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February 12, 2010

Via U.S. and Electronic Mail

Dee Freeman
Secretary
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, NC 27699-1601

Re: Mercury Contamination of the Northeast Cape Fear River

Dear Secretary Freeman:

We write today to request on behalf of the North Carolina Coastal Federation, Cape Fear River Watch, and PenderWatch & Conservancy that you take several discrete actions necessary to protect and, ultimately, restore water quality in the Northeast Cape Fear River. These actions are necessitated by the pending permitting and construction of Titan America's ("Titan") proposed limestone quarry and cement manufacturing facility on the banks of that River. Specifically, we request that you take the following immediate actions:

1. Petition the Environmental Management Commission to declare that the permitting of any additional mercury discharges into the section of the Northeast Cape Fear River that is currently impaired would result in a generalized condition of water pollution.
2. Require Titan to conduct a complete analysis of the impacts to soil and vegetation from the projected emissions from the facility.
3. Require Titan to demonstrate that it can comply with the more stringent emission limitations in EPA's pending regulations for cement kilns.
4. Require Titan to submit complete, detailed plans for its proposed facility, including the limestone quarry.

These actions are necessary to ensure that the Department of Environment and Natural Resources meets its statutory mandate to provide "a complete program of water and air conservation, pollution abatement and control."¹

¹ N.C. Gen. Stat. § 143-211(c).

The Northeast Cape Fear River winds through Pender and New Hanover counties, ultimately flowing into the Cape Fear River and the Atlantic Ocean. It is a river basin rich in ecological and recreational value, but it is plagued by mercury contamination. If built, Titan America's proposed Portland cement manufacturing facility would further contribute to levels of this potent neurotoxin in the Northeast Cape Fear's already tainted waters, a result the Division of Water Quality recently recognized as unacceptable. This recognition by the Division of Water Quality reveals a schism that must be resolved before the Division of Air Quality issues any permits that would advance this project and exacerbate the river's existing water quality impairment.

The construction and operation of Titan's proposed facility would ensure the continuation of the existing generalized condition of mercury impairment in the Northeast Cape Fear River for decades. More than 15 miles of the Northeast Cape Fear are impaired by mercury contamination and listed on the State's 303(d) list as required by the Clean Water Act. The location of Titan's proposed facility is near the middle of that contaminated stretch of river. Titan has stated that it must operate the proposed facility for more than 40 years to justify the capital expenditures, and its experts have concluded that the operation of that facility would further contaminate the Northeast Cape Fear with mercury.

Because the permitting of Titan's proposed facility will guarantee the continued contamination of the Northeast Cape Fear River, we request that you petition the Environmental Management Commission to issue an order pursuant to N.C. Gen. Stat. § 143-215.3(a)(8) finding that "the permitting of any new or additional source or sources of water or air [mercury] pollution" within the watershed of the Northeast Cape Fear between N.C. Highway 210 to Prince George Creek "will result in a generalized condition of water or air pollution" within that stretch of river. The stretch of river between these points currently represents a generalized condition of water pollution, as evidenced by its presence on DWQ's 303(d) list. This statutory provision provides a method, in tandem with those under the Clean Air Act and Clean Water Act, to address the pollution of the river that would result from Titan's proposed facility. The order from the EMC authorized by this statute would further enable you to address airborne mercury contamination of the waters surrounding Titan's proposed facility and resolve the schism between the Divisions of Water and Air Quality.

We also request that you take three actions to ensure DAQ has fully considered the potential for mercury discharges from Titan's proposed facility. First, require Titan to conduct a complete analysis of the soil and vegetation impacts of its proposed emissions as required by the Clean Air Act. DAQ is required to evaluate the effect of Titan's air emissions on soil and vegetation.² According to DAQ guidance, that analysis should include an inventory of plants and soil types within the impact area.³ Nonetheless, Titan has not submitted an inventory of plants and soil types within the affected area, nor has it demonstrated how those soils and plants would be affected by the Company's

² 40 C.F.R. § 51.166(o)(1).

