

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV - ATLANTA, GEORGIA 30365

DATE: January 13, 1984

SUBJECT: Recommended 404(c) Determination for the M.A. Norden  
Permit Application, Mobile District File No. AL80-00327-C

FROM: Regional Administrator  
Region IV - Atlanta, Georgia

TO: William D. Ruckelshaus  
Administrator

Under Section 404 of the Clean Water Act (33 U.S.C. §1344 et seq.), any person who wishes to discharge dredged or fill material into the waters of the United States, including wetlands, must first obtain a dredge or fill permit from the Secretary of the Army, acting through the Chief of Engineers.

Section 404(c) of the Clean Water Act (33 U.S.C. §1344 et seq.) provides that if the Administrator of the U.S. Environmental Protection Agency (EPA) determines that unacceptable adverse effects on municipal waters supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas would result from the discharge of dredged or fill material, he may exercise his authority to withdraw, restrict, or prohibit the defined area from specification as a disposal site.

On October 7, 1980, the Corps of Engineers advertised a permit Application No. AL80-00327-C for the deposition of fill material in approximately 55 acres of wetlands (waters of the United States) adjacent to Three Mile Creek. The applicant is Mr. M.A. Norden, P.O. Box 2245, Mobile, Alabama 36601, who proposes to construct an office, warehouse and a storage yard on the filled wetlands. The proposed site borders Three Mile Creek and One Mile Creek, and is bound on the east by Conception Street within the city limits of Mobile, Alabama.

Review agencies, including EPA, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) objected to permit issuance on the basis of the project's non-water dependency, applicant's failure to adequately consider less damaging alternatives, the potential for loss of functioning wetlands, adverse environmental effects anticipated to fish and wildlife, loss of water filtration benefits, and loss of stormwater storage capacity.

On April 21, 1982, Mr. Norden modified his application by reducing the proposed fill area to 25 acres of wetlands. Mr. Norden indicated he had considered upland alternatives, but determined those alternatives to be too costly.

On June 3, 1982, EPA responded to the Corps indicating that the revised proposal did not comply with the Section 404(b)(1) Guidelines and that no ecological justification was found to alter the previously stated EPA denial position. The Mobile District of the Corps of Engineers agreed with EPA's recommendation and determined that the permit should be denied. However, because of the expressed interest in permit issuance from Alabama's Governor, the District, by regulation, referred the file to the Division level for final decision. The South Atlantic Division reversed the District's decision and on August 3, 1983, Colonel James B. Hall, Acting Division Engineer, wrote to EPA indicating the Division's decision to direct the Mobile District to issue the permit.

On August 30, 1983, EPA, in accordance with our Memorandum of Agreement, wrote Mr. William R. Gianelli, Assistant Secretary of the Army (Civil Works) requesting a review of the Division's decision by a higher authority in the Department of the Army. In his September 22, 1983, response, Mr. Gianelli declined referral of the application to a higher authority level, having determined that EPA's objections constituted a technical disagreement between the Division and EPA, not an issue of national importance. He suggested that provisions contained in Section 404(c) of the Clean Water Act would more appropriately address the technical disagreements between EPA and the Division Engineer. On September 30, 1983, Region IV initiated Section 404(c) procedures to restrict or prohibit the specification of the site in question as a disposal site for fill materials, as provided in 40 CFR 231.3(a)(2).

Technical studies were conducted by EPA's Environmental Services Division, Athens, Georgia, and the U.S. Fish and Wildlife Service in early October 1983. These data confirm that the proposed fill site is an important wetland, the loss of which would result in "unacceptable adverse effects."

EPA Region IV's proposed determination was published in the Federal Register on November 10, 1983. A public hearing was conducted in Mobile, Alabama, on December 15, 1983. The record was held open for public comment from November 10, 1983 through December 30, 1983. No information was presented to EPA during that comment period to alleviate my concerns.

