December 28, 2007

US Army Corps of Engineers
Tom Walker, Project Manager
Wilmington District, Regulatory Division
P.O. Box 1890
Wilmington, NC 28402-1890

Attn: File Number 2001-10096

Subject: Draft Supplemental Environmental Impact Statement (EIS) for the PCS Phosphate Mine Continuation, Aurora, North Carolina CEQ 20060481

Dear Mr. Walker:

Pursuant to Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act (NEPA), EPA Region 4 has reviewed the supplemental draft EIS that evaluates the environmental consequences of expanding phosphate mining operations located adjacent to the Pamlico River, South Creek and associated tributaries, north of Aurora, Beaufort County, North Carolina.

Background - The Potash Corporation of Saskatchewan (PCS) applied for Department of the Army authorization to advance its current mining operation into a 3,608-acre tract, known as the NCPC Tract, situated east of PCS's current mining operation. The requested authorization would impact 2,408 acres of jurisdictional wetlands and waters of the US. The US Army Corps of Engineers Wilmington District (COE) filed on October 13, 2006, a draft EIS pursuant to PCS's application that examined mining impacts on the NCPC Tract and two additional sites known as Bonnerton Tract (2,806 acres) and S33 Tract (8,686 acres). Nine alternative mining alignments and a "No-Action" alternative were identified for further study in the draft EIS. The applicant's preferred alternative (AP) was to mine solely on the NCPC Tract. An additional expanded applicant-preferred alternative (EAP) would have mining on all three tracts (NCPC, Bonnerton, and S33) was also considered economically practicable by PCS.

Both EPA's Region 4 NEPA Program and Wetland Regulatory Section provided comments on the draft EIS in February and March of 2007. EPA identified significant environmental concerns that were the basis for rating the AP alternative as "EO-2, Environmental Objections". The focus of EPA's concern was that of all the alternatives

considered, the AP and the EAP were the most environmentally damaging. The AP alternative would impact 2,408 acres of waters/wetlands and 7.3 miles of streams on the NCPC Tract, and the EAP alternative would impact 5,667 acres or waters/wetlands and 16.9 miles of streams. Region 4 further concluded that the economic modeling conducted by PSC to determine the fiscal viability of each of the nine mining alternatives failed to demonstrate why the less environmentally-damaging Alternatives SCR and SJA were not feasible. In a separate regulatory process, EPS's Wetland Regulatory Section advised the COE of wetland concerns in separate letters of February 9, 2007, and March 6, 2007, on issues relating to CWA Section 404 (3)(a) and (3)(b).

Subsequent to the release of the 2006 draft EIS, the COE requested that PCS explore a new alternative "L", and PCS, on its own initiative, submitted a separate additional alternative "M". L and M were evaluated in a supplemental draft EIS filed on November 16, 2007. The COE's stated intent for this document was neither to respond to comments received on the draft EIS nor to correct any information presented in the draft EIS. Hence, the COE did not address EPA's earlier concerns and requests for additional information, intending instead to address these issues in the final EIS.

New Economic Model - While the stated purpose of the supplemental draft EIS was solely to present two new alternative boundaries and provide updates to the draft EIS as necessary for their evaluation, the supplemental draft EIS nonetheless provided newly-minted economic arguments that have major implications in determining the least environmentally damaging practicable alternative (LEDPA). Initially, EPA understands the COE's rationale for developing Alternative L because it provides 15 years of mining north of North Carolina State Road 33 and allows all capital outlays necessary for mining to be amortized over the first 15 years of the life of the mine. But we do not understand why Alternative L has more impacts to aquatic habitats in the tract south of State Road 33 as compared with the SCR alternative. In other words, why were impacts to south of SR 33 increased in Alternative L if the sole purpose of this alternative was to have an alternative which would allow 15 years of mining north of SR 33? EPA Region 4 is in the process of reevaluating economic issues through EPA's National Center of Environmental Economics and will provide further comments on economic issues in early 2008.

Aquatic Resources and North Carolina Natural Heritage Program – EPA will continue to evaluate the impacts on the aquatic resources of national importance and degradation of wetlands/waters of the US issues that are found in the Alternatives. Region 4 EPA is in consultation with the North Carolina Natural Heritage Program concerning the natural communities which would be impacted by the various project alternatives.

