office of Congressional and Intergovernmental Relations at (404) 562-8237.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Stanley Meiburg', written in a cursive style.

A. Stanley Meiburg
Acting Regional Administrator

Identical Letter Sent to:

The Honorable Richard Burr
United States Senate

The Honorable Walter B. Jones
House of Representatives

The Honorable G. K. Butterfield
House of Representatives