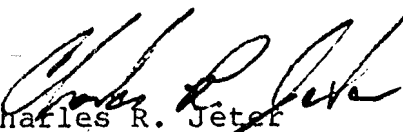
I am hereby submitting the recommendation of my designee, Howard D. Zeller, Assistant Regional Administrator for Policy and Management, that the 25 acre wetland site be restricted from fill with demolition material and sand for the purpose of a non-water dependent, private commercial facility as proposed in Section 404 permit Application No. AL80-00327-C. I request that you sustain this denial recommendation.

I was certainly impressed, as I am sure you will be, by the need for increased employment expressed by local residents at the public hearing and in their written comments as reflected in the record.

Therefore, in an effort to assuage the impact of this permit denial, I propose that Region IV initiate an effort and participate with the state and local communities in assisting Mr. Norden in identifying other alternative sites. I would suggest that a task force be organized to include a representative of the Governor's office, the Alabama State Docks (where Mr. Norden presently operates his business), and county/city representatives.

We have closely coordinated all of our efforts in this regard with Dr. Allan Hirsch, Director, Office of Federal Activities. He, in turn, has briefed Ms. Josephine Cooper and Mr. Jack Ravan.

Attached is Mr. Zeller's recommendation and Administrative Record.

  
Charles R. Jeter  
Regional Administrator

Attachment

cc: Ms. Josephine Cooper  
Jack Ravan  
William Sipple  
John Meagher  
Dr. Allan Hirsch  
Kathy Winer

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JAN 13 1984

Recommended Determination of EPA Region IV

Section 404(c) of the Clean Water Act Action

Subject: Corps of Engineers Permit Application File No.  
AL80-003270-C for M.A. Norden, Mobile, Alabama

SECTION I. SUMMARY

Under Section 404(c) of the Clean Water Act, the Administrator of the Environmental Protection Agency (EPA) is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site for discharge of dredged or fill materials, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site for the discharge of dredged or fill materials whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

The EPA regulations promulgated pursuant to this Section at 40 CFR Part 231, "Denial or Restriction of Disposal Site; Final Rule," authorize the Regional Administrator or his designee to recommend that the Administrator prohibit or withdraw specification or deny, restrict, or withdraw the use for specification of a disposal site for the discharge of dredged or fill materials whenever he determines that the discharge is having or will have an "unacceptable adverse effect."

After conducting a public hearing and considering all relevant information in the subject file, including extensive ecological data, public comments and the hearing record, I have determined that filling 25 acres of tidal marsh and swamp within the city limits of Mobile, Alabama, as proposed in the permit application by Mr. M.A. Norden, would result in an "unacceptable adverse effect" to wildlife areas and downstream fisheries.

Biological and hydrological studies of the site conducted by EPA's technical staff and U.S. Fish and Wildlife Service personnel show that the project site is a productive wetland, typical of the area, that contributes organic material to the fish and shellfish communities of the Mobile Bay estuary, provides valuable habitat for wildlife, and acts as a pollutant filtering mechanism which helps to reduce degradation of water quality in the adjacent open water system.

Pursuant to authority granted to me in 40 CFR Part 231.5, I recommend that you restrict the wetland area described herein from specification as a disposal site for discharge of 228,000 cubic yards of demolition materials and sand as proposed in the Corps of Engineers Permit Application File No. AL80-00327-C, for the purpose of constructing this private commercial facility. Prior to reaching this recommended decision, the opportunity was extended to the Corps and the applicant to show how our Agency's concerns might be resolved, but they were unable to demonstrate that no unacceptable adverse effect would result from the filling action.

## SECTION II. BACKGROUND INFORMATION

Under Section 404 of the Clean Water Act (33 U.S.C. 1251 et seq), any person who wishes to discharge dredged or fill material into the waters of the United States, including wetlands, must first obtain a dredge or fill permit from the Secretary of the Army, acting through the Chief of Engineers. In August of 1980, Mr. M.A. Norden purchased a tract of land which includes wetlands and applied to the Mobile District Corps of Engineers for a Section 404 permit to fill 65 acres. The request was later revised to reduce the fill area to 25 acres, all in wetlands containing waters of the United States.

