

RECOMMENDATION OF THE REGIONAL ADMINISTRATOR

REGION II

CONCERNING WETLANDS OWNED BY THE RUSSO DEVELOPMENT CORPORATION

IN CARLSTADT, NEW JERSEY

PURSUANT TO SECTION 404(c) OF THE CLEAN WATER ACT

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INTRODUCTION

This recommended decision concerns a 57.5 acre wetland in Carlstadt, New Jersey where the Russo Development Corporation (Russo) proposes to maintain 52.5 acres of unauthorized fill (of which 44 acres have been built upon) and fill an additional five acres of wetland to complete a warehouse complex. The wetland site is located in the Hackensack Meadowlands in Carlstadt at the intersection of Commerce Road and Central Boulevard (Block 131.1, Lots 59, 64.01 - 64.06, 66.01/.02). It lies adjacent to industrial development to the north and west and to a continuing expanse of wetlands extending to the Hackensack River to the south and east. The Russo Development Corporation would enhance a nearby existing wetland northeast of the project site and secure the permanent preservation of 23 acres of wetland in Troy Meadows of the Passaic River basin (to the southwest of the Hackensack River basin).

Section 404(c) of the Clean Water Act (CWA, 33 U.S.C. 1251 et seq.), authorizes the Administrator of the Environmental Protection Agency (EPA) to prohibit or restrict the use of any defined area as a disposal or discharge site whenever he or she determines, after notice and opportunity for public hearing, that the discharge of dredged or fill material into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such a determination, the Administrator must consult with the Chief of the Army Corps of Engineers, the property owner, and the applicant in cases where there has been application for a Section 404 permit.

EPA's regulations implementing Section 404(c), 40 CFR Part 231, establish procedures to be followed in exercising the Administrator's authority to prohibit or restrict the use of an area as a disposal site. The three major steps in the process are: 1) the Regional Administrator's proposed decision to prohibit or restrict the use of a site, 2) the Regional Administrator's recommendation to the Administrator to prohibit or restrict use of the site, and 3) the Administrator's final decision to affirm, modify, or rescind the regional recommendation. The Administrator has delegated the authority to make a final decision under Section 404(c) to the Assistant Administrator for Water.

I have carefully considered the record developed by EPA and the Corps of Engineers (COE) in this case, including the public comments submitted in response to the notice announcing the proposed determination and at the public hearing, and the comments of other federal and state agencies. As described more fully below, I have determined that the unauthorized discharge of fill material and the proposed discharge of fill material into the Russo owned wetlands has had and will continue to have an unacceptable adverse effect upon wildlife. Therefore, I

recommend that the designation of the Russo owned wetlands as a discharge site for the purpose of building a warehouse complex be prohibited.

In the following sections, I first discuss the history of the Russo Development Corporation's proposal and the events leading to EPA's initiation of the Section 404(c) process. Next, I describe the values of the Russo owned wetlands concluding that the wetlands provide/provided high quality habitat to a variety of wildlife. Following a description of the wetland values, I explain the basis for my conclusion that use of the wetlands as a discharge site has caused and would cause significant degradation under the Section 404(b)(1) guidelines.

To determine whether the adverse impacts have been and would be unacceptable, I examine whether the project complied with those relevant portions of the Section 404(b)(1) Guidelines. I have determined that the project does not comply with the guidelines since the unauthorized discharge of fill and the proposed discharge of fill has resulted and will continue to result in significant environmental degradation because of site specific and cumulative adverse impacts. In addition, the mitigation as offered would not prevent significant degradation from occurrence. I explain why the loss of 57.5 acres of wetland coupled with the violation of the Section 404(b)(1) guidelines are unacceptable and that the designation of the site as a discharge site should be prohibited.

The case history of the Russo Development Corporation application is complex. But the issues of environmental degradation and the failure to minimize adverse impacts addressed in this determination are fundamental to the regulatory program and the Clean Water Act. This recommended determination seeks to prohibit the designation of the Russo owned wetlands as a discharge site, and would thereby prohibit any further discharge of fill on site, based on the habitat value of the wetlands to wildlife. Fill is in place on site and the action reviews an after-the-fact permit application. This recommendation proposes that Russo be denied legal authorization for that fill.

BACKGROUND

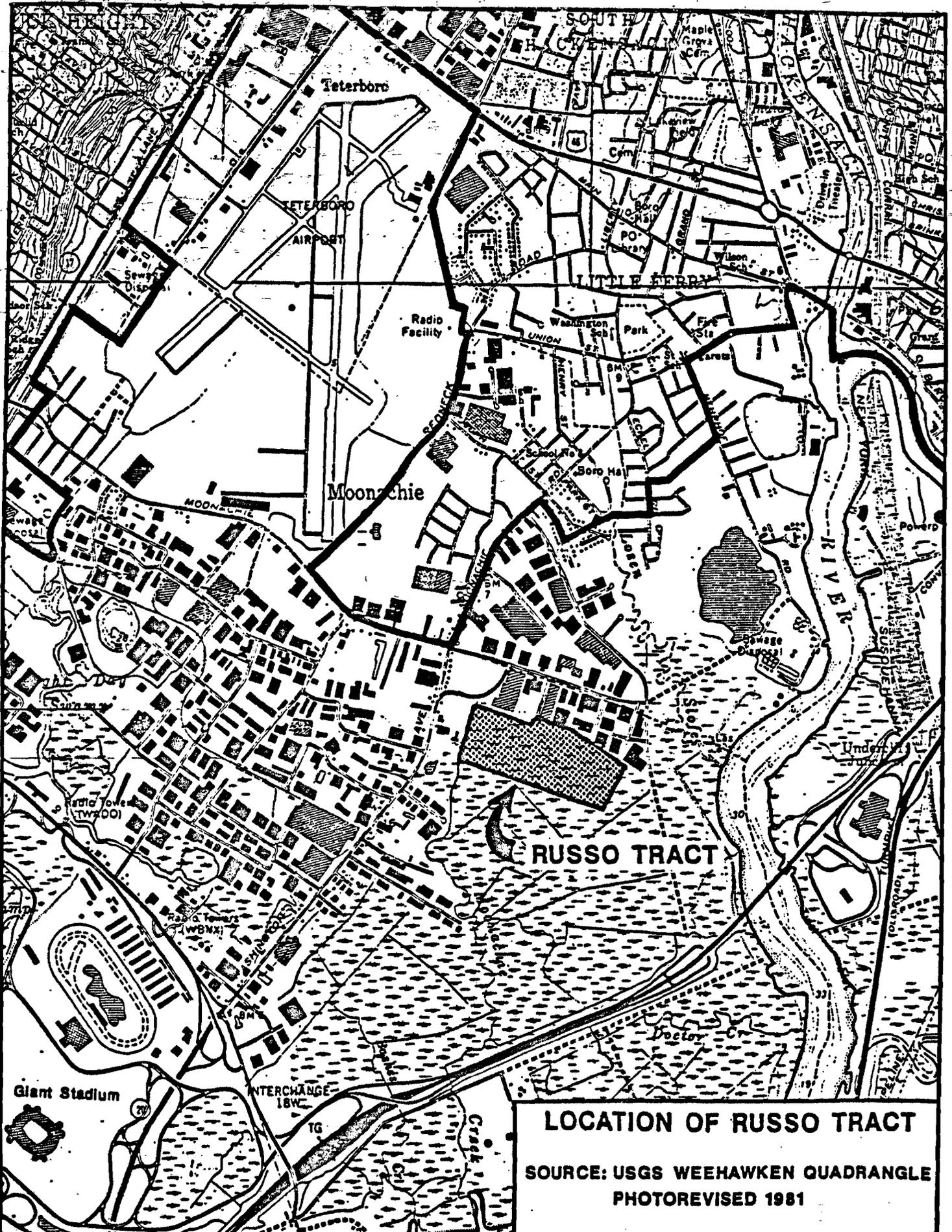
Project History

The Russo Development Corporation placed 44 acres of fill in 1981 for the purpose of constructing a warehouse complex in Carlstadt in the Hackensack Meadowlands in Bergen County, New Jersey. Figure one identifies the project vicinity. Russo constructed six warehouses and began a seventh on the 44 acre fill. Six of the warehouses are currently tenanted. They subsequently filled 8.5 additional acres in order to build additional warehouses. Five acres of the parcel remain wetland. Russo excavated two to three acres of the remaining five acres to remove unsuitable soils and fill with suitable construction material. The COE issued a cease and desist order prior to his placement of 8.5 acres of fill. This excavated area subsequently ponded and developed into open water with aquatic and emergent vegetation.

EPA first learned of Russo's fill activities in an April 22, 1985 letter from the Corps of Engineers (COE) which announced their investigation of unauthorized fill activity on the 8.5 acres. EPA submitted a verbal response recommending either removal of fill or mitigation. The COE processed the enforcement action as an after-the-fact permit and issued a public notice on August 28, 1985 proposing to maintain 55 acres of fill (later corrected to 52.5 acres) and to authorize the placement of additional fill in the remaining five acres of wetland. Russo has stated in his affidavit, submitted in the litigation discussed below, that he submitted the after-the-fact application under duress because the COE advised him that they would not consider an application for 13.5 acres of fill (8.5 + 5.0) without inclusion of the 44 acres in the permit application.

EPA responded on September 30, 1985 to the August 28, 1985 public notice. EPA concluded that had the project proposal been submitted prior to filling, the Agency most likely would have recommended denial. Since the warehouses were in place and the five remaining wetland acres were severely disturbed, EPA would not request denial, removal and restoration of the site if 2-for-1 complete and appropriate mitigation were provided compensating for the loss of both the five acres and 55 acres (actually 52.5 acres). Russo had proposed creating wetlands in three upland parcels, to be purchased.

In response to the public notice, the Transcontinental Pipeline Company objected to the use of their property, in two of the three proposed parcels, for mitigation efforts. EPA considered the mitigation proposed by Russo to be inadequate and inappropriate, and recommended that enhancement of the tract of wetland adjacent to the site would be the most appropriate mitigation for the loss of wetlands.



Russo submitted a revised mitigation plan to the COE on November 27, 1985 for the 8.5 acre fill and the proposed additional 5 acre fill proposing to: 1) remove fill material on a 16 acre parcel within in the Hackensack Meadowlands in Lyndhurst, south of the Carlstadt wetlands, 2) reintroduce tidal inundation, and 3) plant Spartina alterniflora. In a January 24, 1986 letter, EPA responded that although the type of mitigation was acceptable, the acreage and compensation of functional values proposed was unacceptable. The proposed mitigation did not address impacts to the entire 57.5 acres of wetlands. Russo submitted further information to the COE on February 17 and 26, 1986 assessing the value of the 16 acre Lyndhurst site and a 23 acre wetland tract owned by Russo in Parsippany, New Jersey for which he would secure permanent preservation. In an April 8, 1986 letter, EPA concluded that Russo's assessment of existing habitat values of the Lyndhurst site and the Carlstadt site were unrealistically low, and the values of the proposed improvement were optimistically high; we requested detailed technical support of those assessments. EPA maintained the position of not requesting denial, removal and restoration of the fill, provided complete and appropriate mitigation be done on a 2-for-1 basis for function and value.

In a June 11, 1986 letter to the COE, Russo noted that he had been unable to commit to the 16 acre site in Lyndhurst in the absence of a permit decision. He would, instead, enhance an unspecified acreage of wetlands located 1.5 miles northeast of the Carlstadt site and secure the permanent preservation of the 23 acres of wetlands he owned in Parsippany. EPA attended a July 2, 1986 interagency meeting on the project. EPA concluded that the applicant was disregarding the need for mitigation of the 44 acre site. EPA stated that if an adequate Section 404(b)(1) analysis and investigation of mitigation alternatives within the Hackensack Meadowlands District proved 2:1 compensation to not be practicable, EPA would accept 1:1 value-for-value compensation. EPA advised that, if the Corps intended to issue the permit with the unsatisfactory proposed mitigation plan (providing 0.5:1 value-for-value compensation), the District Engineer would be contacted under the November 1985 404(q) Memorandum of Agreement (MOA).

On September 30, 1986 the COE submitted a Preliminary Position Document (PPD) stating a preliminary decision to issue the permit with the mitigation proposal to which EPA had objected. I responded in an October 8, 1986 letter reiterating the Agency's concerns on the project. I emphasized objections to the mitigation proposal, particularly since the latest site location was not specified and EPA therefore was unable to evaluate the feasibility of the mitigation's success. I concluded that the mitigation plan was inconsistent with EPA initiatives in the Hackensack Meadowlands and was not consistent with the Section 404(b)(1) guidelines. I recommended that the permit decision deny any further placement of fill, that fill placed on the 8.5 acre section be removed and the wetlands be restored to conditions prior to fill, and that compensation be provided on a

2:1 basis for the loss of 44 acres of wetland.

On October 15, 1986 the District Engineer hosted an interagency/applicant meeting to discuss the project. EPA maintained the position stated in our October 8, 1986 letter. The COE requested that the federal agencies provide a list of permit conditions which would satisfy the agencies in the event that the COE issued a permit. I responded on October 22, 1986 with recommended permit conditions essentially restating our position on denial of further fill, removal and restoration on the 8.5 acres and 2:1 compensation for the 44 acres of fill. My response commented on the September 30, 1986 Preliminary Position Document with concerns about the alternatives analysis and compliance with the Section 404(b)(1) guidelines, and requested notification in accordance with the 404(q) MOA.

On December 22, 1986 the COE submitted a Notice of Intent to Issue a permit to the Russo Development Corporation accompanied by a Statement of Findings, environmental assessment, and evaluation of compliance with the Section 404(b)(1) guidelines. The permit decision would authorize 0.5:1 value-for-value compensation for the 57.5 acre loss of wetlands. EPA responded on December 24, 1986 requesting a meeting with the Division Engineer and suspension of further action on the project.

On January 6, 1987 I met with the Division Engineer and expressed my concerns regarding the inconsistency of 0.5:1 mitigation with past COE practices, the net loss of wetlands resulting from 0.5:1 mitigation and the implications to cumulative impacts. On January 16, 1987 the Division Engineer responded that he had directed the District Engineer to re-evaluate the decision with respect to specific parts of the record. Subsequently, EPA and the COE attempted to negotiate a resolution on the basis of 1:1 value-for-value compensation. The Fish and Wildlife Service (FWS), which had also elevated the COE December 22, 1986 Notice of Intent to Issue, strongly pursued the denial of fill on the remaining five acres of wetland. Unable to resolve both agencies' concerns, the COE subsequently issued its final Notice of Intent to Issue on March 23, 1987, proposing to permit maintenance of 52.5 acres of fill and placement of five additional acres of fill, and to require Russo to compensate on a 0.5:1 value-for-value basis for the loss of 57.5 acres of wetland.

