



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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June 20, 2013

Donald W. Kinard
Chief, Regulatory Division
Jacksonville District, U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

**Subject: EPA's Comments on the Final Areawide Environmental Impact Statement for the Central Florida Phosphate District, located in Charlotte, DeSoto, Hardee, Lee, Manatee, Polk, and Sarasota Counties, Florida
EIS Filed Date: 04/26/2013; CEQ Federal Register Date: 05/03/2013
CEQ Number: 20130117; ERP Number: COE-E67007-FL**

Dear Mr. Kinard:

Pursuant to Section 309 of the Clean Air Act (CAA) and Section 102(2)(C) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) Region 4 has reviewed the Final Areawide Environmental Impact Statement (FAEIS) on Phosphate Mining in the Central Florida Phosphate District (CFPD) developed by the U.S. Army Corps of Engineers (USACE), Jacksonville District, using a third-party contracting process as described in 40 CFR §1506.5. This EPA process was initiated because the USACE has received four applications for Department of the Army permits under Section 404 of the Clean Water Act (CWA) from Mosaic Fertilizer, LLC and CF Industries, Inc. (the Applicants) for four proposed phosphate mining projects in the CFPD (referred to locally as the "Bone Valley"). The specific projects currently being reviewed by the USACE are the subject of this AEIS (including their Department of the Army permit application numbers) are: Mosaic's Desoto Mine (SAJ-2011-01968); Mosaic's Ona Mine (SAJ-2010-03680); Mosaic's Wingate East extension of the Wingate Creek Mine (SAJ-2009-03221); and CF Industries' South Pasture Mine Extension (SAJ-1993-01395).

The scope of the proposed action includes creating new phosphate mines, expanding existing mines and constructing attendant facilities. As proposed, these actions would result in the discharge of fill into Waters of the United States. EPA notes that USACE determined that when viewed collectively, the separate proposed phosphate mining projects have similarities that provide a basis for evaluating their direct, indirect and cumulative environmental impacts in a single AEIS and this FAEIS evaluates the environmental and economic impacts of the Applicants' four proposed mines (the Applicants' Preferred Alternatives), as well as the impacts associated with a No Action Alternative and other reasonably foreseeable alternatives in the CFPD. EPA understands that this AEIS serves dual purposes, both as a Regulatory EIS for the four specific mine applications, as well as a holistic areawide mining

environmental impact study. EPA also notes that over 20 municipal and county governments in the region agreed to become Participating Agencies to the USACE on the AEIS.

In a letter dated September 14, 2010 USACE offered EPA, as well as the Florida Department of Environmental Protection (FDEP), an opportunity to become a "Cooperating Agency" to the USACE in the development of this AEIS for phosphate mining in the CFPD. EPA accepted the USACE offer to serve as a Cooperating Agency in our letter sent to the USACE on October 14, 2010, and EPA noted that FDEP accepted on January 25, 2011.

EPA has supported the development of an AEIS for the CFPD, with a goal of bringing together local, state, federal agencies and the industry involved in phosphate mining in the Bone Valley and developing a comprehensive AEIS that fully analyzes the secondary and cumulative impacts of phosphate mining. EPA also concurred with the USACE retaining an EIS contractor (utilizing the 3rd Party NEPA process) to develop this AEIS and we appreciate the USACE making development of this important AEIS a high priority. As a part of the AEIS, USACE worked with EPA, other local, state and federal agencies, the Applicants and NGOs to develop a conceptual model for addressing wetland avoidance, minimization and mitigation for the AEIS mining permits. This conceptual model is referred to as the "Framework". It is also EPA's understanding that the Framework will be used as a foundation for any future proposed phosphate mining permits within the CFPD.

EPA worked with USACE on an aggressive schedule that yielded a comprehensive DAEIS in less than 18 months from the date of the publication of the Notice of Intent (NOI) and the publication of the FAEIS approximately 12 months later. The AEIS development and review has been a multi-program effort within EPA.

EPA commented on the DAEIS in a letter dated July 20, 2012, and provided recommendations regarding the wetlands avoidance, minimization and mitigation analysis of river flow and runoff, water quality analysis and impacts, the long duration of permits, groundwater analysis and impacts and the economic analysis. Through a proactive collaborative approach between the Corps, EPA and other stakeholders, most of these issues were resolved before the release of the FAEIS. The FAEIS was filed with EPA, noticed in the federal register on May 3, 2013 and submitted to EPA for review. Based on our multi-program review, we identified the following outstanding issues that are discussed below.

