

April 25, 2011

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Re: Additional Comments on Scoping for Areawide EIS for Central Florida Phosphate District
on behalf of Community and Environmental Organizations

Dear Mr.Fellows:

On April 20, 2011 we forwarded comments on behalf of a group of community and environmental organizations. With this email we are providing additional comments on a limited group of issues.

FURTHER INFORMATION RE PHOSPHATE SPILLS AND RELEASES-PLEASE INCLUDE IN EVALUATION OF WETLANDS, WATER QUALITY, RECLAMATION, GYPSTACK, AND SOCIOECONOMIC AND LIABILITY ISSUES.

Spills and Releases: We are providing by attachment a 1997 report from the USEPA Office of Solid Waste entitled, "Damage Cases and Environmental Releases from Mines and Mineral Processing Sites." This document is extremely instructive as it details the causes and impacts of multiple spills and releases from phosphate mining and processing and chemical operations. Eleven spill and release events are discussed. They occur from gypstacks, from CSAs, from reclamation sites, from broken pipelines and from spills in managing materials. They involve contamination of both ground and surface water, with the contamination often including leaching and seeping as well as sinkholes and breaches of dikes. The dike breaches involve brand new CSAs as well as CSAs constructed to current standards. (e.g. IMC Hopewell). Extreme exceedances of both surface and groundwater quality standards are reported (e.g. for phosphates, fluorides, iron, gross alpha, radium, turbidity, TSS, etc.), though in several cases, unaccountably, the sampling was very limited (e.g. only turbidity and TSS).

In several cases there are indications that the seepages and leaks were ongoing. Some releases appeared to be intentional, with unauthorized pipes, unlocked pipes and intentional releases to avoid loss of berms.

In no case was the FDEP reaction any stronger than a warning letter and in some cases a consent decree. Fines, if any, were extremely minimal, frequently involving a nominal payment to some group like the Tampa Museum of Science and Industry (\$37,500 for a wetland program). Required remedial actions were also minimal, e.g. in one case of gypstack leakage the industry proposed only to monitor the leak. (CF-Bartow). In another case where wetlands had been scoured 10 ft deep and wetland forests flattened by a spill from a brand new CSA, no penalty at all was imposed. (IMC Hopewell).

This data demonstrates the importance of impacts from spill and leakage events; the very real risk posed by all stages of the mining operations, including gypstacks, chemical plants, pipelines, reclamation and CSAs; the inadequacy of state controls; and the fact that any past, present or future operation can contribute to damage from mining and processing. They must all be considered.

There is no indication that the responsible companies paid any amounts to reimburse the victims of these spills and leaks.

AND, THIS REPORT DOES NOT EVEN INCLUDE THE MORE RECENT SPILLS IDENTIFIED IN THE EXHIBITS TO THE SIERRA CLUB ET AL. LETTER OF NOVEMBER 13, 2009, TRANSMITTED IN THE APRIL 19, 2011 LETTER FROM PERCY ANGELO.

CERCLA/Superfund Liability-Previous comments have noted the substantial liabilities which may be imposed on phosphate lands for cleanup and remediation under authorities such as the Comprehensive Response Compensation and Liability Act (CERCLA or Superfund). Information about just one of these sites, the Coronet site, is found at www.epa.gov/region4/waste/npl/nplfls/coronetfl.htm. This site, near Plant City, involves inorganic chemical and radionuclide contamination of groundwater and surface water. This is the site currently being studied with aerial surveys for radioactivity. The extensive work being addressed at this site, and discussed at the link and associated references above, illustrates the potential risk and liability which should be evaluated in the AEIS.

COST PRACTICABILITY

In our prior correspondence we addressed the issue of cost practicability. In connection with that discussion we are providing a copy of a July 23, 2008 letter from USEPA to the Corps of Engineers, Wilmington District, regarding the PCS Phosphate Mine permit. That letter includes a further discussion of USEPA's recommended approach to cost practicability review and it provides further support for the review we believe should take place in the AEIS.

RIPARIAN CONNECTIONS-WILDLIFE ISSUES

The COE has issued guidance for protection of riparian corridors and buffers which should be incorporated in the AEIS and followed in selecting alternatives and mitigation for any permitted mine activity. A copy is attached.

WETLAND SCORING

An April 25 and 26, 2011 series of articles in the Charlotte Sun newspapers by Greg Martin addresses the continuing loss of wetlands being experienced in the Charlotte Harbor watershed, despite directions that there be no net loss of such assets. The article notes a recent study by the Charlotte Harbor National Estuary Program (CHNEP) of 118 projects over three years from 2004-08, the permitting authority had allowed a wetland loss of 11%, despite allegedly protective requirements. The data demonstrate that the AEIS must consider the loss which in fact takes place. It may not rely on the assumption that programs are in place to guarantee no net loss.

The Sun article also illustrates the failure of the widely used UMAM scoring system for wetlands, which evaluates only three wetland parameters (location, water characteristics and vegetation), and routinely underestimates the functional value of wetlands before they are impacted. The Citizens Advisory Committee for the Charlotte Harbor National Estuary Program has recently recommended that the method for evaluation of wetland values should be a Hydrogeomorphic Method (HGM), which was developed by the Corps and which measures 14 variables, including the degree of wetland connection and the wildlife complexity. UMAM is used primarily because it is fast. That is not the right reason for Section 404 permitting or AEIS review. We ask that the AEIS and any resulting Corps permitting use the HGM evaluation system.

PERMIT CONDITIONS MAY NOT BE USED TO AVOID AEIS REVIEW

In our prior filings we pointed out the number and extent of variances and waivers of permit requirements to illustrate that the Corps may not rely on permit conditions to assume that EIS review of issues is resolved by state or even other federal permits. Recent experience with Mosaic's decision to move ahead with mining at South Fort Meade extension, even though it is inconsistent with the terms of its state permit and the challenged federal permit for that project, provides further proof of that principle. See Brian Ackley, "Opponents Challenge New Mosaic Mining Plan," Polk County Democrat (April 23, 2011). The Corps may not shortcut its AEIS process by assuming the protection of permit documents and conditions.

Thank you again for the opportunity to comment. This comment is submitted on behalf of the organizations listed below.

Very truly yours,

Percy Angelo, Member of the Sierra Club Florida Phosphate Committee

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Comments submitted on behalf of:

Sierra Club Florida
Lemon Bay Conservancy
People for Protecting Peace River (3PR)
Protect Our Watersheds (POW)