In accordance with the 404(q) MOA, EPA's Assistant Administrator for Water wrote to the Assistant Secretary of the Army (Civil Works) on April 20, 1987 requesting that the permit decision be reviewed at a level above the District Engineer. The Assistant Administrator concluded that permit issuance would not comply with the Section 404(b)(1) guidelines and would authorize significant adverse environmental impacts, and the acceptance of 0.5:1 mitigation raised environmental issues of national importance that required policy level review. The Acting Assistant Secretary of the Army responded on May 8, 1987 concluding that the COE had complied with the Section 404(b)(1)

guidelines, that the wetland was of marginal value, and that the implications regarding application of the Section 404(b)(1) guidelines were currently being discussed at the headquarters level. Therefore, he concluded that there was no basis for a higher level review.

Having exhausted these procedures to resolve my concerns, I then notified the District Engineer and the Russo Development Corporation on May 26, 1987, in accordance with Section 404(c), of my intent to issue a public notice of a proposed determination to prohibit or restrict the discharge of fill on the Russo site. The letter afforded the mentioned recipients 15 days to demonstrate that no unacceptable adverse effects would occur as a result of permit issuance. On May 27, 1987 the District Engineer responded that his analysis clearly demonstrated that no unacceptable adverse effects would occur from permit issuance. Russo responded on June 10, 1987 concluding that EPA could not successfully argue that the project would have an unacceptable adverse effect on the environment, and they requested the COE decision to issue a permit be affirmed. I concluded that no new information had been presented and therefore that I was not satisfied that the project would not pose unacceptable adverse impacts. On August 7, 1987 I published a public notice in the Federal Register and the New Jersey Star Ledger announcing the proposed determination to prohibit or restrict the discharge of fill material. The comment period extended for 60 days, closing on October 6, 1987. The notice requested comment on the need for a public hearing. There was response requesting a public hearing and I considered a hearing to be in the public interest. On October 13 and 14, 1987 I issued a public notice in the New Jersey Star Ledger and the Federal Register scheduling a public hearing for November 5, 1987. The hearing was held and the comment period closed on November 20, 1987.

Litigation

On September 25, 1987, Russo Development Corporation brought an action in the United States District Court in Newark, New Jersey, Civil No. 87-3916, seeking an order enjoining EPA from, among other things, exercising jurisdiction over any fill activities in the 44 acres, applying a two-for-one mitigation requirement, and staying or adjoining the Section 404(c) proceedings currently in progress. On November 18, 1987, Russo advised the Court that it sought a stay of the Section 404(c) proceedings pending the Court's decision. The Court, on December 17, 1987, issued an Order in response to the federal government's motion to dismiss the complaint. The Court granted the motion to dismiss the complaint in most respects, and denied the plaintiff's motion for a preliminary injunction.

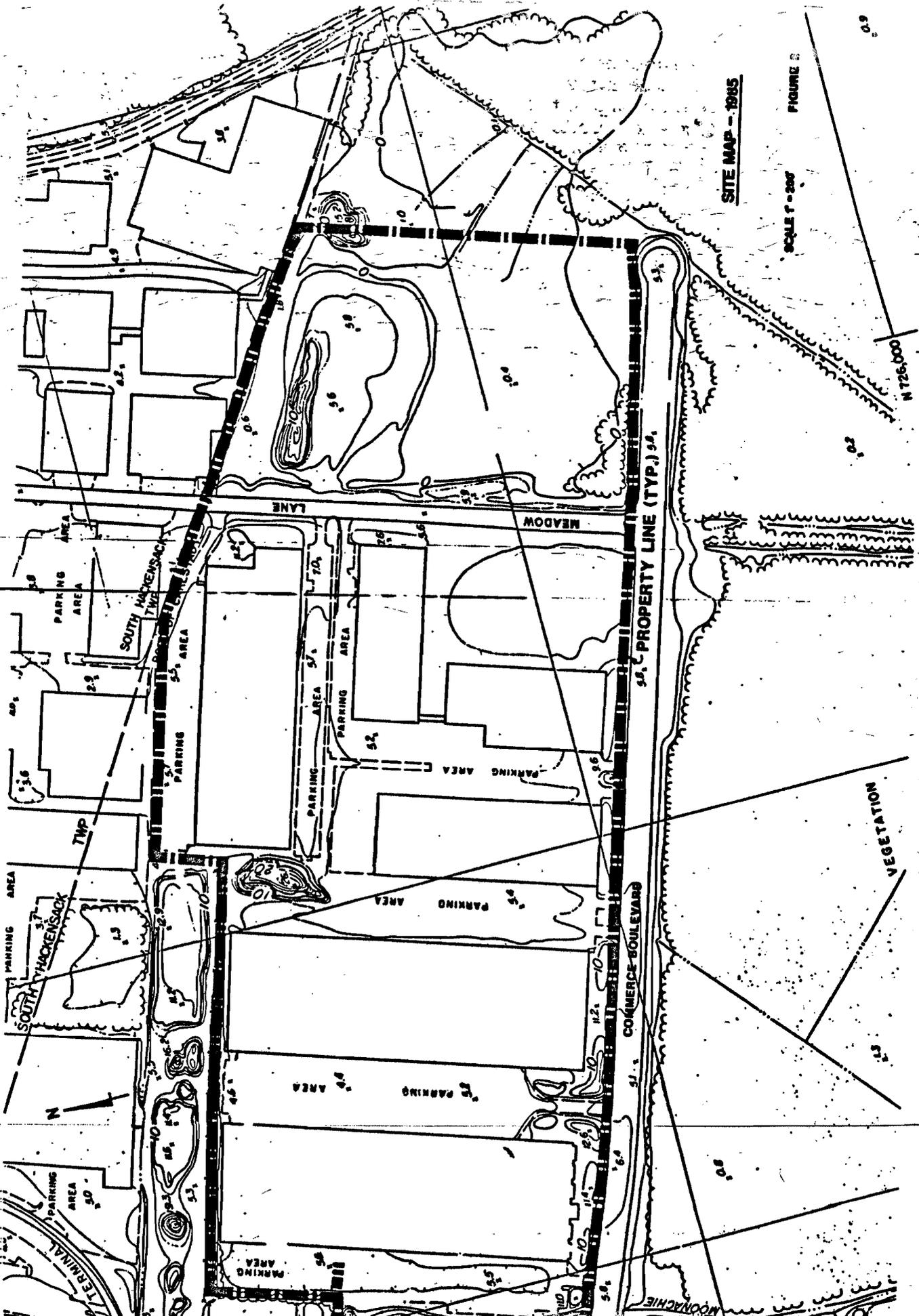
DESCRIPTION OF THE SITE

Prior to filling in 1981, the Russo site was characterized by 57.5 acres of palustrine wetlands. In 1981, the Russo Development Corporation placed fill into 44 acres of wetland, constructed six warehouses, and began construction of a seventh warehouse. In 1985, the Russo Development Corporation placed an additional 8.5 acres of fill into wetlands and excavated approximately two to three acres of the remaining five acres of wetland in the tract. Those two to three acres now exist as a shallow pond with emergent and aquatic vegetation, surrounded by mixed emergents, wet meadow and common reed. The site is situated within a larger palustrine marsh directly south and along the Hackensack River known as the Empire tract in the Hackensack Meadowlands. Historically the site was contiguous with wetlands to the north and east known as Losen Slote. Russo's consultant reports that the site used to drain north to Losen Slote as well as south to Moonachie Creek. Subsequently, fill was placed and warehouses were constructed thereby breaking the hydrologic connection to Losen Slote. Persons historically familiar with the site contend that it is most similar to the Losen Slote area.

Existing conditions on the site were determined through site inspections, examination of aerial photography from March and September 1985 and interviews with public officials and citizens who have recently visited the site. Conditions on the site prior to the placement of fill were determined by: 1) examination of photographs and maps from 1914, 1916, 1941, 1951, 1963, 1969, 1978, 1980, 1982, March and September of 1985, 1986, and 1987; 2) interviewing local citizens who owned property and/or hunted and trapped on the site prior to filling, and interviewing public officials who visited the site as part of the section 404 permit process; 3) reviewing the correspondence of the Corps of Engineers (COE) and the U.S. Fish and Wildlife Service (FWS); and 4) reviewing all pertinent permit applications by the Russo Development Corporation to the Hackensack Meadowlands Development Commission. Information from these sources was compared for validation.

Hydrology

Figure 2 shows the topography and development of the site. Elevations shown on this plan are based on the National Geodetic Vertical Datum (NGVD), which is essentially equal to mean sea level in this region. The Federal Emergency Management Agency indicates the 100 year flood elevation for the entire site is eight feet NGVD. This would put the floodwaters above all roadways, parking lots, and most building foundations.



SITE MAP - 1985

SCALE 1" = 200'

FIGURE 2

0.9

N 726,000

VEGETATION

MONACHIE

SOUTH THACKENSACK TWP

SOUTH THACKENSACK TWP

MEADOW LANE

PROPERTY LINE (TYP.)

COMMERCE BOULEVARD

TERMINAL

SOUTH THACKENSACK TWP

PARKING AREA

PARKING AREA</

The developed portion of the site drains directly to Moonachie Creek. This creek drains a large portion of the surrounding warehouse development and most of the Empire tract to the south. Moonachie Creek discharges to the Hackensack River about one mile to the south of the site. A leaky tide gate on Moonachie Creek near the Hackensack River prevents significant inflow of tidal waters into the creek.

The undeveloped portion of the site drains to a ditch situated east of the site. This ditch drains to Moonachie Creek about one-half mile to the southwest. The undeveloped portion of the site receives run-off water from the nearby paved areas (although no piped discharges were noted). The generally low elevation of the site (one foot, as recorded in 1963 aerial photos) suggests that the ground surface lies near the surface of the water table. In areas near tidal waters, groundwater levels generally coincide with mean sea level. The ground within the meadow areas remains saturated throughout most of the year due to the shallow depth to the water table. During average conditions the water depth in the pond is estimated to average from one to two feet in depth and range up to three to four feet in its deepest parts.

The meadow areas which surround the pond and the fill are inundated during annual flood conditions. Aerial photographs and video tapes suggest that flooding on the site is caused by the surcharging of storm flows. Storm drainage for the extensive paved areas in the basin deliver water to Moonachie Creek faster than it can be discharged to the Hackensack River. Water then overtops the banks of drainage ditches on site and floods extensive areas to a shallow depth. Most of this water drains back into the ditches within a few days, although isolated pockets will remain flooded until infiltration to the groundwater or evaporation dry them up.

Hydrology on the 57.5 acre site prior to filling was essentially as described above. Aerial photography shows that a number of drainage ditches interlaced the site and drained southwest into Moonachie Creek. Soils on the site are discussed in engineers' foundation reports (Biggs Engineering, 1980-1985) prepared for and submitted by the Russo Development Corporation to the Hackensack Meadowlands Development Commission (HMDC) as part of building permit applications. These state that surface soils on the site originally consisted of "meadow mat" 8-20 inches in depth. Meadow mat is an accumulation of organic material produced by wet meadow vegetation. Fires reportedly occurred seasonally on the tract. Dark areas which appear to have been burned appear in some photographs of the site prior to filling. The fact that the meadow mat did not burn entirely when fires destroyed above ground vegetation suggests that the organic mat retained moisture. With a mat depth of 8-20 inches and a probable depth to the water table of less than 24 inches, it is likely the meadow mat was wet most of the time. Historical accounts and aerial photographs indicate that the 57.5 acre tract included areas which were permanently flooded, temporarily and seasonally flooded, and areas which were only occasionally

flooded in severe storms.

Vegetation

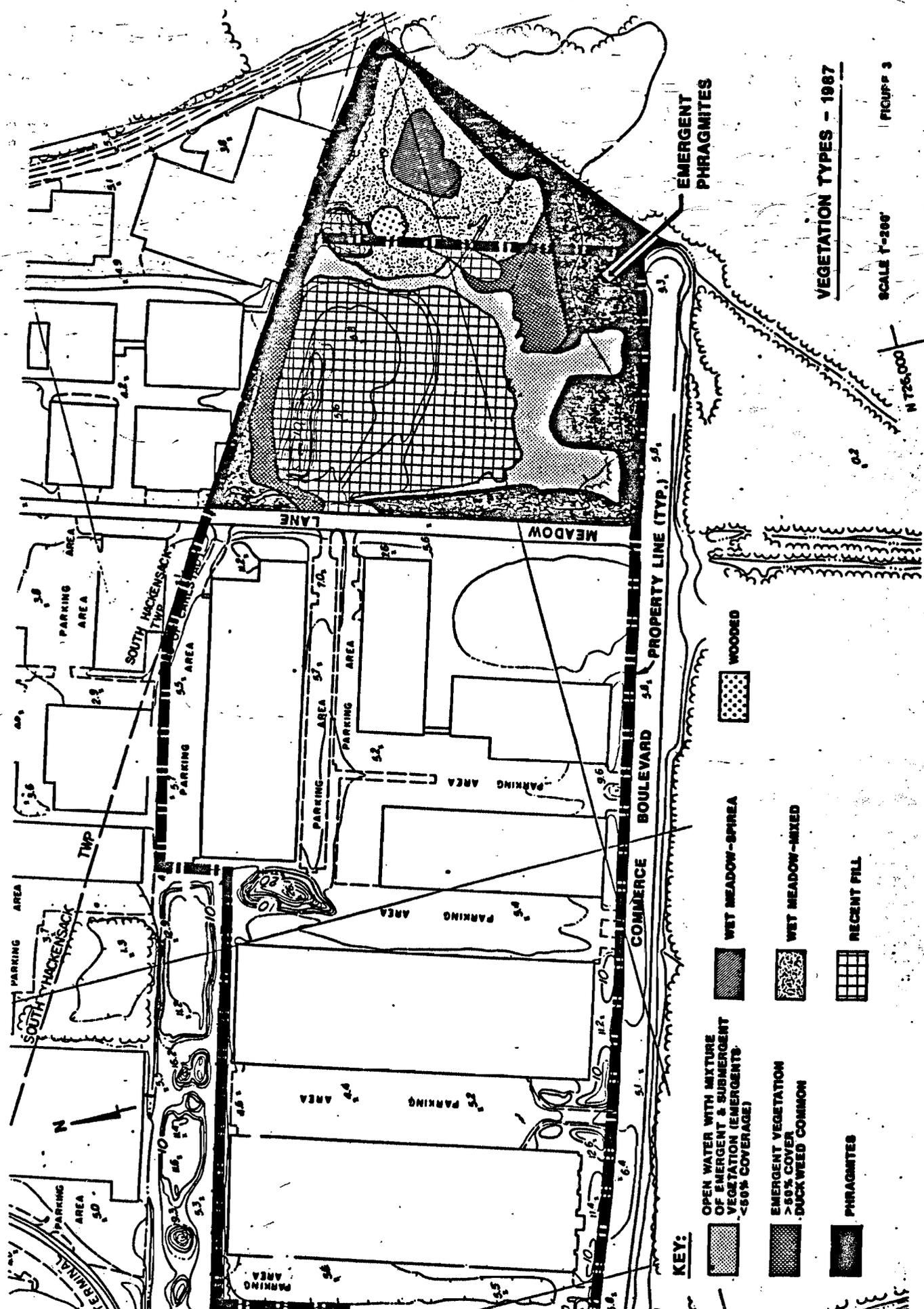
Figure 3 shows the current pattern of vegetation on the Russo tract. Plant species identified on the site are listed in Table 1. A vegetation zone dominated by common reed (*Phragmites australis*) occurs along the north, west and south edge of the undeveloped portion of the site. Within this zone are areas where the reed occurs in standing water, and is found in association with duckweed. Muskrat huts were observed within this emergent *Phragmites* area. In other parts of this zone the *Phragmites* occurs on saturated soil with little or no surface ponding present. The *Phragmites* which occurs just along the road embankments is typically found in association with aspen trees in the 1" to 6" diameter class.