Gypsum Stack

Although gypsum stacks are related to the phosphate mining activities, the issues and impacts relating to gypsum stacks are being addressed independent of this FAEIS through a separate permitting mechanism.

Wetlands Avoidance, Minimization and Mitigation Framework:

EPA is encouraged by the proactive and collaborative approach that USACE has displayed while working with EPA, over 20 local, state and Federal organizations, the Applicants, NGOs during the AEIS process. EPA commends the USACE for working closely with these widely diverse organizations and the public to develop and adopt the Framework (as outlined in Chapter 5). We consider this approach to be a conceptual model that the USACE could use for other regulatory EIS permitting

actions. To ensure the success of the Framework, we highly recommend that the USACE continue their collaborative efforts with these entities pre and post permit issuance. We also feel confident that any remaining EPA issues associated with wetlands avoidance, minimization and mitigation will be addressed through continued collaboration and creative problem solving. It is EPA's understanding that the USACE will continue to build upon the strong foundation established during the extensive AEIS process. EPA understands and also supports USACE's decision to create an Interagency Review Team (IRT) as outlined in the conceptual Framework. The IRT will be charged with taking the conceptual Framework and shaping it into a practical, useful tool for issuing and implementing the 4 proposed permits outlined in the AEIS and potentially future phosphate mining within the CFPD. Further, EPA understands that the IRT intends to work collaboratively to develop a robust monitoring and adaptive management plan, which should include performance and/or success criteria that should result in optimization of wetlands avoidance and minimization and implementation of mitigation measures and controls. EPA supports USACE including examples of possible compensatory mitigation performance standards, monitoring requirements and adaptive management plan permit conditions as outlined in Appendix I. Because of the risks and uncertainties associated with the long duration of the proposed permits, EPA supports USACE making monitoring and adaptive management measures commitments in both the ROD-SOF and within special conditions for each of the permits.

We also understand that USACE will incorporate non-wetlands related mitigation commitments within the ROD. EPA supports this approach and encourages the USACE to continue dialogue with the EPA especially regarding issues relating to surficial aquifers and minimum flow levels (MFLs).

RECOMMENDATION: EPA recommends USACE continue to work with EPA to establish an IRT, which will implement the Framework as outlined in Chapter 5 and consider permit conditions similar to those outlined in Appendix I of the FAEIS. EPA commends the USACE for this forward thinking, solutions oriented approach and looks forward to working together to ensure future success.

Duration of Permit:

EPA understands that lengthy permit durations are being considered for the proposed projects. EPA notes that long duration permits can involve substantial risk for increases in environmental impacts over time as technical, biological, climatic, economic and legal conditions may change over such a long duration.

RECOMMENDATION: As previously noted, EPA recommends that shorter permit durations be considered with the entire proposed mine area potentially covered as a sequential individual permits for shorter terms instead of a single long permit. As a part of the Framework, EPA recommends permit conditions (similar to those outlined in Appendix I) that require periodic IRT reviews of mining and mitigation activities at least every 5 years, as well as annual or semi-annual substantive reporting of mining and mitigation efforts. To offset the risk and uncertainty of having such long duration permits, EPA recommends that the IRT use a monitoring and adaptive management plan (similar to the example provided in Appendix I) to ensure mitigation measures are working. Lastly, EPA recommends the RODs reflect USACE's commitment to offset the risk and uncertainty associated with having such long permit durations by establishing the IRT to develop the monitoring and adaptive management plan.

Surficial Water and MFLs:

Throughout the review of the FAEIS, EPA has expressed concern regarding the potential impacts of the mining activities on the surficial aquifer and surface water flows in the areas affected by the projects. In response to our concerns, updated modeling and groundwater analysis was added to the FAEIS. One remaining critical concern of EPA is ensuring that minimum flows and levels as required under state law are maintained in surrounding rivers and streams adequate to be protective of water quality standards such that biological integrity of these systems is maintained during the mining activities. It is our understanding that the South Florida Water Management District (SFWMD) requires a Consumptive Water Use Permit for phosphate mining operations. These permits allow the permittee to withdraw a specified amount of water, either from the ground, a canal, a lake or a river. The water can be used for a public water supply; to irrigate crops, nursery plants or golf courses; or for industrial processes (such as phosphate mining). The SFWMD reviews these permits to ensure that the proposed use is reasonable and beneficial as defined in Section 373.019 of the Florida Statutes, that the proposed project will not interfere with other water users in the vicinity, that the proposed withdrawal is consistent with the public interest, and that the withdrawal will not harm the environment (SFWMD website: <http://www.sfwmd.gov/portal/page/portal/levelthree/permits>).

