



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET, SW  
ATLANTA, GEORGIA 30303-3104

**December 17, 2021**

Benjamin M. Melnick, Director  
Division of Water Resource Management  
Florida Department of Environmental Protection  
2600 Blair Stone Road  
Mail Station 3500  
Tallahassee, Florida 32399

SUBJECT: Troyer Brothers Limestone Mine, ST404\_292013-007

Dear Mr. Melnick:

This letter is being sent in response to the Florida Department of Environmental Protection's (FDEP) above-referenced public notice for a Clean Water Act (CWA) Section 404 permit application dated November 5, 2021, in which the applicant seeks authorization to discharge dredged or filled material to construct and operate a limestone, sand, and fill dirt mine and processing facility. The proposed project is located in Lee County, Florida.

FDEP notified the EPA during recent conversations that FDEP is currently implementing its CWA Section 404 program using the 2020 Navigable Waters Protection Rule (NWPR) to interpret the definition of "waters of the United States." As communicated to FDEP during these conversations and in a letter issued to your office dated December 9, 2021, the CWA and its implementing regulations require Florida to implement its program consistent with the current definition of "waters of the United States," which the EPA and the U.S. Army Corps of Engineers interpret to be the pre-2015 regulatory regime following vacatur of the NWPR. As a result, as FDEP proceeds with the issuance of new CWA Section 404 permits, it must ensure that any discharges of pollutants into waters protected under the pre-2015 regulatory regime, including discharges into waters outside the scope of the vacated NWPR, which are not otherwise exempted from permitting requirements under that regime (e.g., under section 404(f)), are authorized by a CWA Section 404 permit. Nothing in Florida's statute or regulations codifies the NWPR and the EPA therefore expects Florida to implement the current federal definition of "waters of the United States."

The information provided for the above referenced project was insufficient to determine the extent to which Florida considered discharges into all waters of the United States, as interpreted consistent with the pre-2015 regulatory regime. Therefore, the information provided did not demonstrate consistency with the CWA or the regulations at 40 C.F.R. Part 233.

Accordingly, the EPA objects to FDEP issuing a CWA Section 404 permit for the proposed project. In order to address the federal objection, please demonstrate that all waters of the United States, consistent with the pre-2015 regulatory regime, were included and considered for the above referenced project.

Pursuant to CWA Section 404(j) and 40 C.F.R. 233.50, the EPA previously notified FDEP that it intended to comment upon, object to, or make recommendations within 90 days of receipt of the public notice of the above referenced permit application. The EPA is notifying FDEP at this time of its objection based on the insufficiency of information available to determine whether the permit application addresses discharges into all waters of the United States. The EPA reserves the opportunity to make additional comments, objections, or recommendations before the end of the 90-day period from receipt of this public notice on November 5, 2021. Accordingly, the 90 days provided in the federal regulations for FDEP to resolve objections, comments, or recommendations will not commence until the EPA's 90-day review period has ended (i.e., on February 3, 2022). *See* 40 C.F.R. § 233.50(f)-(i). FDEP may request a public hearing regarding EPA's objection. If the state neither satisfactorily resolves this objection and any other objections within 90 days of the close of the EPA's review period or within 30 days after the completion of a public hearing (if one is held), nor denies the permit application, processing of the permit application shall be transferred to the U.S. Army Corps of Engineers.

Thank you for the opportunity to comment on this public notice. If you have any questions regarding this letter, please contact me or Ms. Rosemary Calli of my staff at [calli.rosemary@epa.gov](mailto:calli.rosemary@epa.gov), or 404-562-9846.

Sincerely,

Jeaneanne M. Gettle, Director  
Water Division