The wetlands are characterized as tidally influenced, fresh-water marsh and shrub swamp and contain valuable wildlife habitat. They produce and rapidly export detrital materials to downstream fisheries. The project site is located in the Three Mile Creek floodplain, bordered on the east by Conception Street, bounded on the north by Three Mile Creek, to the west by One Mile Creek, and by other similar wetlands to the south. Much of the Three Mile Creek floodplain has been heavily developed, resulting in both flooding problems and degradation of water quality. The Hickory Street landfill is located beyond One Mile Creek to the west and according to the State of Alabama, has been used in the past as a chemical dump. No data are available regarding possible leachates from this area into the Creek. The

subject 25 acre tract is contiguous with, and part of, an estimated 500-600 acre segment of the Three Mile Creek floodplain, which is presently undeveloped.

Specifically, the proposed project calls for the deposition of 228,000 cubic yards of demolition materials and/or sand in order to fill 25 acres of wetlands to create developable uplands. On this filled site, Mr. Norden would construct a fiber recycling facility consisting of offices, warehousing, and storage yard space. He presently operates this type of business on leased property and anticipates losing that lease option. The proposed business requires rail and truck access for distribution to markets.

Mr. Norden employs primarily unskilled laborers in his recycling business. His employment role has reportedly fluctuated between 10 and 100 employees over the past several years, depending on the influence of various economic factors.

During the permit evaluation period, review agencies, including EPA, the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS), objected to issuance of a permit to fill wetlands on the originally proposed 65 acre parcel because of the project's non-water dependency, applicant's failure to adequately consider less damaging alternatives, the potential for loss of functioning wetlands, adverse effects anticipated on fish and wildlife, loss of water filtration benefits, and loss of stormwater storage capacity. EPA determined that the project did not comply with the 404(b)(1) Guidelines.



On April 21, 1982, Mr. Norden modified his application by reducing the proposed fill area to 25 acres of wetlands. On June 3, 1982, EPA responded to the Corps, indicating that the revised proposal still did not comply with the Section 404(b)(1) Guidelines and that no ecological justification was found to alter the previously stated EPA denial position. After performing their 404(b)(1) evaluation and public interest review, the Mobile District agreed with EPA's recommendations. In March 1983, the District determined that the unnecessary destruction of 25 acres of productive wetlands for a non-water dependent private use was unwarranted, and concluded that the permit should be denied. However, the Governor of Alabama wrote to the Corps of Engineers expressing an interest in the Corps giving favorable consideration to Mr. Norden's permit request. Since the District's decision to deny the permit was contrary to the Governor's request, the application was referred to the Corps' South Atlantic Division (SAD) for decision, in accordance with Corps regulations.

On August 3, 1983, Colonel James B. Hall, Acting Division Engineer of the SAD, wrote to EPA advising that he intended to direct the Mobile District Engineer to issue the permit for the discharge of 228,000 cubic yards of sand or demolition materials in the 25 acres of wetlands, as previously described.

Under the Section 404(q) Memorandum of Agreement between EPA and the Department of the Army, EPA wrote to Mr. William R.

Gianelli, Assistant Secretary of the Army (Civil Works) on August 30, 1983, describing in detail how this proposed project failed to comply with the 404(b)(1) Guidelines and requesting a review of the Division's decision. On September 22, 1983, Mr. Gianelli declined referral of the application, having determined that EPA's objections constituted a technical disagreement between the Division and EPA, not an issue of national importance. He stated that he was aware that EPA had the Section 404(c) procedures available to more appropriately address the technical disagreements between EPA and the Division. On September 30, 1983, EPA notified the Mobile District Engineer of EPA's intent to invoke Section 404(c) procedures to prohibit the specification of the site in question as a disposal site as provided in 40 CFR 231.3(a)(2). The permit had not been issued at the time of receipt of this information.