RECOMMENDATION: EPA understands that the SFWMD consumptive water use permit has special conditions that the permittee shall mitigate impacts such as causing harmful movement of contaminants in violation of state water quality standards and significant impacts to hydroperiods for surrounding systems (Consumptive Water Use, Basis of Review Document, Section 5). EPA supports these protective conditions to alleviate any adverse conditions caused by water withdrawals associated with phosphate mining. EPA recommends that the USACE include SFWMD consumptive water use permit special conditions in both the ROD-SOF and in the project specific Section 404 permits. Further, we recommend that the IRT continue to monitor and review applicable water use permits and when appropriate, use an adaptive management approach to ensure permit conditions are met.

Buffers and Ditch/ Berm System:

Chapter 5 discusses wetland and stream buffers in relationship with the mining operations ditch and berm system and displays several photos and graphs illustrating the location of the buffers. However, there is still ambiguity and inconsistency in the way the buffers are represented in the FAEIS. It is EPA's understanding of the diagrams and written discussion that the buffer applies to a 30' to 150' area upslope of the wetlands jurisdictional delineation line to the toe of the berm system and that this area will remain completely undisturbed.

RECOMMENDATION: EPA supports the inclusion of the use of buffers to minimize impacts to jurisdictional waters. However, EPA recommends the USACE clearly describe the buffer length in relationship with the ditch and berm system in the special conditions of the permit and within the ROD-SOF.

Tribal Consultation:

The FAEIS discusses coordination of potential effects with the federally listed Native American Tribes' Tribal Historic Preservation Office (THPO) and also states that any mitigative measures

identified during the coordination process should be documented in the project-specific ROD-SOF before issuance of permit decision. There is no documentation of any tribal consultation, but EPA understands that coordination is ongoing. EPA encourages consultation and coordination with the Tribes at all levels of decision-making. The EPA works closely with both the Miccosukee and the Seminole Tribes on environmental matters and is committed to working with other federal partners to prioritize the Tribes' water quality and water management concerns.

RECOMMENDATION: EPA recommends USACE consult and coordinate with the Tribes through completion of the reviews and issuances of the Section 404 permits for each proposed mine. These consultation and coordination efforts should be documented in the permit specific ROD-SOFs.

Economic Analysis:

EPA appreciates the significant amount of work that has been done to quantify the direct economic impacts of several different mining options. While the analysis detailed in the document provides useful information for decision makers, EPA thinks the economic analysis could be more comprehensive. The economic analysis as presented considers only direct distribution of benefits of phosphate production throughout the area. EPA continues to recommend the consideration of social costs (or negative benefits) in the economic analysis such as changes in valued ecosystem functions, reduced recreational opportunities, human health effects, non-use values, aesthetic changes and effects on endangered species. We also think that ecological modeling results should factor prominently within the economic analysis.

RECOMMENDATION: Although EPA understands the resource constraints of conducting economic analyses, we continue to recommend that the USACE consider using a dynamic model (similar to REMI) including the social costs of future phosphate mining permit actions.

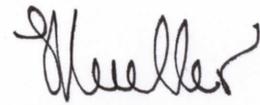
Conclusions:

The USACE has worked collaboratively and proactively with EPA and other federal agencies, local and state agencies, the Applicants, NGOs and the public to balance the needs of the industry and the environment. We are supportive of the proposed conceptual Framework and the monitoring/adaptive management approach. EPA looks forward to working with the USACE in practically applying the conceptual Framework in the review of the proposed permit applications as well as any future phosphate mining permit applications within the CFPD. We will work with USACE in reviewing the proposed permit 404(b)(1) packages and assist the USACE in development of the ROD-SOF for each of the proposed projects.

EPA strongly supports the approach as discussed in the FAEIS. However, although most of our issues have been satisfactorily addressed, we continue to have some remaining concerns as outlined in this letter. We believe that most of these concerns can be successfully resolved through continued dialogue and proactive problem solving between our two agencies. EPA requests the opportunity to review any future NEPA documents on this project and reserves the right to provide the USACE with additional comments within the appropriate time period.

EPA appreciates the opportunity to serve as a Cooperating Agency in the development of the AEIS and we look forward to continued implementation of this approach. If you wish to discuss our comments, please contact me at 404-562-9611 or Jamie Higgins at 404-562-9681 and Duncan Powell at 404-562-9258 for Section 404 issues.

Sincerely,



Heinz J. Mueller
NEPA Program Office
Office of Environmental Accountability

cc: John Fellows
AEIS Project Manager