Moving from the *Phragmites* zone toward the two to three acre pond occurring on site a zone of mixed emergents is encountered. Sedges, rushes, cattail, water smartweed, water plantain, saltmarsh fleabane, duckweed and *Phragmites* are common within this zone. Muskrat trails and signs of grazing were observed in this zone.

The open water zone contains a mix of emergent, floating-leaved and submergent vegetation. Broad-leaved cattail is the dominant emergent species. New growth of cattail is particularly vigorous in the northerly and westerly portions of the pond. Water purslane and several unidentified pondweeds occur in the shallower margins of the pond. Extensive areas of cattail show evidence of muskrat grazing. Adult and juvenile turtles and numerous frogs were observed along the shore of the pond.

A small area of wet meadow occurs along the eastern boundary of the site. It is part of a relatively large area extending beyond the property line to the drainage ditch east of the site's boundary. As with the mixed emergent community, there is no clearly dominant species within the wet meadow community. Steeplebush, switch-grass, goldenrod, impatiens, Joe-Pye weed and *Phragmites* are all common. This vegetation zone has the highest plant species diversity of all the zones identified. It contains several mosses (including sphagnum moss), at least four species of fern, and nine woody species (mostly tree saplings). Over half of the species listed in Table 1 occur within this zone. Five pheasant were flushed from a shrub thicket in this meadow.

The vegetation occurring on the recent fill is dominated by aspen saplings. Review of aerial photographs shows that most of the vegetation on this disturbed site has developed within the past two growing seasons. Mugwort, goldenrod, grasses, mullein and dogbane are also common on the fill area. These plant species are typically associated with disturbed areas, and their presence evidences the impact of the placement of fill.



EMERGENT PHRAGMITES

VEGETATION TYPES - 1987

SCALE 1"=200'

N 725/000

KEY:

OPEN WATER WITH MIXTURE OF EMERGENT & SUBMERGENT VEGETATION (EMERGENTS <50% COVERAGE)

EMERGENT VEGETATION >50% COVER - DUCK WEEED COMMON

PHRAGMITES

WET MEADOW-SPREA

WET MEADOW-MIXED

RECENT FILL

WOODED

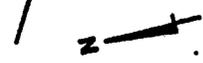


Table 1. Plant Species Identified on the Existing Wetland Site and Fill Area.

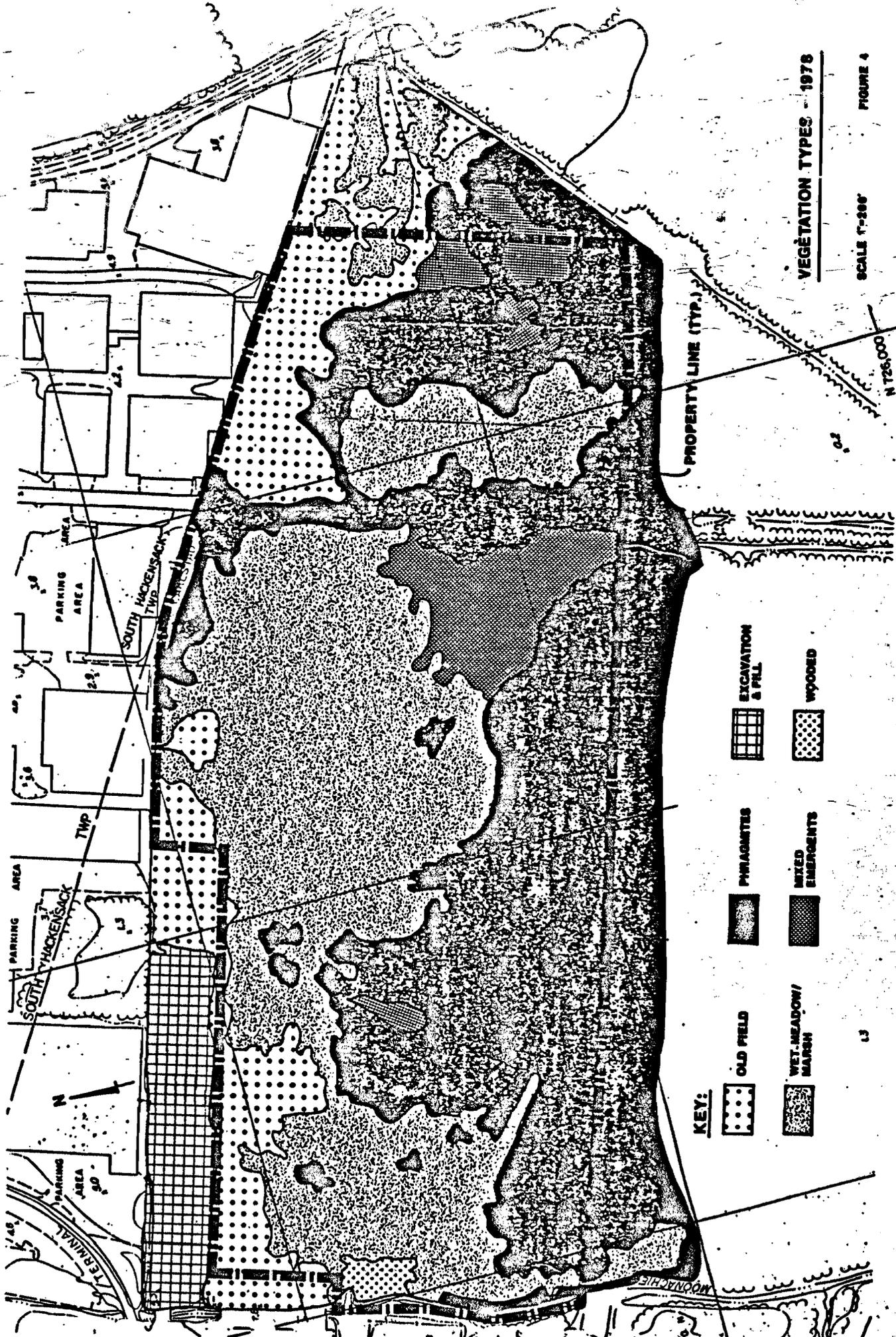
FAMILY	GENUS	SPECIES		COMMON NAME
Sphagnaceae	Sphagnum	sp.		sphagnum moss
Osmundaceae	Osmunda	cinnamomea	L.	cinnamon fern
Osmundaceae	Osmunda	regalis	L.	royal fern
Polypodiaceae	Onoclea	sensibilis	L.	sensitive fern
Polypodiaceae	Thelypteris	palustris	Schott.	marsh fern
Typhaceae	Typha	latifolia	L.	broad-leaved cat-tail
Typhaceae	Typha	angustifolia	L.	narrow-leaved cat-tail
Alismaceae	Alisma	subcordatum	Raf.	water plantain
Gramineae	Panicum	virgatum	L.	switch-grass
Gramineae	Phragmites	australis	L.	common reed
Gramineae	Glyceria	melicaria	(Michx.) Hubbard	slender mannagrass
Cyperaceae	Cyperus	flavescens	L.	yellow cyperus
Cyperaceae	Cyperus	strigosus	L.	umbrella sedge
Cyperaceae	Eleocharis	sp.		spike rush
Cyperaceae	Eleocharis	parvula	(R.&S.) Link.	dwarf club-rush
Cyperaceae	Scirpus	americanus	Pers.	three-square rush
Cyperaceae	Scirpus	cyperinus	L.	wool grass
Lemnaceae	Lemna	sp.		duckweed
Juncaceae	Juncus	effusus	L.	soft rush
Juncaceae	Juncus	canadensis	J. Gay.	Canada rush
Juncaceae	Juncus	acuminatus	Michx.	sharp fruited rush
Myricaceae	Myrica	pensylvanica	Loisel.	bayberry
Salicaceae	Populus	tremuloides	Michx.	quaking aspen
Salicaceae	Salix	babylonica	L.	weeping willow
Polygonaceae	Polygonum	coccineum	Muhl.	water smartweed
Phytolaccaceae	Phytolacca	americana	L.	pokeweed
Scrophulariaceae	Verbascum	Thaspus	L.	great mullen
Hamamelidaceae	Liquidambar	styraciflua	L.	sweet gum
Rosaceae	Spirea	tomentosa	L.	steeple-bush
Rosaceae	Rubus	sp.		blackberry
Fabaceae	Robinia	Pseudoacacia	L.	black locust
Balsaminaceae	Impatiens	biflora	Walt.	jewel weed, touch-me-not
Anacardiaceae	Rhus	Copallinas	L.	winged sumac
Anacardiaceae	Rhus	typhina	L.	staghorn sumac
Aquifoliaceae	Ilex	verticillata	(L.) Gray.	winterberry
Aceraceae	Acer	saccharinum	L.	silver maple
Aceraceae	Acer	rubrum	L.	red maple
Malvaceae	Hibiscus	palustris	L.	swamp rose-mallow
Hypericaceae	Triadenum	virginicum	(L.) Raf.	marsh St. John's-wort
Lythraceae	Lythrum	Salicaria	L.	purple loosestrife
Onagraceae	Ludwigia	palustris	(L.) Ell.	marsh purslane
Onagraceae	Oenothera	biennis	L.	evening primrose
Umbelliferae	Daucus	Carota	L.	Queen Anne's lace
Oleaceae	Fraxinus	pensylvanica	Marsh.	green ash
Apocynaceae	Apocynum	sp.		dogbane
Verbenaceae	Verbena	hasata	L.	blue vervain
Compositae	Eupatorium	purpureum	L.	Joe-Pye weed
Compositae	Solidago	sp.	L.	goldenrod
Compositae	Solidago	Elliotii	T.&G.	Elliot's goldenrod
Compositae	Solidago	tenuifolia	Pursh.	slender fragrant goldenrod
Compositae	Pluchea	camphorata	(L.) DC.	salt marsh fleabane
Compositae	Bidens	discoidea	(T.&G.) Britton	beggar-ticks
Compositae	Artemisia	sp.		mugwort
Equisetaceae	Equisetum	sp.		horsetail
Lycopodiaceae	Lycopodium	obscurum	L.	ground pine
Convolvulaceae	Cuscuta	sp.		dodder

Lycopodiaceae	Lycopodium	complanatum	L.	ground pine
Pinaceae	Juniperus	virginiana	L.	red cedar
Sparganiaceae	Sparganium	lucidum	Fernald & Fames	shining fruited burr reed
Graminae	Echinochola	crusgalli	(L.) Beauv.	barriard grass
Lauraceae	Lindera	Benzoin	(L.) Blume	spicebush
Bignoniaceae	Catalpa	Catalpa	(L.) Karst.	Catalpa
Caprifoliaceae	Viburnum	dentatum	L.	arrow wood
Caprifoliaceae	Symphoricarpos	albus	(L.) Blake	snowberry
Rosaceae	Pyrus	Malus	L.	apple
Rosaceae	Prunus	serotina	Ehrh.	black cherry
Compositae	Eupatorium	perfoliatum	L.	boneset, thoroughwort
Cyperaceae	Carex	stricta	Lam.	tussock sedge
Araceae	Arisema	triphillum	(L.) Schott.	Jack-in-the-pulpit
Araceae	Symplocarpus	foetidus	(L.) Nutt.	skunk cabbage
Anacardiaceae	Rhus	Vernix	L.	poison sumac
Anacardiaceae	Rhus	radicans	L.	poison ivy
Vitaceae	Vitis	Labrusca	L.	fox grape
Vitaceae	Parthenocissus	quinquefolia	(L.) Planch.	Virginia creeper
Tiliaceae	Tilia	americana	L.	basswood, Am. Linden
Liliaceae	Smilacina	stellata	(L.) Desf.	false Solomon's seal
Liliaceae	Maianthemum	canadense	Weber.	wild lily of the valley, canada mayflower
Iridaceae	Iris	versicolor	L.	blue-flag
Salicaceae	Populus	grandidentata	Michx.	large-toothed aspen
Salicaceae	Salix	nigra	Marsh.	black or swamp willow
Betulaceae	Carpinus	caroliniana	Walt.	hornbeam, blue beech, ironwood
Betulaceae	Betula	populifolia	Marsh.	grey birch, white birch
Fagaceae	Quercus	palustris	DuRoi.	swamp oak, pin oak
Fagaceae	Quercus	bicolor	Willd.	swamp white oak
Ulmaceae	Ulmus	rubra (fulva)	Michx.	slippery elm
Urticaceae	Boehmeria	cylindrica	(L.) Sw.	false nettle
Cornus	Cornus	stolonifera	Michx.	red-osier dogwood
Clethraceae	Clethra	alnifolia	L.	sweet pepperbush
Ericaceae	Kalmia	latifolia	L.	mountain laurel
Vacciniaceae	Vaccinium	corymbosum	L.	high-bush blueberry
Vacciniaceae	Vaccinium	vacillans	Kalm.	low-bush blueberry
Oleaceae	Fraxinus	americana	L.	white ash
Oleaceae	Ligustrum	vulgare	L.	privet

Figure 4 shows the pattern of vegetation on the 57.5 acre site prior to the placement of fill. This mapping was prepared from stereo-paired aerial photographs taken in 1978. Mapping was also facilitated by the examination of earlier photographs, the ground-truthing of current aerial photography, and confirmation from historical accounts. Vegetation on the 57.5 acre site was a complex of old field, wet meadow, fields of common reed, emergent marsh, and small ponds, similar to what remains on site, described above, and on adjacent tracts today. The present occurrence of old field species in the remaining wetland and fill areas was too sparse and diffuse to merit individual mapping. However, old field vegetation was distinct in 1978 aerial photographs. Plants comprising the old field community most likely (based on remnant old field vegetation on site) included black locust, sumac, mugwort, and quaking aspen. Those information sources, listed above, also indicate the site included areas which were permanently flooded, temporarily and seasonally flooded, and areas which were only occasionally flooded in severe storms. To summarize, the investigation conducted by EPA during the 404(c) proceedings has revealed that the 57.5 acre wetland site was comprised of different vegetation types and hydroperiods, as opposed to being a monotypic stand of vegetation previously reported during the regulatory permitting process.