On October 28, 1983, the Regional Administrator held a meeting in his office with Mr. Norden, several members of his family, and other associates and representatives from the Corps' SAD and EPA staff, including myself. The purpose of that meeting was to give the applicant and the Corps opportunity to demonstrate that no unacceptable adverse effects would result from the proposed action or to modify the proposal in such a way as to avoid the unacceptable adverse effects. A mitigation proposal presented by the applicant provided that any government agency could remove fill that the Corps had previously placed on four acres of his property outside the 25 acre tract proposed for filling. He

also expressed a willingness to improve the remaining 40 acres of wetlands, provided EPA would tell him how to manage the area. EPA explained that, in our view, the wetlands were a productive, functioning system for which enhancement schemes were neither warranted nor readily available. EPA staff and I explained that "mitigation," as proposed by Mr. Norden, did not adequately address this agency's concern for the loss of valuable functioning wetlands.

That meeting ended without the applicant or the Corps presenting information to alleviate EPA concerns. Therefore, the the issue of unacceptable adverse effects anticipated from the direct loss of 25 acres of productive wetlands for a non-water dependent activity remained unresolved. I pointed out that EPA would have welcomed a more thorough consideration of less damaging alternatives.

On November 10, 1983, in accordance with 40 CFR 231, the Regional Administrator published in the Federal Register his proposed determination to prohibit, deny, or restrict the specification of the site for the disposal or discharge of dredged and/or fill materials. That notice provided for a public comment period for written responses from November 10, 1983, through December 30, 1983, and announced a public hearing. Such a hearing was held in Mobile, Alabama, on December 15, 1983.

Comments supporting EPA's proposed determination were received from Federal resource agencies, conservation groups, the County Extension Service, the Three Mile Creek Association (a local

group organized to insure proper land uses in the Three Mile Creek area), and private individuals. However, the overwhelming majority of written comments, as well as presentations at the public hearing, represented an organized and impassioned outcry for jobs, primarily by the economically depressed population located in residential areas near the proposed project site. Information received during that time, and the hearing record, are included in the official file.

SECTION III. ECOLOGICAL CHARACTERIZATION AND UNACCEPTABLE  
ADVERSE EFFECTS

During on site inspections in July and October of 1980, EPA observed that the project area was a productive wetland, typical of similar nearby systems, and concluded that adverse ecological impacts would result from filling 65 acres (approximately 55-60 acres of which were wetlands). In a letter dated January 22, 1981, EPA wrote to the Corps recommending permit denial based on: 1) inadequate consideration of less damaging alternatives; 2) the proposed project's non-water dependency; 3) anticipated adverse ecological impacts; and, 4) exacerbation of flooding problems. Following correspondence to EPA from the applicant indicating plans to limit the proposed fill area to 25 acres of wetlands, EPA reconsidered the project site and evaluated the anticipated impacts and again determined that the work would result in unacceptable adverse ecological effects. No additional data contrary

to EPA's documentation were presented. EPA wrote to the Mobile District on June 3, 1983, indicating that there was no ecological basis to alter our original denial recommendation.

Upon EPA's decision to invoke Section 404(c), the Region accepted the responsibility for the burden of proof that the discharge would result in an "unacceptable adverse effect." Technical staff from Region IV's Environmental Services Division, Athens Laboratory, conducted hydrographic and biological studies at the Norden tract in October 1983. A summary of that study follows, and a copy of the study report is attached. Concomitantly, the U.S. Fish and Wildlife conducted further investigations, including wildlife surveys and a habitat evaluation, based on the Service's Habitat Evaluation Procedures (HEP). Results from that work are summarized herein and are attached.

