



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

no federal express address available

February 16, 2006

Henry & Patricia Mitchell
P.O. Box 429
Chatham, VA 24531

Re: Columbia Forest Products Draft Permit, Registration Number 30120

Dear Mr. and Mrs. Mitchell:

Thank you for your letter of January 27, 2006 requesting consulting party status under Section 106 of the National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.* (NHPA).

In August 2004, the Advisory Council on Historic Preservation amended its regulations promulgated pursuant to the NHPA, found at 36 C.F.R. §§ 800 *et seq.* to reflect a decision of the United States Court of Appeals for the District of Columbia Circuit in *National Mining Association v. Fowler*, 324 F.3d 752 (D.C. Cir. 2003) (copy enclosed). In that case, the Court ruled that a portion of the definition of the term "undertaking" found at 36 C.F.R. § 800.16(y) was invalid. That decision and the subsequent amendment to the Federal regulations directly impact the scope of government actions which are subject to NHPA Section 106 review. The current definition of "undertaking" is limited to: "a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval." 36 C.F.R. § 800.16(y).

Prior to the decision in *Fowler*, an individual permit application (such as the one submitted by Columbia Forest Products) would have in fact triggered Section 106 review due to its regulation by the Virginia Department of Environmental Quality (VADEQ) pursuant to a federal delegation of authority under of the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* Under the revised Federal regulations, however, Columbia Forest Products' permit application does not trigger Section 106 review because it is not a permit subject to EPA approval, nor is the portion of the program under which this permit is issued financed by EPA.

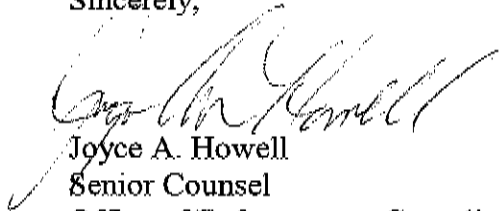


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It is EPA's understanding that the public comment period for this permit remains open until March 1, 2006, and that public comments on the proposed permit can be submitted to: Allan Armistead, South Central Regional Office, 7705 Timberlake Road, Lynchburg, Va. 24502. Moreover, a public hearing on this permit will be held on March 8, 2006.

Thank you for your interest in this matter.

Sincerely,



Joyce A. Howell
Senior Counsel
Office of Enforcement, Compliance
and Environmental Justice

cc: Debra E. Moody