

II. The lack of information in the application prevents meaningful comment by the public.

The Corps may not issue a Section 404 permit before providing public notice and an opportunity to meaningfully comment on the proposed project.²³ “[T]he opportunity to comment ... necessarily require[s] that the Army present for public scrutiny the rationale and pivotal data underlying its proposed action *before* the close of the comment and hearing period.”²⁴ After all, “without pivotal data and information, public comment cannot be meaningful.”²⁵

For example, in *Ohio Valley Environmental Coalition v. U.S. Army Corps of Engineers*, the Corps issued a Section 404 permit to a coal mining company to operate a surface mine in West Virginia. The court vacated the permit, finding that the Corps had not provided adequate notice or opportunity to comment. The court reasoned, “in light of the central role compensatory mitigation plays in determining whether a Section 404 permit for a [surface] mine will cause or contribute to significant environmental degradation,” “the lack of information on mitigation in the notices deprived plaintiffs of an existing procedural right – the right to comment intelligently.”²⁶

Here, like in *Ohio Valley*, the application lacks critical information. For example, the company still has not submitted basic documents like a water management plan. Nor has it completed critical tasks like developing adequate groundwater flow models. This leaves fundamental questions unanswered. For instance, would mining fifty to seventy feet deep, as Twin Pines intends to do, eliminate subsurface strata that prevent water in the Okefenokee Swamp from flowing eastward, thereby draining the swamp or at least lowering the water table enough to cause ecological disruptions?²⁷ Would mining in the northern phases of the project alter regional groundwater flows that currently move directly into the Okefenokee Swamp? Without complete information, the public cannot meaningfully comment on the proposed project, and the Corps cannot competently evaluate the application.

²³ 33 U.S.C. § 1344(a); 33 C.F.R. § 325.3(a). The application must be complete at the time the notice is issued, which requires “sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment.”

²⁴ *Nat’l Wildlife Fed’n v. Marsh*, 568 F. Supp. 985, 994 (D.D.C. 1983) (emphasis in original).

²⁵ *Friends of the Earth v. Hall*, 693 F. Supp. 904, 948 (W.D. Wash. 1988) (granting § 404 permit without releasing a mitigation monitoring plan for public comment violated notice requirements under Clean Water Act); *see also Ohio Valley Env’tl. Coal. v. U.S. Army Corps of Engineers*, 674 F. Supp. 2d 783, 805 (S.D.W. Va. 2009) (granting § 404 permit without releasing substantive information on mitigation violated notice requirements under Clean Water Act); *Northwest Environmental Defense Center v. Wood*, 947 F.Supp. 1371 (D.Or.1996); *Nat’l Wildlife Fed’n v. Marsh*, 568 F. Supp. 985, 994 (D.D.C. 1983) (Clean Water Act notice requirements require that “the Army present for public scrutiny the rationale and pivotal data underlying its proposed action *before* the close of the comment and hearing period.”).

²⁶ *Ohio Valley*, 674 F. Supp. 2d at 799, 804.

²⁷ *See* Richard Rheinhardt, Review of USACE Clean Water Act Permit Application by Twin Pines Minerals at 5–7 (2019) (“Rheinhardt Report”) (attached as Ex. F), Hutson Report at 5.