

## MEMORANDUM:

To: Board Members and Pat Lehman

From: Doug Manson and Dave Pearce

Re: Counsel Status Report

Date: January 29, 2005

### Phosphate Reclamation Rules:

All lands mined or disturbed by the phosphate industry after 1975 must be reclaimed. On October 29, 2004, the Department of Environmental Protection informed that public that it plans to amend Florida Administrative Code Chapter 62C-16. Chapter 62C-16 is the set of rules which govern the industry's reclamation efforts. Specifically, these rules detail the specific goals (recontouring, revegetation, etc.) that the industry must achieve before reclamation is deemed to be successful and complete.

The first public workshop for rule development was held on November 15, 2004. At this workshop, the DEP indicated that it would conduct its rule development in two phases. The public was allowed to submit written comments about the proposed rule changes up until December 6, 2004. The Authority timely submitted its written comments, which generally criticized the proposed rules as easing the burden currently on the phosphate industry to reclaim and restore mined lands.

After receiving written comments, the DEP requested a meeting with the industry, and then a separate meeting with Charlotte County and the Authority. The DEP also provided a new draft of its proposed rules, which incorporated some of the written comments it had received. The Authority and Charlotte County met with the DEP on January 24, 2005, to discuss the new draft. The public may submit written comments on the new draft to the DEP no later than February 2, 2005. This new draft includes language which sets the baseline for reclamation and restoration at six months prior to any site clearing or mining operations. Further, the DEP has proposed new restoration standards for streams. The Authority will be submitting its written comments regarding this new draft on February 2, 2005.

### Phosphogypsum Stack Rules:

On November 12, 2004, the DEP published Notice of Public Workshop to amend Chapter 62-673, Florida Administrative Code, which governs the management of phosphogypsum stacks. The public workshop on rule development took place on December 1, 2004, in Bartow, Florida. At the conclusion of the hearing, the DEP notified all attendees that written comments about the proposed rules would be due no later than December 13, 2004. The Authority timely submitted its written comments.

On January 21, 2005, the DEP gave notice that will be briefing the Environmental Regulation Commission on February 2, 2005, about the proposed rules. The DEP also released a new draft of the proposed rules on January 28, 2005, in a Notice of Proposed Rulemaking. The Environmental Regulation Commission will be meeting again on February 24, 2005, to discuss adoption of the proposed rules.

The ERC is comprised of seven residents of this state appointed by the Governor, subject to confirmation by the Senate. Members are selected from various sections of the state and are representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.

The role of the ERC is to approve for adoption most standards relating to air pollution, water quality, and waste management. The ERC considers the proposed standards in rules for their scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment.

#### Ona Mine and Ft. Green Southern Reserves

In 1997, IMC Phosphates Company unveiled its plans to operate a phosphate mine on its 20,595-acre property in western Hardee County near the rural community of Ona. IMC submitted the first parts of its consolidated development application to the various permitting agencies in April 2000. The Authority challenged several of the proposed permits regarding the mine on February 11, 2003. Charlotte County, Hardee County, Alan Behrens, and Desoto Citizens Against Pollution, Inc. filed petitions challenging the proposed permits. The DEP referred these petitions to the Division of Administrative Hearings, and Administrative Law Judge Robert E. Meale consolidated them into a single proceeding. Later in the proceeding, Hardee County voluntarily dismissed its petition, and Lee County and Sarasota County petitioned to challenge the proposed permits.

IMC submitted new plans regarding the Ona Mine to DEP on January 30, 2004. In its new application materials to DEP, IMC reduced the "footprint" of the mine to approximately 4,200 acres. The final hearing was held in May-July 2004. The parties submitted their Proposed Recommended Orders to the ALJ on September 20, 2004. The parties expect a Recommended Order from the ALJ within the next few weeks or months, and will have an opportunity to file Exceptions with the DEP. DEP Secretary Colleen Castille will then enter a Final Order which grants or denies IMC's permit applications.

#### Altman Tract:

The Altman Tract, otherwise known as "Tract S," is a roughly triangular-shaped 2,367.5-acre parcel located within the northern extent of the Horse Creek basin. Specifically, the Altman tract is located in the northeastern corner of Manatee County; it lies east of State Road 37, west of the Hardee County line, south of the Hillsborough County line, and just north of State Road 62.

The Altman tract is part of the Four Corners/Lonesome mine complex and is considered to be an expansion of that mine. The Altman tract and its wetlands drain entirely to the East Fork of Horse Creek. On May 30, 2002, the DEP issued notices of a proposed final agency action for both pending applications for the Altman Tract. The Authority filed its petition for administrative hearing on October 3, 2002, but later settled this case with IMC.

