Center for Biological Diversity v. Army Corps of Engineers, No. 18-10541 2019 WL 5690619 at *1 (11th Cir. 2019).

Eleventh Circuit Holds that Army Corps of Engineers Only Needs to Analyze Environmental Impacts Connected with Issued Permits.

Mosaic sought permits to discharge dredged and fill materials into waterways for four of its mining projects. The Army Corps of Engineers ("Corps") is tasked with evaluating requests for such permits under the Clean Water Act. The National Environmental Policy Act ("NEPA") requires the Corps to take a "hard look" at the potential environmental impacts of issuing the permits. The Corps determined that Mosaic's four mining projects were similar and proximate enough to evaluate their environmental impact together in one area-wide environmental-impact statement. The Corps determined that the mines' environmental impacts fell outside of NEPA's scope, and ultimately issued the permits. The Center for Biological Diversity ("CBD") brought suit against the Corps challenging the issuance of the permits. The trial court ruled against the CBD on a motion for summary judgment and the appellate court affirmed the trial court's ruling.

CBD argued that the Corps failed to take into account the environmental impact of Mosaic's increased fertilizer production. CBD reasoned that the Corps' issuance of the discharge permits would increase Mosaic's phosphate mining output, which in turn would increase Mosaic's ability to produce fertilizer. The district and appellate courts determined that the Corps was correct in not evaluating the environmental impact of fertilizer production because the Corps was only required to evaluate the environmental impacts connected to the issuance of the permits. The appellate court reasoned that Mosaic's mining operations and fertilizer production operations were related but separate. Mosaic's fertilizer production was already regulated by other federal and state agencies and the Corps' was not required to analyze the environmental impacts of activities that it did not have statutory authority to regulate. The appellate court determined that interpreting NEPA as a requirement of the Corps to take into account any and all public interests that *might* result from its issuance of a permit would make the Corps the "de facto environmental-policy czar."

The appellate court also dismissed CBD's argument that NEPA required the Corps to publish a separate environmental impact statement for one of the mining sites because of (1) changes of ownership of the mine, (2) changes to the timing and duration of the mine, (3) revisions to the project design and permit application, and (4) changes to the mitigation plan. The appellate court found that (1) the change in ownership did not change the Corps' environmental analysis for the permit, (2) the projected increase of one year for the duration of the mine was too slight to affect the Corps' environmental analysis, (3) the Corps was not required to conduct a new environmental analysis of the revisions to the application because the revisions resulted in less harmful environmental impacts, and (4) the Corps' area-wide analysis contemplated mitigation plan changes at each of the four mines.

Lastly, the appellate court dismissed CBD's argument that the Corps' decision to conduct an area-wide environmental-impact statement was an "agency action" under the Endangered Species Act that required them to seek a separate biological opinion from the U.S. Fish and Wildlife Service. The appellate court held that the decision to conduct an area-wide analysis did not affect the substance of the Corps' decision to issue the permit, and therefore was not an agency action.