Wildlife

The Meadowlands lie within the Atlantic flyway and lie within a Priority Habitat Range for waterfowl as indicated in the U.S. Fish and Wildlife Service's 1986 North American Waterfowl Management Plan. Table 2 lists the species observed on the remaining wetlands within the Russo site. It includes a variety of waterfowl, and wading birds, songbirds, game birds, rodents, reptiles and amphibians. The list includes black duck, mallard, woodcock and mourning dove. The FWS considers these species to be of special concern in the northeast region (black duck, mallard, woodcock, mourning dove) and in New Jersey (black duck, mallard, woodcock). Also observed was the great blue heron which is listed among New Jersey's state threatened species. Mr. Cascino, Russo's consultant, lists the occurrence of bobolink, currently a New Jersey state threatened species, on the 57.5 acre site prior to filling. In addition, it should be noted that although the Northern Harrier, a New Jersey state endangered species, was not observed specifically on site, it has been observed by representatives of the FWS and HMDC on the Empire wetland tract directly to the south. Observations on the remaining Russo owned wetlands include evidence of heavy grazing by muskrat and the occurrence of rabbits, raccoon, opossum, skunk, woodchuck, Norway rat, meadow vole, white-footed mice and deer mice. This food base and the physiognomy of low meadow grasses rate the remaining Russo owned wetlands as a highly suitable area for Northern Harrier (FWS).



VEGETATION TYPES - 1976

SCALE 1"=200'

FIGURE 4

KEY:

-  OLD FIELD
-  WET-MEADOW/MARSH
-  PHRAGMITES
-  MIXED EMERGENTS
-  EXCAVATION & FILL
-  WOODED

Table 2. Species observed on the Russo owned wetlands.

<u>Genus</u>	<u>Species</u>	<u>Common Name</u>
Invertebrates		
Lymnaea	sp.	Water snail
Corixa	sp.	Water boatman
Enallagma	exsulans	Damselfly
Culex	pipiens	Mosquito
Libellula	sp.	Dragonfly
Bombus	feruidus	Bumblebee
Vespula	maculifrons	Yellow jacket
Schistocerca	alutacea	Bird grasshopper
Cicindela	sexguttata	Green tiger beetle +
Mantis	religiosa	Praying mantis +
Fish		
Fundulus	sp.	Killifish
Reptiles		
Malaclemys	terrapin	Diamondback terrapin
Chelydra	serpentina	Snapping turtle +
Amphibians		
Rana	utriculata	Leopard frog
Birds		
Anas	platyrinchos	Mallard (NSSE)
Anas	discolor	Blue winged teal
Anas	rubripes	Black duck (NSSE)
Anas	strepera	Gadwall
Phasianus	colchicus	Ring-necked pheasant
Ardea	herodias	Great blue heron (T)
Bublcos	iris	Cattle egret
Casmerodius	albus	Great egret
Charadrius	vociferus	Killdeer
Philohela	minor	American woodcock (NSSE)
Zenaidura	macroura	Mourning dove (NSSE)
Chaetura	pelagica	Chimney swift
Archilochus	colubris	Ruby-throated Hummingbird

KEY: (T) New Jersey State listed threatened species
 NSSE U.S. Fish and Wildlife Service Species of Special Emphasis
 + Additional species noted in Russo's records

<u>Genus</u>	<u>Species</u>	<u>Common name</u>
Mimus	polyglottos	Mockingbird
Melospiza	georgiana	Swamp sparrow
Melospiza	melodia	Song sparrow
Dolichonyx	oryzivorus	Bobolink (T) +
Agelaius	phoeniceus	Redwinged blackbird
Colinus	virginianus	Bobwhite quail

Mammals

Urocyon	cinereoargenteus	Gray fox
Microtus	pennsylvanicus	Meadow vole
Ondatra	zibethica	Muskrat
Rattus	norvegicus	Norway rat
Sylvilagus	floridanus	Cottontail rabbit
Marmota	monax	Woodchuck +

Although interviews and responses to the public notice/hearing provided few records of observation on the occurrence of wildlife on the 57.5 acre site prior to filling, the FWS and the New Jersey Audubon Society did note species which were likely to have occurred in the given habitat types on site. Table 3 lists species expected to have used the vegetation types occurring on the 57.5 acre tract. This list includes eight bird species with state endangered status and five bird species with state threatened status. The New Jersey Office of Endangered and Non-Game Species considers a species endangered if prospects for the animals' survival within the state are in immediate danger due to one or many factors (including the loss of or change in habitat). Threatened species are those which may become endangered within the state if conditions around them begin to or continue to deteriorate. The presence of old field, wet meadow, common reed fields offering dense cover, and groves of trees on site (and in tracts of nearby woodland in Losen Slote and Teterboro) offered suitable conditions for the hawks, owls and sparrows listed in Table 3. The situation of these habitats contiguous with large tracts of adjacent, undisturbed wetlands (Empire tract, Losen Slote) contributes/contributed to their attractiveness to wildlife.

Accounts from those who had hunted the site prior to filling indicated that the 57.5 acre wetland supported a diversity of wildlife. Although species were not specifically listed, the hunters indicated that there was a great diversity and abundance of animals on site and the tract was a very popular spot for hunting. Muskrat, rabbit and pheasant were taken on the site. Five immature ring-necked pheasants were flushed from a shrub thicket near the eastern border of the site. This game species prefers an agricultural, old field and/or meadow type of habitat to breed, and wintering birds "... seek areas with dense protective cover, often swamps interspersed with thickets" (DeGraaf and Rudis 1986). Mr. Cascino lists rabbit, pheasant, and grey fox in his account of wildlife occurring in the 57.5 acre site. He argues that their occurrence is evidence of the upland characteristics of the site. According to the wildlife literature (DeGraaf and Rudis 1986), these species' habitat ranges include wetlands. Their occurrence on site indicates its habitat value in a highly developed area.

The wetland evaluation method described by Golet and Larsen (1976) was used to provide an evaluation of the values of the 57.5 acre tract (prior to fill) and the five acres of wetland remaining for wildlife. The method is one applied nationally; it is readily interpretable with the attribute of addressing important ecological factors; and it lends itself to application based on historical information. The Golet and Larsen method uses wetland classes, subclasses, size, type, habitat, cover, vegetative interspersion, juxtaposition and chemistry to assess the wildlife value of wetlands. The method and output is summarized in Appendix B. Wetland scores with the method range from a low of 35 to a high of 105 points.

Table 3. Wildlife Species Projected to Have Occurred on the Russo Owned Wetlands Based on Species Habitat Associations and the Vegetation Types That Occurred on the Russo Owned Wetlands.

<u>GENUS</u>	<u>Species</u>	<u>Common Name</u>
Reptiles		
Clemmys	guttata	spotted turtle
Malaclemys	terrapin	diamondback terrapin
Chrysemys	picta	eastern painted turtle
Terrapene	carolina	box turtle
Natrix	sipedon	northern watersnake
Thamnophis	sirtalis	eastern garter snake
Thamnophis	sauritus	eastern ribbon snake
Amphibians		
Notophthalmus	viridescens	red-spotted newt
Desmognethus	fuscus	northern dusky salamander
Pseudotriton	ruber	northern red salamander
Bufo	americanus	American toad
Bufo	woodhousei	Fowlers toad
Rana	clamitans	green frog
Rana	catesbeiana	bull frog
Birds		
Podilymbus	podiceps	Pied-billed Grebe (E)
Bataurus	lentiginosus	American Bittern (T)
Ixobrychus	exilis	Least Bittern
Ardea	herodius	Great Blue Heron (T)
Casmerodius	albus	Great Egret
Butorides	striatus	Green-backed Heron
Nycticorax	nycticorax	Black-crowned Night-Heron
Branta	canadensis	Canada Goose
Aix	sponsa	Wood Duck
Anas	crecca	Green-winged Teal
Anas	rubripes	Black Duck
Anas	platyrhynchos	Mallard
Anas	acuta	Pintail
Anas	discors	Blue-winged Teal
Anas	clypeata	Shoveler
Anas	strepera	Gadwall
Lophodytes	cucullatus	Hooded Merganser
Cathartes	aura	Turkey Vulture
Circya	cyaneus	Northern Harrier (E)
Accipiter	striatus	Sharp-shinned Hawk
Accipiter	cooperii	Cooper's Hawk (E)
Butes	jamaicensis	Red-tailed Hawk
Butes	lagopus	Rough-legged Hawk

Key: (E) New Jersey state listed endangered species
 (T) New Jersey state listed threatened species

<u>Genus</u>	<u>Species</u>	<u>Common Name</u>
Falco	sparverius	American Kestrel
Falco	columbarius	Merlin (T)
Falco	peregrinus	Peregrine Falcon (E)
Colinus	virginianus	Bobwhite
Rallus	longirostris	Clapper Rail
Rallus	elegans	King Rail
Rallus	limicola	Virginia Rail
Porzana	carolina	Sora
Gallinula	chloropus	Common Moorhen
Fulica	americana	American Coot
Charadrius	vociferus	Killdeer
Tringa	melanoleuca	Greater Yellowlegs
Tringa	flaviceps	Lesser Yellowlegs
Tringa	solitaria	Solitary Sandpiper
Actitis	macularia	Spotted Sandpiper
Calidris	pusilla	Semipalmated Sandpiper
Calidris	minutilla	Least Sandpiper
Calidris	melanotos	Pectoral Sandpiper
Limnodromus	griseus	Short-billed Dowitcher
Limnodromus	scolopaceus	Long-billed Dowitcher
Capilla	gallinago	Common Snipe
Stelgidopteryx	ruficollis	Rough-Winged Swallow
Columba	livia	Rock Dove
Zenaida	macroura	Mourning Dove
Coccyzus	erythrophthalmus	Black-billed Cuckoo
Coccyzus	americanus	Yellow-billed Cuckoo
Tyto	alba	Barn owl
Asio	otus	Long-eared owl
Asio	flammeus	Short-eared owl (E)
Chordeilis	minor	Common Nighthawk
Chaetura	pelagica	Chimney Swift
Archilochus	colubris	Ruby-throated Hummingbird
Megaceryle	alcyon	Belted kingfisher
Colaptes	auratus	Northern Flicker
Empidonax	alorum	Alder Flycatcher
Empidonax	traillii	Willow Flycatcher
Empidonax	minimus	Least Flycatcher
Sayornis	phoebe	Eastern Phoebe
Tyrannus	tyrannus	Eastern Kingbird
Progne	subis	Purple Martin
Iridoprocne	bicolor	Tree Swallow
Riparia	riparia	Bank Swallow
Petrochelidon	pyrrhonota	Cliff Swallow (E)
Hirundo	rustica	Barn Swallow
Cyanocitta	cristata	Blue Jay
Corvus	brachyrhynchus	American Crow
Corvus	ossifragus	Fish Crow
Parus	atricapillus	Black-capped Chickadee
Sitta	canadensis	Red-breasted Nuthatch
Certhia	familiaris	Brown Creeper
Troglodytes	aedon	House Wren

<u>Genus</u>	<u>Species</u>	<u>Common Name</u>
Troglodytes	troglodytes	Winter Wren
Cistothorus	platensis	Sedge Wren (E)
Cistothorus	palustris	Marsh Wren
Regulus	satrapa	Golden-crowned Kinglet
Regulus	calendula	Ruby-crowned Kinglet
Polioptila	caerulea	Blue-gray Gnatcatcher
Turdus	migratorius	American Robin
Dumetella	carolinensis	Gray Catbird
Mimus	polyglottus	Northern Mockingbird
Toxostoma	rufum	Brown Thrasher
Sturnus	vulgaris	European Starling
Vermivora	chrysoptera	Golden-winged Warbler
Vermivora	celata	Orange-crowned Warbler
Vermivora	ruficapilla	Nashville Warbler
Dendroica	petechia	Yellow Warbler
Dendroica	coronata	Yellow-rumped Warbler
Dendroica	palmarum	Palm Warbler
Seiurus	noveboracensis	Northern Waterthrush
Geothlypis	trichas	Common Yellowthroat
Wilsonia	pusilla	Wilson's Warbler
Cardinalis	cardinalis	Cardinal
Passerina	cyanea	Indigo Bunting
Pipilo	erythrophthalmus	Rufous-sided Towhee
Spizella	arborea	American Tree Sparrow
Spizella	passerina	Chipping Sparrow
Spizella	pusilla	Field Sparrow
Poocetes	gramineus	Vesper Sparrow (E)
Passerculus	sandwichensis	Savannah Sparrow (T)
Ammodramus	savannarum	Grasshopper Sparrow (T)
Ammospiza	caudacuta	Sharp-tailed Sparrow
Passerella	iliaca	Fox Sparrow
Melospiza	melodia	Song Sparrow
Melospiza	lincolni	Lincoln's Sparrow
Melospiza	georgiana	Swamp Sparrow
Zonotrichia	albicollis	White-throated Sparrow
Zonotrichia	leucophrys	White-crowned Sparrow
Junco	hyemalis	Dark-eyed Junco
Calcarius	lapponicus	Lapland Longspur
Plectrophenax	nivalis	Snow Bunting
Dolichonyx	oryzivorus	Bobolink (T)
Agelaius	phoenicius	Red-winged Blackbird
Sturnella	magna	Eastern Meadowlark
Quiscalus	quiscula	Common Grackle
Molothrus	ater	Brown-headed Cowbird
Carpodacus	mexicanus	House Finch
Carduelis	flammea	Common Redpoll
Carduelis	pinus	Pine Siskin
Carduelis	tristis	American Goldfinch

<u>Genus</u>	<u>Species</u>	<u>Common Name</u>
Mammals		
Didelphis	marsupialis	Opossum
Sorex	cinereus	masked shrew
Cryptotis	parva	least shrew
Blarina	brevi	shorttail
Condylura	cristata	starnose mole
Scalopis	aquaticus	eastern mole
Procyon	lotor	raccoon
Mustela	frenata	longtail weasel
Mustela	vison	mink
Ondatra	zibethica	muskrat
Mephitis	mephitis	striped skunk
Vulpes	lulva	red fox
Urocyon	cineresargenus	gray fox
Marmota	monax	woodchuck
Peromyscus	leucopus	white-footed mouse
Clethrionomys	gopperi	redback vole
Microtus	pennsylvanicus	meadow vole
Zapus	hudsonius	meadow jumping mouse
Sylvilagus	floridanus	eastern cottontail rabbit

Application of this method to the Russo tract prior to the placement of fill scored the site with 73.5 points and rated the site as having high wildlife value. Similarly, the five remaining acres of wetland scored 74.5. These scores are principally the result of: 1) the number of habitat types present on the sites, 2) the interspersion of wetland types on the sites, and 3) the juxtaposition of the sites with other adjacent wetlands. These factors contributed to the number of state threatened and endangered bird species observed on site or projected to occur on the site.

