

# SOUTHERN ENVIRONMENTAL LAW CENTER

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***Via Electronic and U.S. Mail***

Governor Bev Perdue  
Office of the Governor  
20301 Mail Service Center  
Raleigh, NC 27699-0301  
governor.office@nc.gov

Re: *Titan America's proposed Portland cement plant in Castle Hayne*

Governor Perdue,

With the recent scandals uncovered by the news media, the public has lost confidence in the objectivity of regulatory decisions by the Department of Environment and Natural Resources ("DENR") and questions whether the agency is acting in the public interest. DENR's consideration of an air quality permit for Titan America's proposed cement kiln near Wilmington is of considerable public interest, and questions involving the actions of key officials in this permitting matter have come under scrutiny. On behalf of our clients North Carolina Coastal Federation, Cape Fear River Watch, and PenderWatch & Conservancy, we ask that you take three steps to restore confidence in the objectivity of the environmental review and permitting of this facility.

First, direct DENR not to issue any environmental permits for the Titan facility prior to the conclusion of your requested State Bureau of Investigation ("SBI") inquiry into decisions regarding environmental review of the facility. State law requires that applicants for air quality permits satisfy DENR that the company is in compliance with federal and state laws for protection of the environment. No permit actions should be taken by DENR prior to conclusion of the SBI investigation into whether the environmental decisions related to the Titan facility comply with all applicable state and federal laws.

On January 19, 2010, the *News & Observer* reported the key role a former aide to Governor Easley played in obtaining state funding for the project and avoiding review under the North Carolina Environmental Policy Act ("SEPA"), casting a cloud over the integrity of environmental regulatory decisions on the project.<sup>1</sup> This week, the cloud darkened when the *Wilmington Star-News* reported that the president of one of Titan's subsidiaries, S & W Ready Mix Concrete Company, bought an office building at more

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<sup>1</sup> Lynn Bonner, Cement Plant Draws Scrutiny, *News & Observer*, Jan. 19, 2010.

than double its assessed value from a group of fundraisers with ties to Gov. Easley.<sup>2</sup> This property transaction occurred on July 25, 2008, three days after the Assistant Secretary of DENR expressly concluded that the expenditure of public funds as grants to Titan triggered SEPA's comprehensive environmental review process. DENR subsequently reversed this position with little explanation. In light of recurring public revelations of systemic abuses in the State's environmental permitting processes, and the close timing of the reported property transaction and DENR's abrupt reversal of position, we urge you to suspend all environmental permitting of the Titan facility until these issues are resolved by the SBI or other investigators.

Second, stop DENR from issuing the air permit or any other environmental permits requested by Titan until the court decides whether SEPA applies to the State's expenditure of grant funds to Titan for the project. As discussed above, DENR and the Department of Administration concluded SEPA does not apply to the Titan project and that the project can proceed with permitting before conducting a comprehensive review of environmental impacts. SEPA requires comprehensive review of environmental impacts *prior* to issuance of air quality and other environmental permits. Recent newspaper accounts heightened public concern regarding the relationship between parties allied with Titan and state agencies and raised questions about the objectivity of the State's decision that SEPA does not apply in this case. DENR should not move forward with environmental permitting until this concern is resolved.

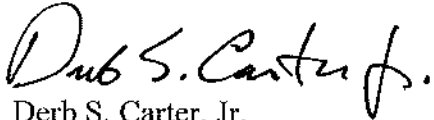
Third, before DENR issues an air quality permit for the Titan facility, direct DENR to comply with federal Clean Air Act and Environmental Protection Agency ("EPA") regulations by fully incorporating the pollution control standards issued by EPA for finalization in June 2010, long before Titan will have obtained all the necessary authorizations to begin construction of this major source of air pollution. EPA already notified the State that Titan's draft air quality permit does not meet Clean Air Act requirements and cannot be lawfully issued because it does not evaluate or establish enforceable emission controls for fine particle pollution and numerous hazardous air pollutants, nor would it adequately protect North Carolina citizens from this dangerous air pollution source. The draft air permit violates the Clean Air Act because it does not require Titan to control its air pollution emissions to "the maximum degree of reduction" that is achievable. To the contrary, as drafted, the permit contains emission limits that EPA has determined are "substantially less stringent" than the level of control EPA has determined is achievable by every new Portland cement plant in the country. The human and environmental impact of these woefully lax limits is startling: without the more rigorous and protective emission limits that EPA has mandated, every year the citizens of southeastern North Carolina will be forced to breathe more than 1,000 tons of dangerous air pollution that the Clean Air Act prohibits and EPA determined can and must be eliminated to protect people's health and their environment— including the most hazardous air pollutants regulated under the Clean Air Act, like mercury, arsenic, and formaldehyde.

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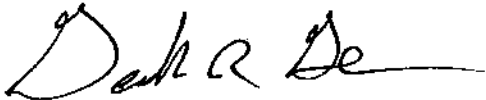
<sup>2</sup> Gareth McGrath and Chris Mazzolini, *Easley Fund-Raisers Sold Building to Titan Executive: Deal Raises Questions Amid Influence Probe*, Star News, Jan. 25, 2010.

The environmental permitting of the proposed Titan Cement kiln involves decisions of great consequence to the citizens of southeastern North Carolina. Those citizens deserve your protection and a process with integrity: one that is free from even the perception of inside deals and bias. We appreciate your consideration of these three discrete requests that are necessary to restore public confidence in the environmental decisions related to this project and look forward to your response. Please contact us if you have any questions regarding our requests.

Sincerely,



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



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