Although Alternative L avoids the same aquatic resources on the NCPC Tract as are avoided on the SCR boundary, EPA is concerned with the level of impacts on the Bonnerton Tract wetland communities. We are awaiting a North Carolina Natural Heritage Program reassessment of the Bonnerton wetland hardwood forest areas, situated on the east and west central areas of the Bonnerton Tract, to see if these communities

qualify for national significance designation. These nonriverine wetland hardwood forest communities are currently designated by the North Carolina Natural Heritage Program as a Significant Natural Heritage Area at the state level and may also qualify for national significance designation.

Economic Reopener Clause – EPA has discussed the reopener clause with the COE in the past and generally agrees it has merit. As described in the supplemental draft EIS, the reopener clause would take place at the end of year 8 under Alternative L and would reevaluate the cost conditions and truth the cost model. Based on this reevaluation, the applicant might be asked to reduce the mining footprint on the Bonnerton Tract, and at the end of year 12, move to the south of tract 33 rather than to continue mining the Bonnerton Tract. With the current mining plan reopener clause, the central wetland hardwood forest, designated as a Significant Natural Heritage Area, would already have been mined at the end of year 12. For this reason, we recommend the Corps revisit the proposed mining sequence for the Bonnerton Tract so that impacts to this Significant Natural Heritage Area would be avoided if reevaluation at year 8 indicates the mining could be shifted to south of tract 33 after 12 years of mining north of tract 33.

Summary – Consistent with our rating of the applicant's preferred alternative in the draft EIS, Alternative, EPA rates Alternative L as "EO-2, Environmental Objections, Insufficient Information" because of the magnitude of impacts on wetland resources. EPA continues to have CWA Section 404 (3)(a) and (3)(b) concerns that were articulated in our letters of February and March, 2007. The supplemental draft EIS provides new economic arguments put forth by the applicant that may have major implications in determining the least damaging environmental alternative. EPA's National Center of Environmental Economics is currently reevaluating economic issues and will provide the COE with our assessment by early 2008. Although Alternative L appears to avoid the same aquatic resources on the NCPC Tract as were avoided by the SCR Alternative, we are concerned with the level of impacts that Alternative L would have on important wetland communities on the Bonnerton Tract.

EPA is awaiting the North Carolina Natural Heritage Program reassessment of the Bonnerton wetland hardwood forest areas, currently designated by North Carolina Natural Heritage Program as a "state significant" Natural Heritage Area, to determine if the Bonnerton forest area meets the criteria for "national significant" designation. We believe the North Carolina Natural Heritage Program Significant Natural Heritage Area designation of the Bonnerton wetland hardwood forest should be an important factor in the 404 (b) (1) analysis process. EPA will continue to coordinate with the State on these issues to determine the extent the Significant Natural Heritage Area determination will affect North Carolina's Section 401 Water Quality Certification. Further coordination with North Carolina Division of Water Quality, COE Wilmington District and other federal and state agencies on water degradation issues will be required.

Thank you for the opportunity to comment on the proposed action. If we can be of further assistance, John Hamilton (404-562-9617) will serve as initial point of contact

for NEPA issues. For questions on wetlands and economic modeling, please contact Becky Fox at (828) 497-3531 or fox.rebecca@EPA.gov.

Sincerely,

Heinz J. Mueller, Chief
NEPA Program Office

Summary Paragraph

Draft Supplemental Environmental Impact Statement (EIS) for the PCS Phosphate Mine Continuation, Aurora, North Carolina CEQ 2006048

EPA rates the new mining Alternative L as “EO-2, Environmental Objections, Insufficient Information” because of impacts on 2,408 acres of jurisdictional wetlands, hardwood forests, and waters of the US. The North Carolina Natural Heritage Program has designated project wetland hardwood forest areas as “significant”, and is determining if these forests meet the criteria for “national significance” designation, a factor in the 404 (b) (1) analysis and North Carolina’s Section 401 Water Quality Certification process. New economic data put forth by the applicant will assist EPA to determine the least damaging environmental alternative.