EPA is currently working on an advanced identification of wetlands within the Hackensack Meadowlands which will be based upon an evaluation of the District's wetlands. Output for the wetland evaluation is in a draft stage, subject to review by the interagency participants. This draft output rates the remaining wetlands on the Russo site high in the general waterfowl category and moderate in the general wildlife and fishery categories. The concurrence of a variety of wetland assessment methods and the actual observations of wildlife on site strengthen my conclusion that the Russo owned wetlands were and are indeed valuable wildlife habitat.

Because of the concern that development in the wetlands and floodplain areas of the Meadowlands would conflict with section 404 of the Clean Water Act, the Fish and Wildlife Coordination Act of 1958 and other federal policies, EPA and the FWS presented recommendations to the COE in 1981 concerning potential permit reviews. In particular, EPA and FWS divided the Meadowlands into marginal and critical wetlands categories. The Agencies anticipated that permits could be granted for "marginal wetlands", provided adequate compensation and other appropriate permit conditions were imposed. The Russo site was designated in this category. While the 1981 policy reflected an initial effort to distinguish among wetlands, it was based on a preliminary and limited data base. Consequently, EPA initiated, in 1985, the advanced identification study, mentioned above.

The Russo Development Corporation has argued that EPA considered the site "marginal", as reflected in that initial 1981 wetland categorization. The 1981 evaluation was a broad overview. It was not intended to preclude site specific evaluation and individual permit application. It should be noted that the COE has not referred to the 1981 "red and green" map in their permitting work. The current advanced identification, in contrast, has involved a very thorough, methodology based approach to the evaluation of wetlands. Output from that investigation and the other investigations mentioned above do not rate the Russo owned wetlands as marginal. Current information provides me with evidence that the 57.5 acres of wetland were/are of high value to wildlife.

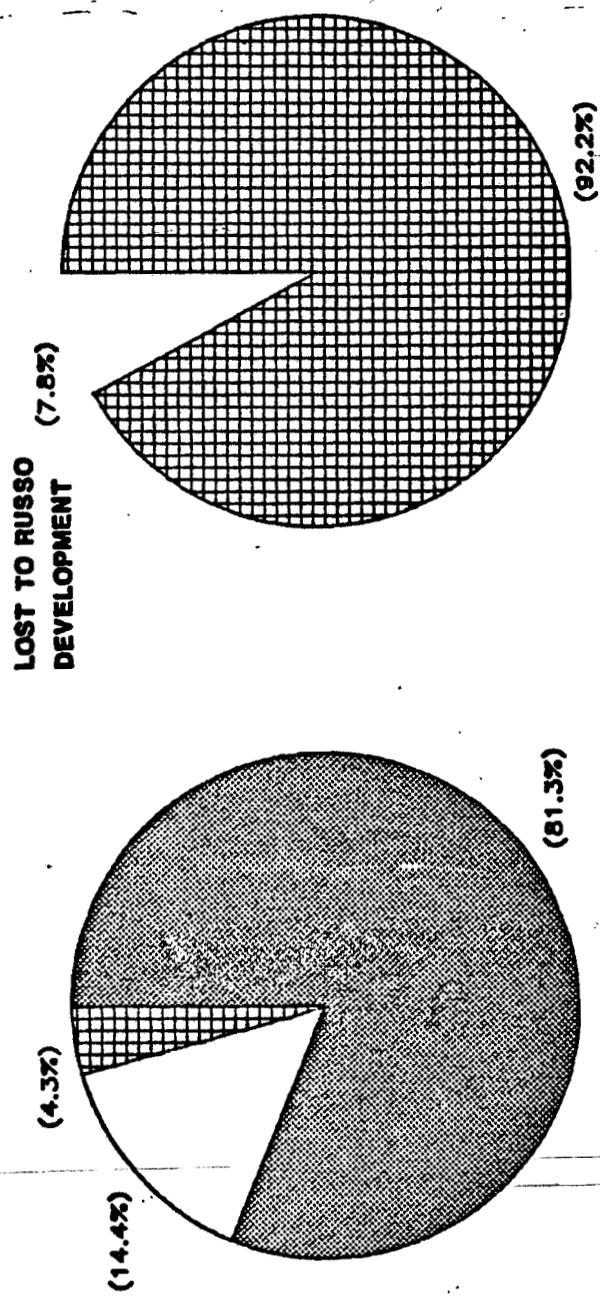
In addition, the Russo Development Corporation argues that the COE and the FWS rated the 57.5 acres of wetland as low quality wetlands. It should be noted that FWS applied that rating of low to moderate based on the assumption, fill having been placed, that the site was characterized by a monotypic stand of common reed. The FWS has noted in their public notice and hearing response that the low to moderate rating was based on habitat homogeneity - the lack of diversity. The Service has acknowledged EPA's vegetation mapping of the site prior to filling and has responded that the site's value may indeed have been higher given the diversity and mix of habitat types on site. FWS considers the remaining wetlands to be high quality wildlife habitat, as consistently stated in their correspondence. As mentioned above, historical accounts and aerial photography substantiate the similarity of the remaining wetlands to vegetation types that occurred on the 57.5 acres prior to filling.

Habitat Value Within the Context of the Meadowlands

The previous discussion of site conditions before and after Russo's fill activity demonstrates that the wetland had, and still has, a high value for wildlife species. Examination of the site in the context of the rest of the Meadowlands shows the 57.5 acre wetland was and still is a relatively rare wetland type offering a juxtaposition of open water, emergent marsh, wet meadow, tree/shrub borders, and old field. The occurrence of vegetation other than common reed in these communities also makes the site relatively rare in the Meadowlands.

Figure 5 shows the relative abundance of wetland types in the Meadowlands. Of the 7,800 acres of wetlands and deep water habitats, about 19%, or 1,400 acres are palustrine according to the FWS classification system (Cowardin *et. al.* 1979). Prior to Russo's fill activity only about 320 acres (22%) of the palustrine wetlands were wet meadows not dominated by common reed. These areas occur in the vicinity of Teterboro Airport, Losen Slote Creek, a site in the south and west portion of the Hackensack Meadowlands District known as LRFC, Kearny marsh, and the Russo owned wetlands. The 320 acres of non-common reed wet meadows comprised only 4% of the wetland acreage in the entire Meadowlands system. It is, therefore, a rare local habitat type. The association of such species as the bobolink, sedge wren, a variety of sparrows, and short-eared owl (listed in Table 3) with this rare wet meadow habitat type contributes to the diversity of wildlife within the Meadowlands and its ability to support a number of state threatened and endangered species. As mentioned earlier, the rodent population supported by wet meadow grasses provides an excellent food base for the state endangered Northern Harrier. The filling of wetlands on the Russo tract has destroyed about 8% of this rare local habitat type within the Meadowlands.

FIGURE 5. WETLAND TYPES IN THE MEADOWLANDS



A. ALL WETLANDS

B. NON-PHRAGMITES PALUSTRINE WETLANDS



Pollutant Attenuation

The remaining wetlands on site perform a pollutant trapping function which, in turn, contributes to the protection of water quality and aquatic organisms in the Hackensack estuary. Fish and wildlife dependent on the aquatic food chains are therefore also protected, to an unknown degree, by pollutant trapping occurring on the existing Russo owned wetlands.

Development surrounding the site's remaining wetlands contributes sediment, toxic chemicals and nutrients to the wetland. No storm drains were seen with discharges to this wetland. However, run-off from curb sides and road embankments enter the wetland along three sides. Large amounts of refuse were seen along these curb sides and embankments. At least half a dozen 55 gallon drums have been disposed of in the tall reeds at the north side of the wetland; one of these drums was labeled as containing phosphoric acid. Car parts and oil deposits were observed amongst construction debris along Commerce Boulevard.

The wetland which remains on the site is an effective trap or filter for sediment, toxicants, and nutrients. This is because the wetland has no permanent outlet. During most rainfall or snowmelt events, run-off carrying pollutants passes slowly through vegetation, eventually soaking through the organic layer of surface soil. This process provides physical trapping of sediments and oil, chemical trapping of toxic chemicals and nutrients on organic and mineral soil particles, and biodegradation of certain chemicals. If run-off was collected and discharged directly to surface waters, this pollutant attenuation would not occur.

This pollutant trapping contributes to the protection of aquatic food chains, and fisheries in particular. Correspondence of the National Marine Fisheries Service (NMFS) on the Russo permit application includes the following observations: "The Hackensack River remains a productive tidal waterway in spite of many past abuses and, in fact, has slowly improved in recent years. It provides habitat for forage fish such as mummichog and Atlantic silversides, as well as other species such as spot, Atlantic tomcod, and silver hake. It also provides spawning habitat for anadromous clupeids such as blueback herring and alewife. The wetlands adjacent to the river provide nutrients to the food web and adsorption capacity for upland generated and waterborne pollutants. As the river's water quality continues to improve, so will its biological diversity, and many species which are found infrequently, such as striped bass and American shad, will become more common - The project - will result in a loss of wetland habitat which could affect the present and potential biological integrity of the Hackensack River Basin." These comments aptly show that the Russo owned wetlands, situated near the Hackensack River and hydrologically connected to it by Moonachie Creek, may perform important functions which protect downstream fisheries resources.

Summary

The different vegetation types and hydroperiods found on this site prior to filling provided a diversity of wetland habitat types. Most of these are still represented on the site and on adjacent tracts today. The combination of these wetland types and the occurrence of the relatively rare (for the Meadowlands) wet meadow community made this site particularly valuable within the Meadowlands wetland system. Prior to filling, only 4% of wetlands in the Meadowlands (about 320 acres) were dominated by non-common reed wet meadow vegetation. The filling on the Russo tract represents an 8% loss of this rare wetland type in the Meadowlands.

The Golet and Larsen method of assessing wetland wildlife value was used to evaluate the wildlife habitat value of the 57.5 acre site (prior to fill) and remaining 5 acres of wetlands. Results show that the site was and still is highly valuable for wildlife, certainly well above the average value of wildlife habitat in the Meadowlands. Personal accounts of neighbors, hunters and trappers substantiate this analysis. Draft output of the wetland evaluation for the advanced identification study in the Meadowlands again supports the conclusions of wildlife value.

Even with the loss of 52.5 acres of the site to fill and development, the remaining wetland still supports a relatively high diversity of plants and animals. Photographs and verbal accounts indicate that the wetlands which remain on the site today, and the meadow area directly to the east, are representative of conditions on the entire Russo tract prior to filling. Open sheltered water, aquatic bed, emergent marsh, open meadow, shrub thickets and wooded fringes all occur in close proximity. These conditions occurred prior to filling. (The areas of open water were smaller and more dispersed on the 57.5 acre site prior to fill, as opposed to the two to three acre pond in the remaining five acres of wetland.) Plants with high wildlife food value are abundant (cattail, duckweed, smartweed, switch-grass, sedges, rushes, and berry producing shrubs). The site provides habitat for two state threatened species (great blue heron, bobolink - seen on site) and, although not actually sited, most likely is used by the Northern Harrier, a state endangered species. In addition, representatives of the FWS and New Jersey Audubon Society projected, based upon species habitat associations and the occurrence of habitats determined to have been on site, that a variety of birds, including eight state endangered and six state threatened species, used the site prior to filling. The site's wetlands have additional significance because they occur as part of the expanse of the Meadowlands - wetlands surrounded by a complex of development - within the eastern flyway. The site provides habitat for a number of species considered to be of special emphasis by the FWS (black duck, mallard, woodcock, mourning dove - seen on site). The rarity of the non-common reed wet meadow community also contributes to the site's wildlife value in the Meadowlands.

ADVERSE EFFECTS OF THE PROPOSED PROJECT

Impacts

After the placement of fill, 52.5 acres of the site was transformed from a complex of old field, wet meadow, common reed field, emergent marsh, and interspersed areas of standing water, into an upland industrial building complex. The discharge of fill resulted in a higher site elevation, a complete change in substrate and hydrology with the consequent loss of occasional open water impoundment, the loss of a diverse wetland habitat mix and animal communities associated with these habitats, and the loss of sediment and toxicant retention capacities. Placement of fill in the remaining 5 acres of wetland, as proposed by the Russo Development Corporation would result in these same impacts.

In all likelihood, animals inhabiting the 57.5 acre site that have small territories and are relatively immobile perished/will perish with the placement of fill. More mobile species would have attempted to migrate and relocate in nearby habitats. However, if these nearby habitats were already at or near carrying capacity, relocation would have resulted in stress and/or death of the refugee animals or stress and/or death of the displaced inhabitants. State threatened and endangered species have encountered these conditions to an acute level. Their dwindling habitat has resulted in precariously declining population levels. The great blue heron and bobolink, and most likely the northern harrier, and eleven other state threatened or endangered bird species were or would be displaced from the Russo site. Their population status in New Jersey suggests that the placement of fill on the Russo site may have imposed significant impacts to them.

In addition to the direct loss of animals on site, the placement of fill has contributed directly to the loss of habitat diversity in the Hackensack Meadowlands. Prior to the placement of fill, only 4% of palustrine wetlands in the Meadowlands were dominated by non-common reed wet meadow vegetation. Russo's fill resulted in an 8% loss to this relatively rare habitat type. Also, the mix of five habitat types on site (old field, wet meadow, emergent, open water, wooded) is quite uncommon within the Meadowlands. This inherent and localized habitat diversity on site supported a diverse wildlife population (as listed in tables 2 and 3). A loss of habitat diversity contributes to the loss of faunal diversity.

In addition to the direct loss of the Russo site, there is reason to conclude that there may be more far-reaching repercussions on wildlife values. Prior to enactment of the Clean Water Act, several of the Meadowlands' wetlands were favored areas for solid waste disposal and many others were slated as acres to be "improved". Although the exact acreage of wetlands subject to solid waste landfill has not been determined, it is projected that the 1,516 acres of landfill in the Hackensack Meadowlands

District were predominantly wetlands. In 1972, remaining wetlands comprised 8,624 acres of the Hackensack Meadowlands. In 1984 they comprised 7,800 acres - an additional loss of 824 acres. Under HMDC's existing zoning, 3,345 acres of wetland are planned for various development zones with open space requirements from 15 to 50%.

