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MEMORANDUM

To: Board Members and Pat Lehman

From: Doug Manson and Laura Jacobs

Re: Counsel Status Report

Date: November 1, 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, which is the set of rules that govern the industry's reclamation efforts. Specifically, these rules detail the specific goals (recontouring, revegetation, etc.) that the phosphate 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 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 phosphate 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 Authority submitted written comments regarding the new draft on February 2, 2005.

On July 8, 2005, revised proposed rules and a notice scheduling an adoption hearing for August 4, 2005, at DEP's office in Tallahassee, Florida were published. Comments and

proposed amendments were submitted to DEP by CF Industries, Mosaic Phosphates Co., PCS White Springs, Charlotte County and the Hillsborough County Environmental Protection Commission. Some of the changes from the October proposed rules are: allowing the designation of reclamation parcels designated on a basis of division other than surface hydrology; allowing the release of a portion of a reclamation parcel prior to the entire parcel meeting the required release criteria; allowing mining or site preparation to begin if a initial conceptual plan is submitted even though such initial conceptual plan is not approve by DEP; expanding the allowed field modifications (do not need a conceptual plan modification and automatically approved) to include changes in the location or shape of land form within a reclamation parcel; and restricting reclamation and restoration of impacted streams to Rosgen Level II standards.

On August 4, 2005, the Department of Environmental Protection (“DEP”) held a Proposed Reclamation Rule Workshop in Tallahassee, Florida. The purpose was for DEP to discuss submitted amendments to the proposed changes to Chapter 62C-16, Florida Administrative Code, and to take comments from interested parties. The Rule Workshop began with general comments. DEP Rick Cantrell stated that as soon as these proposed rules were adopted, DEP would then begin a complete rewrite of existing mining regulations. Requiring two separate processes is archaic and the two programs need to be merged together. DEP will be proposing one permit for permitting and reclamation. To achieve a complete merger, legislation may be needed. Commissioner Cummings stated that he was attending the meeting at the direction of the Charlotte County Board of County Commissioners to show that the issue of phosphate is one of the county’s most important issues. Janet Llewellyn, DEP, stated that they were not going to rule on proposed amendments during the meeting. Rather, we would find out what amendments were accepted when the revised rule was published. Additional amendments were accepted by DEP through August 15. Following review and consideration of the submitted amendments, a revised rule will be published. The revised rule has not been published.

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 it will be briefing the Environmental Regulation Commission (“ERC”) 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 ERC met again on February 24, 2005, to discuss adoption of the proposed rules. Charlotte County proposed two amendments to the rules during the meeting, but those amendments were rejected. The ERC has now adopted the new phosphogypsum rules. On March 11, 2005, DEP gave notice of changes to the proposed rules, which incorporated changes by staff and public comments. The new language requires an owner or operator to provide alternate financial assurance within ten days of it no longer meeting the financial test requirements or a financial mechanism is no longer valid. In addition, DEP is authorized to

require reports of financial conditions when it has a reasonable belief that financial requirements are not being met.

On June 3, 2005, Notice of Proposed Rule Development was issued for Rules 62-672 and 62-673, Florida Administrative Code. The proposed rule amendments are intended to ensure that phosphogypsum stack systems can be operated to avoid spills of process wastewater or discharges of materials that adversely affect surface or ground waters. They are proposing to provide requirements ensuring those treatment systems, or other water consumption methods, are available and can be operated at rates sufficient to avoid releases of untreated, or inadequately treated process wastewater, during or following periods of chronic or catastrophic rainfall events. In addition, changes to the existing requirements for emergency diversion impoundments are being proposed. Increased reporting requirements when process wastewater levels in the impoundments are trending towards critical high levels is also being proposed.

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. A Recommended Order ("RO") from the ALJ was issued on May 9, 2005. The RO recommended additional permit conditions.

On August 8, 2005, DEP Secretary Castille issued a Limited Remand Order, which sends the case back to the ALJ for additional findings of fact on specified recommended additional permit conditions and Conclusions. The Limited Remand Order states that additional fact finding by the ALJ is needed on several issues including on the closed basin-open basin issue; recharge wells mechanism; sand tailings; ERP financial responsibility. In addition, the ALJ must reconsider proposed revisions by DEP and IMC to the additional permit conditions that were not previously recommended by him or supported by the findings of fact in the RO. DEP defers ruling on the filed exceptions and ALJ's recommendations, including dismissal of the Authority's petition for lack of standing, until a Recommended Order on Remand is submitted to DEP. The Authority was deemed a party for purposes of the Limited Remand Order.