Field investigations show that the project site is characterized as a highly diverse and productive vegetative community of wetland species typical of fresh water marshes and shrub swamps in the Gulf Coastal region. Net primary production at two plots within the marsh was consistent with literature values for similar productive freshwater plant associations and is further elaborated on herein.

Water quality conditions in One Mile Creek and Three Mile Creek are degraded from the stormwater runoff from industrial and residential development and discharges of inadequately treated wastewater from the nearby Three Mile Creek municipal treatment

plant. EPA data demonstrate that the subject wetland acts as a filter and is absorbing and storing heavy metals and pesticides, and that waste nutrients in overflow water and runoff water from adjacent development are being converted in the wetland to desirable detrital materials. Further documentation and description of these processes can be found in the attached EPA report. Although these water quality conditions may be harsh for development of indigenous aquatic fauna, transport mechanisms are available for rapid and frequent transfer of vegetative material produced on the site to Mobile Bay for utilization by marine organisms within the Bay's food chain.

The productivity of an estuary, Mobile Bay in this case, can be attributed to many things, one of the most important of which is the contribution made by tidal wetlands. In their 1979 symposium on the natural resources of the Mobile Bay Estuary, a group of resource managers and ecologists considered the tidal wetlands associated with the Mobile Bay areas. Loyacano and Smith (1979) reported the results of that symposium wherein it was recognized that roles played by marsh ecosystems are varied, whether tidal or inland fresh marshes. The important role of wetlands as primary producers for the detritus-based food chain was recognized in that symposium. Further statements indicated that high levels of productivity, enrichment by microbes of detrital material, and tidal transport to estuaries and coastal waters combine to provide a rich and abundant food source.

Although the project area wetland is fringed by urban areas, its role in, and contribution to, the Mobile Bay estuarine complex remains viable. Rather than being viewed as an isolated wetland degraded by urban development, it should be regarded as an extension of the Mobile Bay system. Net primary productivity of the wetland vegetation is consistent with literature values reported for similar freshwater marshes in the Gulf Coastal Region as well as other areas. Mean standing crop values of 542 g/m<sup>2</sup> for a project site sample area, dominated by Sagittaria latifolia, and 345 g/m<sup>2</sup> for a less homogeneous project site sample area, dominated by Polygonum sp., can both be considered conservative since they omit contributions by the intermediate canopy litter fall onto the sites.

Translation of plant biomass (detritus) produced in the project site marsh to nutrient concentrations in the water column is reflected by organic nitrogen and total organic carbon concentrations in the marsh water column being orders of magnitude greater than that in One Mile and Three Mile Creek. Utilization and fragmentation of this material begins on site as evidenced by the macroinvertebrate community dominated by detritivores. Although utilization of this material may begin at this point, the most notable consideration concerning utilization of nutrients produced and exported from the project marsh is the rapidity by which the material can be transported to Mobile Bay proper.

Hydrological data collected by EPA showed that ground and water surface elevations were flooded by at least 45% of the high tides in the area. Dye tracer studies confirm that tidally driven

water inundating the project site reaches the Mobile River in 21 hours and Mobile Bay in 69 hours. Utilization of the detrital material in the Bay, in conjunction with the contribution from many other allochthonous (non-Mobile Bay) sources, is evident through the highly important status of Mobile Bay fishery resources.

Detrital material is eaten by small animals that include shrimp, crabs, oysters, clams, and juvenile and larval stages of several species of fish, including menhaden, spotted seatrout, sheepshead, and Atlantic croaker (Odum et al., 1972). It is also utilized by planktonic crustaceans (copepods, etc.) which are important food for juveniles of most fish species. The importance of the fishery in Mobile Bay, as well as the role of wetlands as a source of nutrients in estuarine food web dynamics, is well recognized and is substantiated by the multi-million dollar annual commercial and sports fish landings. It has been estimated that as much as 93 percent of the fish landings in the two Alabama coastal counties are of estuarine-dependent species. Estuarine dependency is varied from species to species. Some may require the estuary as a spawning area, some for nursery, and others for feeding purposes only. Still others may spend their entire life in these highly productive areas.