Because of these extensive past losses, I believe the past and proposed future fill of the Russo site has contributed and will further contribute to cumulative adverse impacts on wildlife. The FWS has designated wetland areas in the eastern flyway, a category into which the Hackensack Meadowlands falls, as priority areas in their Waterfowl Management Plan (May 1986). The Service reports that the degradation of migratory and wintering habitat have contributed to long-term downward trends in some important duck populations including the black duck. Black ducks were seen on site prior to filling and were observed on the remaining five acres of wetlands. Therefore, loss of the Russo owned wetlands has contributed to cumulative impacts to waterfowl. Also, the population declines of threatened and endangered species are related to the loss of their habitats. The Russo site is known to support or have supported two state threatened species in New Jersey and is highly suitable habitat for the state endangered Northern Harrier, seven additional state endangered bird species, and six state threatened bird species. Loss of the 52.5 acres of wetland has contributed to a cumulative adverse impact to those species.

I believe that the Russo owned wetlands did and do provide important wildlife values, inherently and cumulatively. Destruction of these values caused/causes significant degradation under 230.10(c) unless the wildlife values can be preserved. However, Russo has not proposed, and the COE has not required, adequate mitigation as necessary under 230.10(c) and (d).

A one-half replacement of wetland values does not minimize adverse impact, does not comply with the Section 404(b)(1) Guidelines, and represents an unacceptable adverse effect because it results in the net loss of valuable wildlife habitat. The COE's position that the 57.5 acre wetland was low quality is incorrect, and EPA's findings argue that the wetlands provided valuable wildlife habitat supporting a great diversity of wildlife. A 0.5:1 compensation of the wetland values provided by the 57.5 acres of wetlands contributes to the permanent loss of valuable wildlife habitat and the wildlife populations supported by that habitat. It contributes to cumulative loss of a valuable wetland resource, and sets a provocative precedent with respect to interpretation of the Section 404(b)(1) Guidelines and implementation of the regulatory program. The net loss of significant habitat is unacceptable.

The information provided to date on the proposed mitigation does not identify a particular site and is too limited to evaluate the anticipated ecological gains and the probability of success. The precise location, acreage, and method of wetland enhancement have not been divulged by Russo. They assert that that information is particularly sensitive relative to the intense competitive market of the Meadowlands. The location and specific mitigation methods remain unavailable for EPA review. In order to assure no net loss, EPA considers that at minimum there must be a 1:1 value-for-value compensation. And, due to the uncertain likelihood of success of mitigation methods and objectives there is reason to argue that no net loss may require 2:1 - or perhaps greater - value-for-value compensation. Yet, contrary to EPA's and the FWS's consistent comments that 1:1 to 2:1 value-for-value compensation is necessary to prevent net loss of wetland values and functions, the proposed mitigation states outright that it will not accomplish that goal (0.5:1 (mitigated:lost) value-for-value). Moreover, the deed restriction may afford only questionable environmental benefit since the wetland site would already be protected from significant degradation under section 404 in the event that the discharge of fill were proposed.

The COE intends to issue a permit with special conditions which, they argue, would mitigate for the loss of wetland values. Russo has offered only to compensate on a 0.5:1 (mitigated:lost) value-for-value basis by enhancing existing wetlands within the Meadowlands District, and to place a deed restriction on 23 acres of wetlands it owns outside the District. The COE concludes that this is adequate mitigation and complies with the Section 404(b)(1) Guidelines directive to minimize adverse impacts (40 CFR 230.10(d)). Permit issuance as proposed disregards the rationale of no net loss and does not minimize adverse impacts. It proposes substantially less than the minimum of 1:1 compensation for lost values necessary to preserve wetland resources. As such it results in significant degradation to wildlife habitat which I consider to be an unacceptable adverse impact.

Pollutant Attenuation

As mentioned above, the wetland had and has the capacity to contribute to sediment, toxicant, and nutrient trapping or filtering. Development surrounding the site, the warehouse complex itself, and the fill contributed/contribute sediment, pollutants and nutrients to the wetland. This sediment, pollutant, and nutrient trapping is significant with respect to the protection of aquatic food chains, and fisheries in particular. The NMFS response to the public notice states that the Russo owned wetlands may perform important functions which protect downstream fishery resources of the Hackensack River. As mentioned above, the placement of fill has and would result in a higher site elevation, a complete change in substrate and hydrology resulting in the loss of these sediment and toxicant retention capacities. In addition, the wetland's capacity to retain surcharge of storm events and floods would be lost.

The Russo Development Corporation's Assessment of Impacts

Through the course of the 404(c) procedure I have sought comment from and provided the opportunity for comment to the Russo Development Corporation. Russo has responded with three major points: 1) that the 44 acres filled were not wetlands within the meaning of 33 CFR 323.2(c), 2) that the existing and proposed fill poses no adverse environmental impact on any of the resources addressed in the 404(c) regulations, including wildlife, and 3) "EPA's implementation of the so called Region II enforcement policy of 2:1 mitigation is, in fact, a rule which has not been lawfully promulgated, publicly debated or approved under the APA, 5 U.S.C. 553". Russo's arguments have been supported by a number of certifications and affidavits by Mr. Cascino, his consultant. In the following paragraphs I summarize Russo's arguments on the latter two points and offer my response to them. The first point bearing on whether the 44 acres are wetlands is beyond the scope of this 404(c) proceeding in that the COE has already determined these acres to be wetlands. I will touch upon this issue further on in the response to comments (Appendix D).

Regarding the proposed project's impact to wildlife, point two, Mr. Cascino argues: 1) the 44 acres was upland and the 13.5 acres, due to limited species of flora and the type of wildlife observed in the area, was of extremely low value to wildlife; and 2) the site's value ranked between zero and two on a scale of ten (by an undefined method of evaluation). He considered EPA's description of the site's vegetation to be "for the most part, inaccurate."

In EPA's public hearing testimony we concluded that the vegetation on site accurately represents what occurred on the site prior to fill, with the exception that Russo excavated the pond creating open water. It may be the case that the diversity of emergent plants occurring in the emergent zone was influenced by creation of the pond. Yet, historical accounts list the occurrence of sedges and arrowhead, primarily sedges, which substantiates EPA's vegetation mapping.

Regarding the wet meadow description, Mr. Cascino argues that the depiction of Russo's property in Mr. Del Vicario's affidavit includes additional acreage which is not part of Russo's property. Mr. Cascino states that that vegetation type is of higher value than what occurs on the 57.5 acre site. I acknowledge this claim in that the reproduction of aerial photos in Mr. Del Vicario's affidavit did, in error, include an area beyond the Russo property. Yet, EPA's site description recognizes that the wet meadow extends to the east beyond the site, as well as occurring on site. Indeed, a memo from Mr. James Schmid (a consultant to Russo) to Russo lists the same plant species as occurring on the 13.5 acres that EPA also recorded on site and described in the wet meadow classification. In addition, Mr. Cascino's certification characterizes the 44 acres as fields punctuated with deciduous trees and consisting of

a wild meadow containing various types of vegetation subject to harvesting for use as hay (grasses). He further States that, from time to time, there were areas of shallow ponding on a small portion of the 13.5 acre parcel. In conclusion, Russo's description of the 57.5 acre site agrees with our description, and I do not think it is "for the most part, inaccurate". I have drawn the conclusion that what remains on site and the area directly east of the site represents the vegetation that extended into the 52.5 acres of wetland prior to fill. The vegetation descriptions certainly do not indicate a "limited flora", but rather a diverse flora capable of supporting a diverse fauna.

Finally, I would like to address point three. Russo repeatedly asserts that EPA is requiring mitigation on a 2:1 basis and that this requirement is based on an illegal, punitive regional enforcement policy. However, EPA's proposed 404(c) determination refers only to the need for value-for-value or 1:1 to 2:1 mitigation. Indeed, even prior to the initiation of the Section 404(c) proceedings, EPA expressed a willingness to resolve this issue based on, in effect, 1:1 mitigation. Further, EPA's section 404(c) notice did not refer to an enforcement rationale. Rather, the Federal Register notice discussed 40 CFR 230.10(c) and (d) and 230.11 (g) and (e), none of which pertain to enforcement considerations. While the Region II EPA office has a 2:1 enforcement mitigation policy it applies to enforcement actions, not Section 404(c) proceedings.

Summary

The Russo Development Corporation's proposal has had and would continue to have severe impact on wildlife habitat from the filling of 52.5 acres of wetlands and the proposed filling of the remaining 5 acres of wetland. Moreover, the project has contributed/will contribute to cumulative losses of wildlife habitat with the consequent probability of affecting waterfowl populations and state threatened and endangered wildlife. The project has depleted/will deplete some of the uncommon habitat diversity within the Hackensack Meadowlands and thus has contributed/will contribute, in a cumulative sense, to impacts on wildlife occurrence in the region. In addition, the value of these wetlands to pollutant attenuation has been and will be lost.

Destruction of these values causes significant degradation under 230.10(c), unless the wildlife values can be preserved. Russo has not proposed, nor has the COE required, a mitigation plan which would avoid the net loss of valuable wetlands. This would result in significant degradation of the wetland resource which I conclude is unacceptable.

RECOMMENDATION

In the preceding sections, I explain the basis for my conclusion that the Russo Development Corporation's proposal to maintain 52.5 acres of fill and place additional fill in 5 acres of wetland on site for a warehouse complex would violate the Section 404(b)(1) Guidelines. The Russo site's inherent mix of habitat types and the occurrence of the relatively rare wet meadow (not dominated by common reed) provided/provides valuable wildlife habitat and added/adds to the value of the site in the context of the Hackensack Meadowlands ecosystem. To permit this fill without adequate mitigation would result in significant degradation, within the meaning of the Section 404(b)(1) guidelines, on the wetland's functions. Issuance of a permit under the conditions of 0.5:1 compensation for the wetland values lost will result in the net loss of valuable wetland habitat and will contribute to the cumulative loss of uncommon (within the Meadowlands) and valuable habitat on a regional and even extended (eastern flyway) basis.

Under Section 404(c) I must consider whether these adverse impacts are unacceptable. The 404(c) regulations define unacceptable adverse effect:

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss or damage to fisheries, shellfishing, wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) guidelines. [40 CFR 231.2(e)]

Those portions of the guidelines relating to significant degradation of waters of the U.S. (40 CFR 230.10(c)), to minimizing adverse impacts to aquatic resources (40 CFR 230.10(d)), and to the determination of cumulative effects on the aquatic ecosystem (40 CFR 230.11(g)) are of importance to evaluating the unacceptability of environmental impacts in this case. Compliance with the guidelines requires that no discharge of dredged or fill material shall be permitted if it causes or contributes to significant degradation of waters of the U.S. Effects contributing to significant degradation include but are not limited to the loss of wildlife habitat or the loss of a wetland's capacity to assimilate nutrients. Compliance with the guidelines requires that no discharge be permitted unless appropriate and practicable steps have been taken to minimize adverse impacts to the discharge on the aquatic ecosystem. In addition, the guidelines state that the permitting authority should consider information concerning cumulative impacts during the decision-making process. Thus, it is appropriate under Section 404(c) to take into account whether the project has resulted or will result in significant degradation to wildlife habitat and whether the proposed mitigation is adequate to offset the impacts of the Russo project.

In the previous sections I state that the proposed project: 1) has resulted and will result in significant degradation to the 57.5 acres of wetland, 2) has contributed and will contribute to cumulative effects on the aquatic ecosystem, and 3) has not minimized and will not minimize adverse impacts to aquatic resources. I have concluded that the wetland resources that the project has impacted and will impact were and are of high quality. The 57.5 acres of wetland provided a complex of contiguous habitat types capable of supporting a diverse faunal community as evidenced by the species occurring on site and projected, by those knowledgeable, to have occurred on site. The 57.5 acres of wetland supported species that are on the decline within the larger regional context of the state and the area encompassed by the eastern flyway.

The COE has argued that these losses are in compliance with the 404(b)(1) guidelines and are acceptable based on the public interest and the interest of the Russo Development Corporation. The acceptability of the adverse impact is based upon the consideration that the wetlands were low quality. I have demonstrated that these points are not valid. I consider the adverse impact unacceptable because 52.5 acres of valuable wetland habitat has been lost and the project proposes loss of five additional acres of valuable wetland habitat. This loss is unacceptable in both an endemic and cumulative sense. I reach this conclusion without even considering the effect on the orderly regulation of wetland related activities of Russo's having filled the wetlands, thereby destroying the wildlife habitat, before applying for the permit to authorize such fill. As I have stated in the text, loss of these wetlands does not comply with the Section 404(b)(1) guidelines. The precedent set in accepting a net loss of valuable wetland resources, as would be the case were I to accept the proposed 0.5:1 mitigation, is detrimental to wetland protection and inconsistent with the goals and objectives of the Clean Water Act.

In my proposed determination set forth in the public notice and the public hearing, I suggested that: 1) mitigation providing value-for-value replacement be required for the 44 acres that have been filled and contain warehouses, 2) restoration be required for the 8.5 acres that have been filled but contain no warehouses, and 3) that a permit be denied to fill the remaining 5 acres of wetland.

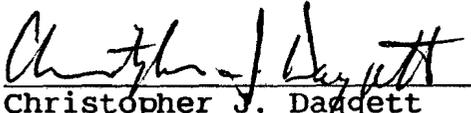
Quite a few respondents to the notice and hearing commented that: 1) fill on the 44 acres, in addition to that on the 8.5 acres, should be removed and the area restored to the wetland conditions prior to impact and, 2) mitigation should be provided on a 2:1 value-for-value basis. Most respondents emphasized the unauthorized nature of the fill and most concluded that 2:1 compensation should be provided as a deterrent to future unauthorized filling and as a punitive measure.

The significance of a 404(c) action is somewhat different for an after-the-fact permit. An after-the-fact permit must meet the same 404(b)(1) guidelines requirements as a pre-discharge permit; the fact that fill has already occurred does not entitle the applicant to a permit. In this case, I have determined that the fill of the Russo owned wetlands has and would result in unacceptable adverse impacts to wildlife. Consequently, if the Administrator affirms my decision, Russo would not receive legal authorization for its prior or proposed fill. Denial of the permit for the wetlands that have already been filled, however, does not mean that Russo must automatically remove the unauthorized fill. The appropriate remedy for an unauthorized discharge would be resolved in the context of an enforcement action, not through this 404(c) proceeding. Accordingly, comments as to whether removal, restoration, or off-site mitigation is the best remedy will be considered if I subsequently begin an enforcement action.