³ N.C. Division of Air Quality Permitting Section, North Carolina PSD Modeling Guidance at 14 (2008).

proposed emissions.⁴ And despite its published guidance, DAQ has not required it to provide that inventory and analysis.⁵ The evaluation of atmospheric deposition of pollutants, which is the purpose of the soil and vegetation analysis, is critical because Titan proposes to emit substantial quantities of mercury into a wetland environment that rapidly transforms deposited mercury emissions into toxic methylmercury. Recent scientific publications that identify blackwater rivers and riverine wetlands as the “best” environment for the methylation process underscore this need.

Second, require Titan to demonstrate how it expects to meet the substantially more stringent emission limitations in EPA’s pending regulations. As Titan and DAQ concede, the pending New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants apply to Titan’s proposed facility. Those proposed standards would require Titan to reduce its emissions of some pollutants by up to 99% and reduce its mercury emissions by more than 85%. Yet Titan has not explained how it plans to meet those more stringent standards when they are finalized. Indeed, according to newspaper reports, Titan does not know how it will meet the proposed mercury standards.⁶ As EPA has recognized, and as we discussed in detail in our comments on the draft air permit, meeting those more restrictive emission standards will likely require Titan to install additional control technology. These control technologies will remove mercury from air emissions but concentrate it in solid or liquid wastes that must be discarded, and which may provide additional conduits for contamination and pollution of the river. Rather than ignoring the likely scenario that Titan will have to install these control technologies before it can operate, DAQ should fully evaluate control technologies that will be necessary for Titan to achieve the emission limits in EPA’s pending regulations, including the disposal of mercury-laden byproducts of those technologies, before taking any action on the pending permit application.

Finally, require Titan to submit complete, detailed plans for its proposed facility, including the proposed limestone quarry. Clean Air Act regulations require Titan to submit “all information necessary” to evaluate the project and authorize DAQ to require “[a] description of the nature, location, design capacity, and typical operating schedule of the source.”⁷ Although Titan’s PSD application requests approval of emissions from a limestone quarry that is an integral part of the project, the Company has not provided the necessary information related to the nature, location, design capacity, or operating schedule of the quarry. Without that information, DAQ cannot accurately estimate emissions – including mercury emissions – which fluctuate with the chemical composition of the limestone in the quarry. Moreover, those quarry details would provide critical information regarding Titan’s intended storage and handling of limestone, flyash, gypsum, and cement kiln dust within the facility and the potential impacts of stormwater runoff and groundwater seepage of mercury-contaminated water.

⁴ See PSD Preliminary Review No. 07300R08 at 61 (Sept. 11, 2009).

⁵ Id.

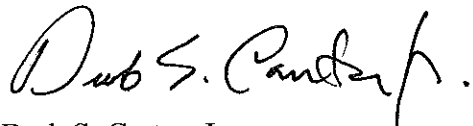
⁶ Lynn Bonner, News and Observer, River’s Mercury Level May Bar Permit, February 3, 2010.

⁷ 40 C.F.R. § 51.166(n).

These measures are essential to protect the long-term health of the environment and communities surrounding Titan's proposed site and to understand the full impact of Titan's proposed project on the mercury-impaired Northeast Cape Fear River. These measures are consistent with the Department's regulatory authority and responsibility pursuant to the Clean Air Act, Clean Water Act, and state regulations.

We appreciate your consideration of our requests and look forward to your reply. Please do not hesitate to contact us at the numbers listed below if you have any questions regarding the content of this letter.

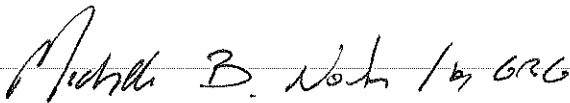
Sincerely,



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Director, NC/SC Office



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