

# SOUTHERN ENVIRONMENTAL LAW CENTER

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June 5, 2009

Honorable Lisa Jackson  
Administrator  
Environmental Protection Agency  
Washington, DC

*Re: EPA veto of PCS Phosphate Permit in North Carolina*

Dear Administrator Jackson:

The Acting Regional Administrator of EPA Region IV has elevated to EPA Headquarters a proposed permit under Section 404 of the Clean Water Act that, if issued, would authorize the largest wetland destruction in the history of the permitting program in North Carolina. The wetlands that would be destroyed are adjacent to the Pamlico Sound estuary and provide critical functions in maintaining the water quality and fisheries in this estuary which has been designated by Congress and EPA as an estuary of national importance. We appreciate your commitment to protection of our nation's wetlands and the important economic and environmental values they provide. Last month, you wrote to Senator Boxer that "as we work to meet goals for wetlands protection nationwide, we need to identify opportunities to expand protection of wetlands and other aquatic resources that are especially vulnerable or critical to sustaining the health of [aquatic] systems." On behalf of the Environmental Defense Fund, Sierra Club, North Carolina Coastal Federation, and Pamlico Tar River Foundation, we respectfully request that you exercise your authority to veto the permit in order to protect the nation's waters and wetlands from significant degradation. EPA's veto would allow uninterrupted mining to continue for at least 29 years without unacceptable adverse impacts to wetlands, water quality, and fisheries.

On April 3, 2009, EPA determined that, unless specified actions are taken to avoid particularly critical wetlands, the permit the Corps of Engineers proposed to issue to PCS Phosphate would violate EPA's 404(b) Guidelines for wetland permits and result in "unacceptable adverse impacts to aquatic resources of national significance." Specifically, EPA concluded the proposed permit "would result in substantial and unacceptable impacts to waters of the United States, including wetlands, in the Albemarle Pamlico River estuary system." This violation of EPA's Guidelines would trigger EPA's duty to veto the permit under Section 404(c). EPA's letter to the Corps clearly identified the unacceptable adverse impacts that would occur if the permit issued and EPA equally clearly identified the actions required to avoid these impacts and prevent significant degradation of waters and wetlands.

On June 3, 2009, the Wilmington District of the Corps issued the permit, inadequately responding to all of EPA's requested actions to avoid significant degradation of waters and completely failing to respond to some. To avoid unacceptable adverse impacts:

- EPA requested no further drainage basin reductions of primary fishery nursery areas; the permit will allow substantial additional drainage basin reductions of all primary nursery areas.
- EPA requested avoidance of an additional 1,166 acres of wetlands to reduce impacts to acceptable levels; the permit only avoids an additional 44 acres.
- EPA requested complete avoidance of the identified rare wetlands of national ecological significance; the permit will allow destruction of these wetlands.
- EPA concluded that the proposed compensatory mitigation would not reduce impacts to an acceptable level; the permit includes no additional restoration of wetlands to compensate for impacts.

The proposed permit includes monitoring provisions to attempt to document water quality impacts of the mining. EPA's Guidelines require *prevention* of significant degradation of waters, not documentation of its occurrence. In sum, the Corps's proposed permit almost completely ignores EPA's concerns and specific requested actions to ensure the project will not result in unacceptable adverse impacts to the nation's waters and wetlands.

Since the Corps failed to respond to EPA's concerns and failed to incorporate the actions required to reduce these impacts to acceptable levels, EPA has a duty to veto the permit under Section 404(c).

Sincerely yours,



Derb S. Carter, Jr.  
Senior Attorney  
Director NC/SC Office

cc Environmental Defense Fund  
Sierra Club  
North Carolina Coastal Federation  
Pamlico Tar River Foundation