On August 1, 2003, the administrative law judge issued a 120-page Recommended Order which recommended that the DEP deny the Altman permit application. In September, Secretary Struhs issued the DEP's Final Order which denied the permit applications for the Altman Tract.

IMC appealed Secretary Struhs' Final Order to the Second District Court of Appeal in

Lakeland. All briefs have now been filed with the court. A decision on the merits of the appeal will only be made after oral arguments, which have been set for February 8, 2005.

On January 29, 2004, IMC also submitted its revised plans to DEP regarding the Altman Tract. In December 2004, IMC (now Mosaic Company) submitted additional information in support of the application. Charlotte County has given the DEP notice of some of its concerns with this new application for the Altman Tract. The Authority will continue to monitor the progress of this application.

#### South Fort Meade Expansion

Last year, Cargill Fertilizer, Inc. ("Cargill") unveiled its plans to expand its South Fort Meade Mine southward from Polk County into Hardee County. The proposed mine expansion is for a 11,653.8-acre parcel east of the Peace River and U.S. 17, and just south of the Polk/Hardee county line.

On July 10, 2003, Cargill provided a set of pre-application materials to the Central Florida Regional Planning Council, which reviews applications for a Development of Regional Impact ("DRI"). No formal DRI application has been submitted to the council, and it appears that Cargill delayed submittal of this application because of its merger with IMC Phosphates into the Mosaic Company. This is still in the early stages of development, and the Authority will continue to monitor the progress of this project.

#### Wingate Creek Mine

The Wingate Creek Mine is located in eastern Manatee County. The mine is approximately 7,500 acres in size, comprised of a 3,024-acre parcel originally owned by Nu-Gulf Wingate Holdings, L.L.C. and a 4,400-acre parcel originally leased from the Texaco, Inc. by Nu-Gulf. The 4,400-acre parcel is east of the existing mine area, and west of the proposed Ona site. Wingate Creek is a tributary to the Myakka River, which flows through Manatee, Sarasota, and Charlotte counties on its way to Charlotte Harbor and the Gulf of Mexico. The Authority will continue to monitor the Wingate Creek Mine project, particularly any plans concerning the 4,400-acre parcel which is west of the Ona property.

#### South Pasture Mine:

On April 21, 1994, the United States Army Corps of Engineers ("ACOE") issued dredge and fill permit number 199301395 (IP-BL) to CF Industries, Inc. ("CFI") in connection with the opening of CFI's South Pasture Mine. On October 16, 1995, the Florida Department of Environmental Protection issued environmental resource permit number 252607909 to CFI, which granted CFI permission to conduct mining activities on the South Pasture property for the life of that mine.

The South Pasture Mine is located in Hardee County immediately south of State Road 62. CFI divided its South Pasture property into three separate mining areas: A, B, and C. The original ACOE permit and subsequent modifications to that permit approved dredge and fill activities in Areas A and B, which together constitute the middle 6,558-acre portion of the South Pasture property.

On July 18, 2001, the ACOE issued a public notice acknowledging receipt of permit application number 199301395 (IC-PS) MOD #8 (the eighth modification of the original permit) from CFI. In its permit application, CFI seeks permission to conduct dredge and fill activities on

the remainder of the South Pasture property, known as Area C. As previously described, Area C actually consists of two separate land masses, separated by Areas A and B. The total acreage of these two portions of the South Pasture property, dubbed "Area C West" and "Area C East," is measured at approximately 8,858 acres. In this newest permit application, CFI's proposes to mine approximately 1,969.4 acres of wetlands and reclaim 2,038.0 acres of wetlands.

On August 13, 2001, the Authority formally requested a public hearing regarding the permit application within the original public comment period. In a newspaper article dated September 20, 2001, the Sun-Herald reported that the EPA recommended a denial of CFI's pending permit application.

In June 2004, after almost three years of reviewing CFI's permit application, and while the Authority, Charlotte County, and Sarasota County were in the midst of the ten-week trial regarding the Ona-Ft. Green Extension, the ACOE granted CFI's permit application. Despite the pending requests for a public hearing, the ACOE elected not to hold such a hearing. Further, the ACOE did not even give the Authority notice of its decision. In a letter dated January 14, 2005, the Authority requested the ACOE's district engineer provide the Authority with written reasons as to why its request for a public hearing was denied. To date, the Authority has not received a response to this letter.