Although the project site represents 25 acres of several thousand acres of marshland associated with Mobile Bay, the consequences of the physical alteration by filling coastal wetlands not only deprive marine organisms of habitat, but also decrease the amount of detrital-based nutrients which serve as the foundation for the aquatic food web. Both EPA and FWS concluded



that commercial fisheries resources in Mobile Bay would be adversely affected as a result of the project due to the loss of detrital export.

FWS wildlife habitat surveys showed that the interspersion of trees, shrubs, and low-growing emergent vegetation and pockets of shallow water provide excellent habitat conditions for many species of resident and migratory wildlife. Bird populations on the project site are highly diversified as demonstrated by FWS's limited observation of 44 species in the immediate project vicinity. The listing includes numerous waterfowl and songbirds which utilize the area for feeding and/or reproduction. The FWS concluded that the area experiences high rates of use by hawks during spring and fall migration. Wading birds are well represented on the project site by great egrets, snowy egrets, cattle egrets, and green herons.

The site provides moderate to excellent habitat for rabbits, nutria, muskrat, and racoons. According to the FWS, moderate to high populations of reptiles and amphibians inhabit the project area. The American alligator has been observed in and on the banks of Three Mile Creek.

The FWS concluded after their field review of the wildlife resource at the site that the wetlands in question are viable and an integral part of the Three Mile Creek ecosystem as every layer of the food chain is represented by moderate to high levels of vertebrates.

The proposed fill activity will have: (1) direct adverse effects on the aquatic environment by causing the destruction of 25 acres of productive wetlands, including their indigenous plant and animal communities, their capacity to provide habitat for migratory wildlife, and reducing their pollution filtration functions; and, (2) indirect adverse effects on the downstream shellfish beds and fisheries by eliminating a source of detrital food for the biological communities on which they are dependent. This activity in itself would be destructive to the Mobile Bay estuary and would contribute to the cumulative deleterious effects of other activities which have already occurred.

#### SECTION IV. WATER DEPENDENCY & ALTERNATIVES

One of the basic functions of the Section 404(c) process is not only to prevent adverse environmental impacts but also to protect the integrity of the Section 404(b)(1) Guidelines and to insure their proper application. Basic to these Guidelines is the presumption against the unnecessary destruction of wetlands. For a fill activity to be permitted, the Guidelines require that the project be water dependent and that there not be practicable alternative sites available.

The COE stated that the proposed activity is "water associated" because the facility needs to be located so that rail transportation to docking facilities is available. They suggested that this particular business with related facilities is dependent on being constructed in this particular wetland resource in order

to have the desired transportation access advantages. As defined in the Guidelines, "water dependency" means that in order to fulfill the basic purpose, the activity would require a location in or near the water resource. It is my conclusion that a fiber recycling business is not dependent on a location in the water resource in order to fulfill the basic purpose of storage, sorting, and fiber preparation for recycling.

The intent of the regulations and guidelines is to protect valuable wetland and water resources from unnecessary dredging and filling operations when the purposes of those dredging and/or filling activities are not dependent on being located in the wetland resource to fulfill their basic purposes and for which, in most cases, other alternative sites exist to fulfill those purposes.

The alternative sites analysis presented by the applicant and in the SAD's environmental assessment was very limited. One of the specific alternatives evaluated included a cost comparison between development at the proposed site vs. development on the nearby Hickory Street landfill (filled wetlands which are owned by the applicant). This alternative was rejected by the applicant because of higher costs projected for obtaining rail/roadway access to the Hickory Street landfill, and higher costs for soils stabilization and foundation construction. Further, the State of Alabama had suggested that there may be conditions caused by previous waste disposal at the landfill site which could restrict development there. Another alternative which would have included

purchase of nearby uplands was rejected because the property was unavailable for purchase.

