



NORTH CAROLINA MARINE FISHERIES COMMISSION DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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January 26, 2009

Mr. Henry Wicker
U. S. Army Corp of Engineers
Wilmington Regulatory Field Office
P.O. Box 1890
Wilmington, NC 28402

Subject: Action ID # SAW-2007-00073, Carolinas Cement LLC (Titan America), New Hanover County, North Carolina

Dear Mr. Wicker:

I am writing on behalf of the N.C. Marine Fisheries Commission regarding a proposal by Carolinas Cement LLC to build and operate a cement plant and mining operation adjacent to the Northeast Cape Fear River. Our commission is responsible for ensuring sustainable marine and estuarine fisheries and habitats for the benefit of the public and we have the authority to review and comment on and otherwise participate in the determination of permit applications received by state agencies that may have an impact on the marine and estuarine resources of North Carolina.

Based on the information provided by your public notice on June 5, 2008 and subsequent requests by Carolinas Cement LLC for permits required for this project the N.C. Marine Fisheries Commission writes this letter to recommend to the Corps of Engineers and the state to postpone issuing any permits for this project until all of the environmental impacts are fully evaluated and disclosed to the public. We request that the Corp of Engineers umbrella all permitting for this project beneath the jurisdiction of the National Environmental Policy Act (NEPA) process for the draft Environmental Impact Statement required for this project.

The Northeast Cape Fear River has been designated as a Primary Nursery Area by our commission and both the river and Island Creek have been designated as Anadromous Fish Spawning Areas by the Marine Fisheries Commission and the Wildlife Resources Commission. Seven of the nine diadromous fishes that are known to occur in the Cape Fear River drainage have been documented in the Northeast Cape Fear River and/or Island Creek by the Division of Marine Fisheries and others. These species include American eel, American shad, Atlantic sturgeon, blueback herring, hickory shad, shortnose sturgeon, and striped bass. The shortnose sturgeon is listed as federally endangered, while populations of the Atlantic sturgeon are currently being considered for listing as federally threatened. There has been a fishing moratorium on both since 1991. The stock status of the blueback herring in North Carolina is depleted and our commission implemented a fishing moratorium in 2008. Problems include decreased recruitment and declining spawning stock biomass. The same is true of the striped bass population in the Cape Fear River; a moratorium on commercial and recreational harvest was implemented in June 2008.

East Coast stocks of American shad are at all-time lows according to the latest 2008 Atlantic States Marine Fisheries Commission stock assessment. The status of the American eel is unknown but the Atlantic States Marine Fisheries Commission has concerns. Several of the species which inhabit these waters serve as a valuable food source for other marine species such as king mackerel and tuna. Both of these species have shown evidence of being impacted by the presence of mercury in the food chain. Through these fishing moratoriums and other restrictions our commission has tried to meet its statutory duties regarding conservation of these fisheries resources. However, additional degradation of habitat and water quality conditions where these species occur limits our ability to restore these fisheries.

Postponing the issuance of all required state permits until the completion of the project's environmental impact statement would also allow the N. C. Division of Air Quality to apply clear regulatory standards, including draft revised air toxins rules that are scheduled to take effect in less than two months. Recognizing the failure of existing regulations to adequately protect human health, the Environmental Protection Agency is expected to release revised final standards regulating hazardous air pollutants from Portland cement facilities this spring. These upcoming regulations on hazardous air pollutants have important implications for Carolinas Cement's proposed facility and for the health and well-being of our community and the natural resources on which we depend.

Toxic emissions from this facility could pose substantial risk to the critical fisheries of Northeast Cape Fear system by polluting the air, wetlands and waters that are critical to healthy fish stocks. These impacts would be felt for decades, long beyond the useful life of the plant itself. Such potential impacts and risks demand full evaluation, disclosure, and public input. Prior to issuance of the air quality permit, completion of the environmental review process and release of EPA's publication of the pending air quality regulations is necessary to ensure appropriate, legally sufficient standards are applied through the Prevention Significant Deterioration (PSD) and other permitting processes.

Our commission is extremely concerned about the significant adverse impacts to the aquatic resources that would occur if this project were approved as proposed. We urge the Corps of Engineers to thoroughly review all associated impacts of this proposed project and incorporate the potential air toxic impacts into the overall NEPA process prior to any permits being issued for this project.

Sincerely,



Mac Currin, Chairman
N.C. Marine Fisheries Commission

Cc: N.C. Marine Fisheries Commission
Secretary Dee Freeman
Dr. Louis Daniel
Anne Deaton