An administrative hearing was held October 10-14. Rather than extend the hearing, additional testimony was taken through the use of depositions. The ALJ is now reviewing the evidence in order to issue a revised RO. We have no expectation of when a revised RO will be released.

According to the Central Florida Regional Planning Council, as a result of the issuance of

the Recommended Order by the ALJ, the Application for Development Agreement is being modified to be consistent. Technical meetings are being held to bring the review agencies up to speed. A February – March hearing date is possible.

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 that recommended that the DEP deny the Altman permit application. In September, Secretary Struhs issued the DEP's Final Order that denied the permit applications for the Altman Tract.

IMC appealed Secretary Struhs' Final Order to the Second District Court of Appeal in Lakeland. Oral arguments took place on February 8, 2005. The Court affirmed the DEP's Final Order in a per curiam opinion dated February 18, 2005.

On January 29, 2004, IMC also submitted its revised plans to DEP regarding the Altman Tract. In December 2004, IMC (now Mosaic Phosphates 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.

Lipman Tract

The Lipman Tract is located within the Four Corners/Lonesome Mine, in Manatee County. The tract is approximately 3.5 miles north of SR 62 and 1.5 miles west of CR 39. The wetlands within the tract are in the Long Branch Basin, which is a tributary to the Little Manatee River (Class III waters).

On October 21, 2005, DEP gave notice of intent to issue an ERP to Mosaic allowing Mosaic to conduct phosphate mining on 304.8 acres of uplands, wetlands and other surface waters. The mine will disturb 4.7 acres of wetlands and 3.8 acres of other surface waters. Reclamation of the 304.8 acres following the completion of mining includes approximately 5.1 acres of wetlands, including 3.0 acres of freshwater marsh and 2.1 acres of mixed wetland hardwood. The mitigation wetlands will be located within the upland forest buffer next to Long Branch. No clay settling areas are proposed, so all reclamation will be underlain by overburden or sand tailings.

On October 28, 2005, DEP gave notice of its approval of Mosaic's request to modify the Conceptual Reclamation Plan for Four Corners/Lonesome Mine. This modification includes an update to the pre-mining and post reclamation land use and contours for the Lipman Tract. By

including this tract within the plan, the acreage of the plan has increased to 51,696 acres. The plan still identifies that 7,017 acres are to remain undisturbed by mining operations. However, as a result of enhancement work to be performed in the non-mined areas, there is a change in FLUCCS acreage from pre-mining to post reclamation. This approval still shows that the Altman Tract remains unmined.

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 Phosphates Company. The Application for Development Agreement is expected in the fall. At this time, a hearing date cannot be projected beyond a possible Summer 2006 event.

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.

On June 16, 2005, a Notice of Draft Permit for Permit No. 0032522-005-IW1S/NR was issued by DEP for the Wingate Creek Mine. This draft permit is being issued in response to an application by Mosaic Fertilizer, L.L.C., to renew the surface water discharge permit for the discharge of excess process wastewater, stormwater and reclaimed groundwater via two outfalls at Wingate Creek Mine. Outfall D-001 discharges directly into Wingate Creek and Outfall D-002 discharges into Johnson Creek, then into Wingate Creek, a tributary of the Myakka River. DEP has determined that a wastewater permit with authorization to discharge to surface waters of the State under the National Pollutant Discharge Elimination System ("NPDES") permit is required. Once specified conditions are met, Mosaic Fertilizer L.L.C. is authorized to construct and operate waste clay settling areas. In addition, Outfall D-001 is being moved to a location 5000 feet north of the existing discharge point. On August 12, 2005, DEP's Bureau of Mine Reclamation held a meeting with the Myakka River Management Coordinating Council to discuss Mosaic Fertilizer, L.L.C.'s NPDES Permit Renewal. DEP stated that it is planning on adding new permit conditions requiring monitoring for turbidity; chronic toxicity testing and stream condition index sampling. DEP is accepting additional comments on this permit renewal through September 14, 2005.

South Pasture Mine

On April 21, 1994, the United States Army Corps of Engineers (“ACOE”) issued Dredge and Fill Permit No. 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.

On October 24, 2005, DEP acknowledge receipt of CFI Industries’ intent to use a Noticed General Permit for minor activities to install a surface water monitoring station at Coons Bay Branch, a tributary of Payne Creek. According to DEP, the project meets the notice of general permit requirements. CFI Industries has five years to complete the project.

In regards to the South Pasture Development of Regional Impact, the Application for Development Agreement is currently being prepared but is not expected to be submitted until early 2006. The Central Florida Regional Planning Council expects that a late Summer 2006 hearing on the application will be held.