I do wish to clarify, however, EPA's position on 2:1 mitigation. As explained earlier, in this 404(c) proceeding, EPA's concern is to assure that there are no unacceptable adverse impacts to wildlife. We believe that this requires no net loss of habitat value which, in turn, would necessitate at least 1:1 value-for-value off-site mitigation. The precise ratio would be determined by the nature of any new mitigation proposal by Russo and its likelihood of success. Any decision I make as to the adequacy of the mitigation would be determined solely on the basis of ecological considerations.

On the other hand, were I to bring an enforcement action, I might well seek 2:1 mitigation to establish a deterrent for Russo and future violators. However, those types of enforcement considerations are irrelevant to any decision I or the Administrator makes with respect to this 404(c) proceeding. The only criteria we may consider are those in 404(c) of the Act and 40 CFR Part 231.

Dated: JANUARY 19, 1988


Christopher J. Daggett
Regional Administrator
Region II

REFERENCES

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Golet & Larsen. 1976. Francis C. Golet "Wildlife Wetland Evaluation Model" in Models for Assessment of Freshwater Wetlands. Joseph S. Larsen, editor. Publication #32 FY-76-5 Univ. of MA at Amherst.

APPENDIX A

Russo Development Corporation
Project Chronology

April 22, 1985

COE letter announcing their investigation of unauthorized activity. Fill material had been discharged onto 8.5 acres of the 13.5 remaining acres of the 57.5 acre parcel. EPA verbal response for either removal or mitigation.

August 28, 1985 - September 27, 1985

Public Notice proposing to maintain 55 acres of fill (actually 52.5 acres), discharge five further acres of fill and provide whatever compensation needed for the wetland loss.

September 30, 1985

EPA response to the Public Notice requesting 2:1 complete and appropriate mitigation to replace the functions and values provided by the 57.5 acres of wetlands. Denial, removal and restoration not requested since fill supported warehouses and the remaining acres without fill material had been severely disturbed.

December 3, 1985 and January 23, 1986

COE correspondence requesting review of November 27, 1985 submittal of mitigation proposal.

January 24, 1986

EPA review comments to the November 27, 1986 mitigation proposal. EPA concluded that the amount - acreage and functional value replacement was not acceptable. EPA also raised concern over potential title problems with the proposal.

February 27, 1986 and March 19, 1986

COE correspondence requesting review of February 27, 1986 revised mitigation proposal.

April 8, 1986

EPA response maintaining that the proposed mitigation was inadequate to compensate for wetland losses. EPA deferred denial, removal and restoration of the impact sites provided complete and appropriate mitigation be done on a 2:1 basis for function and value.

July 2, 1986

Interagency meeting with the COE. EPA questioned why the mitigation plan offered 2:1 for just 13 acres and concluded that the applicant was disregarding the need for mitigation of the 44 acre site. EPA stated that if adequate 404(b)(1) analysis and investigation of mitigation alternatives within the Hackensack Meadowlands District proved 2:1 compensation as not practicable EPA would accept 1:1 value for value compensation. EPA advised that if the permit were issued with the proposed mitigation plan the District Engineer would be contacted under the MOA.

September 30, 1986

COE Preliminary Position Document (PPD) stating a preliminary decision to issue the permit with the mitigation plan which EPA objected to.

October 8, 1986

EPA letter to the COE recommending denial of any further fill, removal of 8.5 acres of fill material not supporting warehouse construction and restoration, and 2:1 compensation for the 44 wetland acres lost to warehouse construction.

October 15, 1986

Interagency meeting with the District Engineer and the applicant. EPA maintained the October 8, 1986 position and commented on the trend of fill and after-the-fact authorization. The COE requested that the federal agencies provide a list of permit conditions which would satisfy the agencies should the COE issue the permit.

October 22, 1986

EPA letter to the COE with proposed permit conditions referenced in the October 15 item. Those conditions reiterated the October 8 position of removal, restoration and 2:1 compensation for 44 wetland acres. EPA footnote that if the COE determined no practicable alternatives for the 13.5 acre fill, then EPA would request 2:1 compensation. The letter responded to the September 30, 1986 PPD with concerns about the alternatives analysis, compliance with the 404(b)(1) Guidelines and

requested notification in accordance with the 404(q) MOA.

December 22, 1986

COE first Notice of Intent to Issue and supporting documentation. 2:1 mitigation for 13 acres turned into 1:2 mitigation for 57.5 acres.

December 24, 1986

EPA response requesting a meeting with the Brigadier General and suspension of further action on the application.

January 6, 1987

Meeting between the Regional Administrator and the Brigadier General. Concerns expressed regarding the inconsistency of 1:2 mitigation with previous COE practices, the net loss of wetlands from 1:2 mitigation and the implications to cumulative impacts.

January 16, 1987

Letter from the Brigadier General advising that he had directed the District Engineer to re-evaluate the decision with respect to specific parts of the record.

Interim

EPA and the COE were negotiating a resolution on the basis of 1:1 value for value compensation for the 57.5 wetland acres. COE broke off the negotiation (based on FWS unwillingness to pursue negotiation) and submitted the Notice of Intent to Issue (below).

March 23, 1987

COE Notice of Intent to Issue proposing authorization of the discharge of five further acres of fill and 1:2 value for value compensation for the loss of 57.5 wetland acres.

April 20, 1987

Assistant Administrator's elevation referral transmitted to Assistant Secretary Dawson, U.S. COE (Civil Works). Mr. Jensen indicated that the permit as proposed: 1) did not comply with the Section 404(b)(1) Guidelines, 2) would authorize significant adverse environmental impacts, 3) presented important implications to the Section 404 program nationwide in the manner in which the COE applied the 404(b)(1) Guidelines.

May 8, 1987

Acting Assistant Secretary of the Army, John Doyle, response to Mr. Jensen's 404(q) referral. Mr. Doyle concluded that the COE had complied with the Section 404(b)(1) Guidelines, that the wetland was of marginal value, and that the implications regarding application of the Section 404(b)(1) Guidelines are currently being discussed at the headquarters level. Therefore, Mr. Doyle concluded that there was no basis to elevate the issues for higher level review.

May 26, 1987

EPA's Regional Administrator notified the District Engineer and the Russo Development Corporation, in accordance with Section 404(c), of his intent to issue a public notice of a proposed determination to prohibit or restrict the discharge of fill on site. The letter afforded the concerned parties 15 days to demonstrate to the RA's satisfaction that no unacceptable adverse effects would occur as a result of permit issuance.

May 27, 1987

The District Engineer responded that his analysis clearly demonstrated that no unacceptable adverse effects would occur from permit issuance.

June 10, 1987

The Russo Development Corporation responded that EPA can not successfully argue that the project will have an unacceptable adverse effect on the environment and, they requested that the COE decision to issue a permit be affirmed.

August 7, 1987

EPA published a public notice in the Federal Register and the New Jersey Star Ledger announcing the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material into the Russo wetlands. The comment period extended for 60 days, closing on October 6, 1987.

October 6, 1987

Close of the 60 day August 7, 1987 public notice comment period. Thirteen responses all in support. Varying recommendation for corrective action. One request for a public hearing.

October 13 and 14, 1987

Public notice published in the New Jersey Star Ledger and the Federal Register, respectively, scheduling a public hearing on the proposed determination for November 5, 1987.

November 5, 1987

Public hearing on the proposed determination. Representatives of local environmental organizations in support of the proposed determination outnumbered those in support of Russo. RDC stated they would submit comments by the close of the comment period.

November 20, 1987

Close of the public hearing comment period. Response included mostly private citizens in favor of the proposed determination. Russo responded that the 44 acres filled were not wetlands, the wetlands on the 13.5 acres were low quality and there were no unacceptable adverse impacts.

December 11, 1987

Public notice published in the Federal Register announcing a 45-day extension of the time requirements in the 404(c) regulations for the Regional Administrator's decision to withdraw the proposed determination or prepare a recommended determination. Closing date with extension is January 19, 1988.

APPENDIX B: From "An Evaluation of Wetland Conditions On the Russo Tract Before and After Wetland Filling". November 1987. Prepared byMaure Group Inc., Providence, Rhode Island for EPA Region II.

SUMMARY OF WETLAND EVALUATION METHOD

(GOLET & LARSEN 1976) .

Table 2. Wildlife criteria, significance coefficients, specifications and ranks.

RANK.	(3.0)	(2.5)	(2.0)	(1.5)	(1.0)
<u>Criteria</u>					
		<u>Specifications</u>			
Wetland Class Richness (5) ¹	5 or more classes	4 classes	3 classes	2 classes	1 class
Dominant Wetland Class (5)	SF, DM	SH	WS, SS	OW, BG	H
Size Category (5)	over 500 acres	101-500 acres	51-100 acres	10-50 acres	under 10 acres
Subclass Richness (4)	10 or more subclasses	6-9 subclasses	4-5 subclasses	2-3 subclasses	1 subclass
Site Type (4)	bottomland-lakeside bottomland-deltaic bottomland-streamside		bottomland-isolated upland-lakeside		upland-isolated

¹Number in parentheses after each criterion is its significance coefficient.

Table 2 (continued)

RANK	(3.0)	(2.5)	(2.0)	(1.5)	(1.0)
<u>Criteria</u>			<u>Specifications</u>		
Surrounding Habitat Types (4)	2 or more of following constitute more than 90% of surrounding habitat: 1. forestland 2. agricultural or open land 3. salt marsh	1 or more of following constitute 50-90% of surrounding habitat: 1. forestland 2. agricultural or open land 3. salt marsh (or) 1 of preceding constitutes more than 90% of surrounding habitat.	1 or more of following constitute less than 50% of surrounding habitat: 1. forestland 2. agricultural or open land 3. salt marsh		
Cover Type (3)	Type 5	Type 4	Type 3 Type 7	Type 1. Type 2 Type 6	Type 8
Vegetative Interspersion Type (3)	Type 3	Type 2			Type 1

Table 2 (continued)

RANK	(3.0)	(2.5)	(2.0)	(1.5)	(1.0)
<u>Criteria</u>					
Wetland Juxtaposition (2)	<p>Hydrologically connected to other wetlands (different dom. class) or open water bodies within 1 mile.</p> <p>(or)</p> <p>Hydrologically connected to other wetlands (same dom. class) within 1/4 mile.</p> <p>(or)</p> <p>Wetland greater than 500 acres, with three or more wetland classes (including DM or SH)</p>		<p>Hydrologically connected to other wetlands (different dom. class) or open water bodies from 1-3 miles away.</p> <p>(or)</p> <p>Hydrologically connected to other wetlands (same dom. class) from 1/4 - 1 mile away.</p> <p>(or)</p> <p>Within 1/2 mile of other wetlands (different dom. class) or open water bodies, but not hydrologically connected.</p>		<p>All</p> <p>other</p> <p>possibilities</p>
Water Chemistry (1)	<p>Total alkalinity greater than 69 ppm CaCO₃.</p> <p>pH greater than 7.5</p>		<p>Total alkalinity 23-69 ppm CaCO₃.</p> <p>pH 6.5-7.5</p>		<p>Total alkalinity less than 23 ppm CaCO₃.</p> <p>pH less than 6.5</p>

Wetland scoring (Ranks are based on fictitious data).

Criterion	Signif. Coeff.	Rank	Subscore
1. Class Richness	5	2.0	10.0
2. Dominant Class	5	3.0	15.0
3. Size	5	2.5	12.5
4. Subclass Richness	4	2.5	10.0
5. Site Type	4	2.0	8.0
6. Surrounding Habitat	4	3.0	12.0
7. Cover Type	3	2.0	6.0
8. Veg. Interspersion	3	1.0	3.0
9. Juxtaposition	2	2.0	4.0
10. Water Chemistry	1	3.0	3.0
Total Wetland Score			83.5

The lowest possible total score is 36 and the highest is 108. A brief description of each of the criteria follows. For more details, see Golet (1972) or Golet and Larson (1974).

1. Wetland class richness. This criterion describes the number of wetland classes present in a wetland. An area must be at least 1 acre in size to be recognized as a separate class. As wetland class richness increases, so does the likelihood for greater wildlife species richness because each wetland class provides habitat for a different assemblage of species. However, the number of classes alone does not account for all of the species richness. Certain classes support a greater number of species than others, so that the kind and relative proportions of different wetland classes present are important as well. Wetland class richness is the broadest and most important of the criteria for evaluation.

2. Dominant wetland class. Some wetland classes support greater numbers and a greater diversity of wildlife than others, and certain classes provide the only suitable habitat for species such as waterfowl that are especially valued by man. Therefore, wetlands are rated according to the dominant class present. This is the one that clearly occupies the greatest area. If two or more classes are co-dominant, their ranks are averaged. Dominant life form of vegetation, water depth and permanence of surface water are the major characteristics considered in ranking classes (see Table 3).

3. Size categories. Wetlands are ranked from largest to smallest, according to the general principle that as size increases, so does wildlife value. Large wetlands serve as refuges for wildlife particularly sensitive to man's activities. With increasing size, disturbances on the periphery have less effect on wildlife in the interior. Large wetlands also tend to encompass a greater diversity of habitat types because of irregularities in topography and associated differences in water depth. Large wetlands are usually longer-lived than small ones because large size is generally correlated with a permanently high water table and an extensive watershed. In addition, wetlands larger than 100 acres are of great value to flocks of migrating waterfowl.

4. Subclass richness. This criterion goes one step further than wetland class richness in assessing habitat diversity. Just as particular life forms characterize classes, particular subforms characterize subclasses. A wetland's broad wildlife value increases as the number of subclasses increases. As noted above, a wetland segment must be at least 1 acre in size to be recognized as a separate subclass.

5. Site type. Bottomland wetlands are generally more valuable than upland wetlands because of greater soil fertility, more sustained surface water levels and greater life expectancy. Similarly, wetlands associated with open water bodies are usually more valuable than isolated ones. Using this rationale I grouped site types into three categories for evaluation (see Table 2).

6. Surrounding habitat types. Freshwater wetlands bordered by forest, agricultural or open land, or salt marsh are more valuable to wildlife than those adjacent to land more intensively developed by man. Furthermore, diversity in the surrounding habitat increases the possibility of wildlife diversity within the wetland. The percentage of the surrounding habitat occupied by the less intensively developed types and the number of these types present determine the rank given for this criterion.

7. Cover type. This criterion can be assessed in wetlands consisting of one or many wetland classes, although its value is most evident in evaluating deep and shallow marshes. Studies suggest that a cover-water ratio of approximately 50:50 is optimal for waterfowl and marsh birds in general (Weller and Spatcher 1965, McGilvrey 1968). Highest ranks are thus given to wetlands with nearly equal proportions of cover and water. Areas with nearly total cover or total open water receive low ranks. In addition, cover interspersed with water is deemed more valuable than a band of cover surrounding open water.

