



**Public Employees for Environmental Responsibility**

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John R. ("Randy") Pomponio, Director  
Environmental Assessment and Innovation Division  
US EPA Region 3  
1650 Arch St.  
Philadelphia, PA 19103

August 20, 2014

**RE: Clean Water Act Complaint: Petition for Review of "Camp Property" Wetlands  
Delineation by Army Corps of Engineers, Norfolk District Regulatory Office**

Dear Mr. Pomponio,

Public Employees for Environmental Responsibility (PEER) is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. We write to you regarding what appears to be a patently erroneous wetland delineation by the Norfolk District Army Corps of Engineers (Corps) Regulatory Office in Norfolk, Virginia. This error is so severe as to require review by EPA. As you are aware, EPA and the Corps share authority to make jurisdictional determinations; however, we do not believe that the Corps properly followed the Corps 1987 Delineation Manual, Coastal Plain Regional Supplement (especially Chapter 5), or EPA guidance and procedures in this case.

Although experts sometimes disagree over small differences in wetland delineations, PEER believes the jurisdictional determination made by the Corps on the Camp property misidentifies *hundreds of acres* of wetlands as uplands. If these wetlands were correctly identified, a permit to fill them would likely trigger an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). We urge you to use your Clean Water Act oversight of the Section 404 permitting program to correct this error by the Norfolk District Corps.



**~612 wetland acres improperly delineated as only ~250-350 acres of wetlands.**

In or about early 2009, Local Wetland Consultant and former Corps' Regulatory employee Doug Davis of Davis Environmental Consultants performed a rough wetland determination on a roughly 650-acre property on the north side of Route 58, just west of Suffolk Virginia, in part owned by Scott Camp ("the Camp Property"). The Camp Property is just west of, and spreads out behind, 3428 Holland Road, Suffolk, Virginia. The owners plan to install an intermodal trucking facility on the property. This use prevents the owners from relying upon any of the Section 404(f)(1) exemptions for silviculture.

Mr. Davis, a professional Wetland Consultant involved in federal wetland delineations with over 30 years of experience, informed the owners that all but approximately 40 scattered acres were jurisdictional wetlands, requiring a permit from the Army Corps and the Virginia Department of Environmental Quality. This determination was based on the traditional delineation factors, including the presence of hydrophytic vegetation, and – importantly – Mr. Davis' knowledge of the Rains Soil type, the primary soil type on the property. Rains Soil is a heavy clay layer down to 65 inches in depth, and characteristically exhibits standing water conditions for long durations in the early growing season.

The landowner dismissed Mr. Davis and found a consultant, Mr. John Lowenthal, who called the vast majority of the property uplands, requiring no Clean Water Act permit for fill and development. Mr. Lowenthal presented to the Corps field data sheets that lacked any locatable associated field data points.

A common tactic by wetland consultants to minimize wetlands for their clients is to wait until the normal seasonal summer draw down of ground water. Around early August, Mr. Lowenthal requested an on-site meeting with a relatively new Corps Regulatory staff member who had limited experience in non-tidal delineations generally, and especially with large non-tidal wetland determinations of this size and magnitude with need for analysis of ditch drainage effects. Several concerned senior and experienced staff members from Regulatory offered their assistance. A team from the Corps went to the site several times during the years 2010-2013 to evaluate the wetland status of the site from the ground and air, and developed extensive evidence of "long duration" wetland hydrology and confirmation of the hydric soil types at the site. However, the Corps then committed to calling several hundred acres near Route 58 (Holland

Road) “uplands,” not requiring a CWA permit for that part of the Trucking Facility, and allowing for ample free access to the rail line to the north.

At some point (possibly during 2011), EPA was alerted to this problem and inquired about potential discrepancies in the pending delineation. However, Corps Management assured EPA that the Corps was still analyzing the situation, had made no decision, and would come to the correct decision. However, on March 27, 2013, and without consulting with EPA, Corps Management approved a partial delineation that was patently erroneous. On July 25, 2013, the Corps approved a final delineation that was also clearly erroneous. The Corps letter and accepted delineation is included as **Exhibit A**. As shown in this exhibit, Norfolk District proffered upwards of 300 acres of this Camp property as non-wetlands. Although the delineation was then appealed to the Corps’ North Atlantic Division and upheld, PEER believes that the field conditions were not thoroughly investigated, and that the Corps improperly relied on dry summer conditions when approving the delineation. PEER’s estimate of what should have been the proper wetland delineation is shown as **Exhibit B**.

Based on aerial and ground photographs attached as **Exhibits C and D**, PEER believes that that it is evident that the property is covered with standing water for many consecutive weeks during the growing season, including many, many acres within areas that the Norfolk District called “uplands” in its final jurisdictional determination letter. Based on the Corps’ Delineation Manual and Regional Supplement, areas ponded for more than 14 days by default have hydric soils, and need not meet the hydric soil indicators designated by the NRCS. Such areas must be considered hydric wetland soils, no matter what soil samples taken during dry periods appear to indicate. The Camp site exhibits hydrology within 12 inches of the surface for more than 14 days in nearly any year’s precipitation variants. Precipitation records are readily available on the Corps’ web site’s public notice section, searchable through the following web address: <http://www.nao.usace.army.mil/Media/PublicNotices/tabid/3060/Article/489080/2014-wetlands-hydrology-and-growing-season-determinations.aspx>. Data includes precipitation figures for the preceding months for all years relevant to Camp Property determination. Daily precipitation figures are available from NOAA’s website.

From review of the Natural Resource Conservation Service / Virginia Tech City of Suffolk Soil Survey, nearly the entire site is mapped as Rains Soils, known for ponding and a perched water table. **Exhibit E** shows the NRCS Soil Survey Mapping Units for the site, while

**Exhibit F** shows the depth to water table. The Camp site's soils are predominately Rains type soils, meaning that they have a 5-7 inch layer of top soil, underlain by 65 inches of very tight, impermeable, Sandy Clay Loam. This means that the wetland hydrology on the site is “perched” and does not operate like most hydric soils, where a seasonal low water table rises after “leaf-off” to remain near or above the surface. Since this soil differs from other hydric soils in its lack of downward transport of reduced iron, it can give false soil colors once re-oxidized in summer months. The soil analysis by consultant Barrett Kayes, referenced in the Corps’ delineation letter, attached as **Exhibit A**, does not take this into consideration, and more likely takes advantage of it to under-state the limits of wetlands at the site.

**Request for EPA action**

PEER contends that it is impossible for the majority of the Camp property to be considered non-wetlands, as the attached exhibits demonstrate. We are particularly concerned as it is rumored that some consultants have already requested that the Corps apply the same “Camp Standards” to other wetland delineations. Allowing this delineation to stand and provide a precedent for other delineations will have disastrous consequences that eviscerate the intent of the Clean Water Act and endanger Virginia’s few remaining wetlands.

Realizing that EPA may have been unaware of important information regarding the Camp Property, we urge the EPA to step in and exercise its authority to review disputed wetlands delineations made by the Corps. Specifically, we request that EPA investigate the wetland delineation determination on this property and properly identify wetlands on site in order to correct the Corps’ errors and prevent the future filling of what are clearly jurisdictional wetlands.

Sincerely,



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