EPA has conducted only a very limited review of alternative locations which might be suitable for the development. Our conclusion from that review is, however, that alternative business locations are not a limiting factor in the economically stressed Mobile area. Areas available and zoned for industrial development are listed with the Mobile Chamber of Commerce. The recently completed Corps of Engineers' Theodore ship channel was built for the purpose of providing development sites. Properties currently held by Alabama State Docks and/or the City of Mobile may also be feasible alternative sites. It is my opinion that these alternatives have not been fully explored.

Clearly, less environmentally damaging alternative sites exist which could fulfill the expressed needs for rail and truck transportation service for Mr. Norden's business. For example, in nearby Pritchard, Alabama, one specific listing the Mobile Chamber of Commerce advertises is an approximately 25-acre site zoned for industrial development and located about one mile from the currently proposed wetland site. This property consists of level uplands, reportedly at 30' MSL, with existing highway and railway access. The property has direct and immediate access to the same shipping docks which Mr. Norden proposes to use and is also in the immediate population center where extreme problems with unemployment exist. Based on information available to us regarding the availability, the competitive price, and the site characteristics, it is probable that Mr. Norden could realize a

substantial cost savings with development of such an alternate site. A more thorough analysis of alternative sites would likely disclose more suitable locations.

#### SECTION V. CONCLUSIONS AND RECOMMENDATIONS

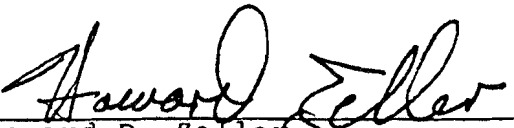
Ecological data collected by EPA and the FWS confirm that the 25-acre site, subject of this action, is a productive wetland which provides valuable wildlife habitat and produces and rapidly exports detrital materials to downstream fisheries and shellfish communities of the Mobile Bay. It also filters pollutants from degraded waters of One Mile and Three Mile Creeks, thereby helping to reduce degradation of water quality in the adjacent open water system.

Filling the 25-acre wetland tract to create developable upland would eliminate these important functions presently performed by the wetland. These conclusions are supported by EPA and FWS studies and further confirmed by the Mobile District's documentation for their initial decision to deny the permit, statements in the record by the National Marine Fisheries Service, the Alabama Cooperative Extension Service, the Audubon Society, the Mobile County Wildlife and Conservation Association, and private individuals.

Based on these ecological data and supplemental information, I have concluded that filling the 25-acre wetland tract as proposed by Mr. Norden would result in "unacceptable adverse effects." Therefore, in accordance with authority granted me (as the Regional Administrator's designee) under 40 CFR 231.5, I recommend denial of the specification of the proposed project site, heretofore

described in detail, for the discharge of 228,000 cubic yards of demolition materials and sand for the purpose of constructing a non-water dependent commercial facility, as proposed by the applicant, M.A. Norden. Alternative locations considered by the applicant and SAD for the proposed facility were apparently very limited and they failed to thoroughly consider upland sites not presently owned by Mr. Norden. In EPA's cursory examination, there appear to be economically feasible sites that are less damaging to aquatic resources. Such sites are available which would offer any necessary rail and truck access within the immediate community area of the presently proposed location.

Written and oral comments received during the public comment period pointed to the serious economic struggles and lack of job opportunities in the Mobile area. EPA, as a regulatory agency, should be considerate of economic problems resulting from regulatory action. In this case, however, loss of jobs cannot be demonstrated simply on the basis of denial of a non-water dependent site when other potential sites exist. I feel strongly that the Mobile area needs would be well-served by the continuation of Mr. Norden's business. By the same measure, I am convinced that more suitable alternatives can be identified for this project.

  
Howard D. Zeller  
Hearing Officer and Regional  
Administrator's Designee

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