SOUTHERN ENVIRONMENTAL LAW CENTER

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March 23, 2015

VIA E-MAIL AND U.S. MAIL

Mr. Craig Brown
U.S. Army Corps of Engineers
Raleigh Regulatory Field Office
3331 Heritage Trade Drive, Suite 105
Wake Forest, NC 27587
Craig.J.Brown@usace.army.mil

RE: Comments on Section 404 Permit Application for Green Meadows Mine Fills, Corps Action ID Number: SAW-2014-02254

Dear Mr. Brown:

On behalf of the Catawba Riverkeeper Foundation, Cape Fear River Watch, Waterkeeper Alliance, and the Sierra Club (collectively, the "Conservation Groups"), the Southern Environmental Law Center offers the following comments on the application of Green Meadows, LLC (a subsidiary of coal ash management company Charah, Inc.) for a Section 404 Clean Water Act permit for mine fills impacting jurisdictional wetlands and streams in Lee and Chatham Counties.

The Conservation Groups are plaintiffs in pending federal lawsuits and plaintiff-intervenors in pending state enforcement actions against Duke Energy Progress, Inc. and Duke Energy Carolinas LLC (collectively, "Duke Energy") for coal ash pollution at its Riverbend facility on Mountain Island Lake near Charlotte, NC, and its L.V. Sutton facility on Sutton Lake near Wilmington, NC. The Conservation Groups have long advocated for cleanup of Duke Energy's coal ash at Riverbend and Sutton as well as other sites around the state, including Duke Energy's Cape Fear facility, which is located very close to both the Chatham and Lee County mine fills. The Chatham and Lee County mine fills proposed in this application are currently planned to receive coal ash that would be excavated from Duke Energy's Riverbend and Sutton facilities.

The U.S. Army Corps of Engineers (the "Corps") should add the conditions described below to any 404 permit for these sites to ensure adequate monitoring to protect jurisdictional waters at the site.

The U.S. Environmental Protection Agency ("EPA") 404(b)(1) Guidelines state that a Section 404 permit must be denied where the proposed project "does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem." 40 C.F.R. § 230.12(a)(3)(iii). They also state that "no discharge . . . shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the

discharge on the aquatic ecosystem." 40 C.F.R. § 230.10(d). Likewise, the EPA/Corps mitigation guidelines explain that a Section 404 permit may be issued only after a determination that "*all* appropriate and practicable steps to avoid and minimize adverse impacts" have been taken. 33 C.F.R. § 332.1(c)(2) (emphasis added).

In this case, the following monitoring conditions should be added to ensure that all appropriate and practicable steps to minimize potential harm to the aquatic ecosystem have been taken. 40 C.F.R. § 230.12(a)(3)(iii). The applicant has a duty to demonstrate conformity with the EPA 404(b)(1) Guidelines and the Corps has a duty to verify compliance with the Guidelines. *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1189 (10th Cir. 2002).

Colon Site (Lee Co.)

1. At least two monitoring wells should be added to the plan. One additional well should be located along the east end of the northern side of the fill directly north of PZ-9s, where the intermittent tributary is closest to the compliance boundary. The second additional well should be located along the northern side of the fill directly north of PZ-12. Each of these locations currently show high hydraulic gradients toward the creek and are not monitored in the proposed monitoring plan.

2. The Water Quality Monitoring Plan (included in the Design Hydrogeological Report at Section 13.5) calls for four initial background monitoring events. Monthly monitoring of groundwater elevations should be required for at least the next year in order to verify assumptions about the seasonal high water levels. Background sampling should be conducted on a quarterly basis for the first year in order to evaluate possible seasonal variation in water quality.

Brickhaven Site (Chatham Co.):

1. At least two monitoring wells should be added to the plan. One should be located on the southeast corner of the fill, and another on the southwest corner of the fill, both located downgradient of the low points of the planned landfill liner.

2. The Water Quality Monitoring Plan (included in the Design Hydrogeological Report at Section 13.5) calls for four initial background monitoring events. Monthly monitoring of groundwater elevations should be required for at least the next year in order to verify assumptions about the seasonal high water levels. Background sampling should be conducted on a quarterly basis for the first year in order to evaluate possible seasonal variation in water quality.

In addition to the Corps requiring the conditions described above in any 404 permit issued for the proposed projects, we further request that the Corps serve us with copies of any additional public notices related to this 404 application and any draft or final permit.

Thank you for the opportunity to submit these comments.

Sincerely yours,

Frank S. Holleman III
Nicholas S. Torrey