8. Vegetative interspersion. A wetland receives a rank for this criterion according to which interspersion type (Fig. 5) it approximates. High ranks are associated with an abundance of edge between subform stands, small size of such stands and a large number of different kinds of edge.

9. Wetland juxtaposition. A wetland's wildlife value is generally higher if it is located near other wetlands, especially if the adjacent wetlands contain classes or subclasses different from those of the wetland being evaluated. Moreover, the value increases if the wetlands are connected by streams. In such cases, wildlife can move safely between wetlands to best satisfy their needs. This is especially advantageous for waterfowl.

Wetland juxtaposition is important because it provides habitat diversity. It is most important when the wetland of interest is small and contains few classes. In evaluation, a rank of 3.0 is automatically given to any wetland larger than 500 acres that also possesses three or more wetland classes, one of which is deep or shallow marsh. If the wetland does not meet these specifications, ranking proceeds according to the normal specifications given in Table 2. If several categories should fit the wetland, the highest ranking one should be used in evaluation.

10. Water chemistry. Water chemistry influences the presence, abundance and distribution of aquatic plants and invertebrates that serve as food for wetland wildlife.

While cover and nest sites are probably more critical than food in determining the presence of most species, abundance of food items can influence the carrying capacity of a wetland during the breeding season and its value to migrating waterfowl. Decision-makers have no time to adequately sample and describe food plants and animals, but water chemistry determinations can serve as indices of potential productivity.

Brooks and Deevey (1963) pointed out that New England surface waters are very dilute and extremely soft for the most part. Analysis of water chemistry data provided by the Massachusetts Division of Fisheries and Game produced support for this generalization (Golet 1972). These data suggest that average total alkalinity in excess of 70 ppm CaCO₃ and pH values above 7.5 can be considered high. Specifications for pH (Table 2) are based upon clear-cut groupings of the graphed data for 95 ponds and lakes. Alkalinity specifications derive from the classes of Brooks and Deevey (1963). Total alkalinity is the better index of productivity; pH is less reliable, and should be used only if alkalinity data are not obtainable.

This system of wetland classification and evaluation allows one to objectively group wetlands according to their wildlife value and to identify key areas for preservation and acquisition. Use of the system assumes, however, acceptance of the stated standard for evaluation: maximum wildlife production and diversity. The above criteria would not be suitable for use by a state fish and game agency attempting to identify valuable wood duck (Aix sponsa) production areas. For that case, more specialized criteria would be required.

Two major constraints guided the development of this system. First, it was designed for use by decision-makers. A special effort was made to produce criteria that are as uncomplicated and objective, and yet as sensitive, as possible. The necessary data for most of the evaluation can be obtained from recent aerial photographs, topographic maps and surficial geology maps. Wetland subclass, vegetative interspersion and water chemistry are key descriptors which require unavoidable, but limited, field work. Shortage of time and expertise would render a more sophisticated system useless to the decision-maker.

The choice to consider virtually all wildlife species during evaluation imposed another major constraint. Although wildlife production and diversity are both reasonable goals, they are not strictly compatible. It is impossible to maximize the production of all species at one, since each has a different set of habitat requirements. The broadness of the criteria reflect the overriding influence of compromise.

1978 WETLAND EVALUATION FORM

Wetland location: Carlstadt, N.J.
 Wetland owner: Russo Development Corp.

EVALUATION PERFORMED BASED ON SITE CONDITIONS IN 1978

<u>RESOURCE VARIABLES</u>		<u>DATA</u>		<u>S.C.#</u>	<u>RANK</u>	<u>PTS</u>
<u>WETLAND CLASS RICHNESS</u>	Four Classes: DM, SM, SP, M			5	2.5	12.5
<u>DOMINANT WETLAND CLASS</u>	Meadow (M)			5	1.0	5.0
<u>SIZE CATEGORY (ACRES)</u>	51-100 acres (52.5)			5	2.0	10.0
<u>SUBCLASS RICHNESS</u>	Four Subclasses: DM4, SM1, SP1 & M1			4	2.0	8.0
<u>SITE TYPE</u>	Bottomland streamside			4	3.0	12.0
<u>SURROUNDING HABITAT TYPES (PERCENT OF TOTAL SHORELINE)</u>	Forest 0	Agric. or Open Land 50	Salt Marsh 0	Mining 0	Recreation 0	Urban 50
						Waste Disposal 0
<u>SIGNIFICANCE COEFFICIENT</u>						<u>SUMTOTAL I: 55.5</u>

RESOURCE VARIABLES	DATA			H.C.	RANK	PTS.
<u>ER TYPE</u>	PERCENT COVER	DISTRIBUTION	TYPE	3	2.0	6.0
	90	occasional small patches of non cover (water)	3			
<u>tative Interspersion</u>	EDGE TYPES*	UNIT SIZE	DISTRIBUTION	3	2.0	6.0
	2					
<u>Land Juxtaposition</u>	CLASS	STREAM-LINKED	DISTANCE (MILES)	2	3.0	6.0
	same	yes	adjacent			
				SUBTOTAL	2	18.0
				SUBTOTAL	1	55.5
				TOTAL		73.5

Numbers refer to sub-forms of vegetation described in Part I of dissertation

Rank low: 35.0-50.0
 med: 50.5-60.0
 high: 60.5-70.0
 outstanding: 70.5-105

WETLAND EVALUATION FORM

Wetland location: Carlstadt, N.J.
 Wetland owner: Russo Development Corp.

EVALUATION BASED ON CONDITIONS IN SEPTEMBER 1987

<u>RESOURCE VARIABLES</u>		<u>DATA</u>		<u>S.C.#</u>	<u>RANK</u>	<u>PTS</u>
<u>WETLAND CLASS RICHNESS</u>	Four Classes: DM, SM, SP, M			5	2.5	12.5
<u>DOMINANT WETLAND CLASS</u>	Shallow Marsh (SM)			5	2.5	12.5
<u>SIZE CATEGORY (ACRES)</u>	<10 acres			5	1.0	5.0
<u>SC CLASS RICHNESS</u>	Four Subclasses: DM4, SM1, SP1 & M1			4	2.0	8.0
<u>SIZE TYPE</u>	Bottomland Streamside			4	3.0	12.0
<u>SURROUNDING HABITAT TYPES (PERCENT OF TOTAL SHORELINE)</u>	Forest 0 Agric. or Open Land 50 Salt Marsh 0 Mining 0 Recreation 0 Urban 50 Waste Disposal 0			4	2.0	8.0
<u>SIGNIFICANCE COEFFICIENT</u>	SUMTOTAL 1:					58.0

[OW-2-FRL-3239-8]

Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site**AGENCY:** Environmental Protection Agency.**ACTION:** Notice.

SUMMARY: Section 404(c) of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. EPA's Regional Administrator, Region II, has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into wetlands by the Russo Development Corporation—71 Hudson Street, Hackensack, New Jersey—within the Hackensack Meadowlands in Carlstadt, New Jersey for the purpose of building warehouses may have unacceptable adverse effects on wildlife. Accordingly, this notice announces the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material at the site and seeks public comment on his proposal.

Public Hearing

EPA will schedule a public hearing if there is a significant degree of public interest, or if Russo Development Corp., as landowner and permit applicant, requests one. If a public hearing is scheduled, public notice of a hearing will be issued and will contain: (1) Reference to this public notice of the proposed determination, (2) the date, time, and place of the hearing and, (3) a brief description of the nature and purpose of the hearing including the rules and procedures.

The public hearing would be scheduled no earlier than 21 days from the date of this notice of proposed determination. Requests for a public hearing should be submitted within 15 days of the date of this notice.

DATES: All comments on this proposed determination to prohibit or restrict the use of the Russo site for the discharge of dredged or fill material should be submitted to the person listed under **ADDRESSES** within 60 days of the date of this notice.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S.

Environmental Protection Agency
Region II, 28 Federal Plaza, New York,
NY 10278.

FOR FURTHER INFORMATION CONTACT:
Mr. Mario Del Vicario, Chief, Marine
and Wetlands Protection Branch, U.S.
EPA Region II, 28 Federal Plaza, New
York, NY 10278, (212) 264-5170.

SUPPLEMENTARY INFORMATION:**I. Description of the Section 404(c) Process**

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404, 33 U.S.C. 1344. Section 404 authorizes the Secretary of Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary or where warranted by the economics of anchorage and navigation, except as provided in section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

Regulations published in 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resources, he may begin the process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator that there will not be unacceptable adverse impacts or identifies corrective measures satisfactory to the Regional Administrator within 15 days, the Regional Administrator publishes a notice in the Federal Register of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination

or prepare a recommended determination. If he prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA's headquarters for a final decision affirming, modifying, or rescinding the recommended determination. The Corps of Engineers and the applicant are provided with another opportunity for consultation before this final decision is made. It is important to note that this section 404(c) action is being initiated in response to an after-the-fact permit action by the Corps pursuant to 33 CFR 326.3(e) and, therefore, primarily involves existing unauthorized fill. EPA may follow up this section 404(c) action with an enforcement action with respect to the unauthorized fill.

II. Description of the Site**A. Russo Site**

Prior to filling in 1961, the Russo site was characterized by 57.5 acres of palustrine emergent marsh, dominated by common reed (*Phragmites australis*) and blue joint grass (*Calamagrostis canadensis*). Groupings of aspen (*Populus tremuloides*) and ephemeral ponds were interspersed within the tract. The site is situated within a larger palustrine emergent marsh along the Hackensack River commonly referred to as the Empire tract of the Hackensack Meadowlands. This tract was cut off from tidal river flow by dikes placed in the 1920's. The Russo site receives upland drainage and storm water runoff from adjacent areas and transfers this drainage via ditches dredged on site in the 1920's to Moonachie Creek which drains to the Hackensack River. Moonachie Creek has had a tide gate at its confluence with the Hackensack River since the 1920's.

Historically the site has impounded large areas of water. For example, during construction of the western spur of the New Jersey Turnpike from 1969 to 1971 ditches within the Empire Tract were filled with fill material and drainage was blocked. The Empire tract including the Russo site became an impoundment area with standing water. When turnpike construction was finished in 1971 the drainage ditches were re-dredged. No further maintenance of these ditches or those on the Russo site has occurred since then. In addition, severe storm events in conjunction with the inadequate drainage provided by unmaintained ditches on the Russo site have resulted in storm water retention and

impoundment related to storm water back-up upstream of the Moonachie Creek tide gate.

Between 1981 and 1985 the Russo Development Corporation discharged 52.5 acres of fill material, shot rock (a mixture of clean dirt and rock) from excavation sites in New York, on the site without Department of the Army authorization. Six warehouses were constructed on 44 of the 52.5 acres of fill and are currently tenanted; 8.5 acres of fill remain undeveloped. The remaining five acres of wetland on site which did not receive fill have developed into a freshwater pond edged by cattail (*Typha* sp.) and common reed. The Russo Development Corporation has sought after-the-fact Department of the Army authorization to maintain the 52.5 acres of fill and authorization to discharge fill material into the remaining 5 wetland acres for the purpose of constructing more warehouses. The Russo site was and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR 230.3. The site therefore is subject to regulations under section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site. This permit issuance must be in compliance with the section 404(b)(1) Guidelines.

Currently, muskrat, waterfowl and a variety of rodents have been observed on the remaining five wetland acres on site. Historical accounts of wildlife use, prior to or at the time of discharge of 52.5 acres of fill, list grey fox (occasional), rabbit, pheasant, waterfowl, woodcock, killdeer and, marsh-associated songbirds. In addition, waterfowl utilization was high when the Russo site impounded large areas of water. Prior to discharge of fill the site functioned in sediment and toxicant retention, contributing to water purification. After discharge of fill, 52.5 acres of the site was transformed from a reed, blue-joint grass and interspersed emergent vegetative community into an upland industrial building complex. The discharge of fill resulted in a higher site elevation, a complete change in substrate and hydrology with the consequent loss of occasional open water impoundment, the loss of ephemeral ponds, the loss of wetland vegetation and animal communities associated with wetland habitat, and the loss of sediment and toxicant retention capacities.

B. The Hackensack Meadowlands District

The Russo site is part of the Hackensack Meadowlands ecosystem. The 7,000-8,000 acres of wetlands

contained therein provide habitat for many species of waterfowl, wading birds, shorebirds, passerines, raptors, and various mammals, reptiles and amphibians.

While the Meadowlands perform critical environmental functions, they are under intense development pressure. In fact, the Hackensack Meadowlands Development Commission (HMDC) reports that the wetlands acreage in the Meadowlands District decreased from 10,521 to 7,800 acres between 1972 and 1984. The HMDC Master Zoning Plan provides for development of approximately an additional 2,200 acres of wetlands.

Because of the concern that development in the wetlands and floodplain areas of the Meadowlands would conflict with section 404 of the Clean Water Act, the Fish and Wildlife Coordination Act of 1958, and other federal policies, EPA and the U.S. Fish and Wildlife Service (FWS) presented recommendations to the Corps of Engineers in 1981 concerning potential permit reviews. In particular, EPA and FWS divided the Meadowlands into marginal and critical wetlands categories. The Agencies anticipated that permits could be granted for "marginal wetlands", provided adequate compensation and other appropriate permit conditions were imposed. The Russo site was designated in this category. For "critical, high quality, and extremely productive wetlands," EPA and FWS indicated that they would be likely to recommend permit denial. If a permit were issued, compensation of at least two wetland acres for every acre lost would be necessary.

While the 1981 policy reflected an initial effort to distinguish among wetlands, it was based on a preliminary and limited data base. Consequently, EPA in late 1985 initiated an Advanced Identification study within the Hackensack Meadowlands with the support of other federal and state agencies. The study is evaluating wetland values, as well as impacts of the intense development pressures to these wetlands, in much greater detail. It is EPA's expectation that the results of the study will serve as a template for future section 404 permit decisions in the Meadowlands. During this time frame, HMDC will also be revising its Master Plan for a number of reasons, including the fact that the Master Plan has not been subject to review for consistency with the National Environmental Policy Act and section 404 of the Clean Water Act.

III. Proceedings to Date

For the reasons stated earlier, a Department of the Army permit is required to discharge fill onto the Russo site. The Russo Development Corporation has sought an after-the-fact Department of the Army permit for the existing and proposed work previously described.

The Corps of Engineers issued Public Notice 12360-85660-11 for this application on August 28, 1985 proposing to maintain the 52.5 acres of unauthorized fill, to authorize 5 further acres of fill for the purpose of constructing warehouses and to require mitigation for the entire 57.5 acres. The Corps has approved Russo Development Corp.'s mitigation proposal which includes enhancement of existing wetlands within the Hackensack Meadowlands to provide a 0.5:1 (enhance:lost) value-for-value compensation for the wetlands lost and a deed restriction securing permanent preservation of 23 wetland acres owned by the applicant in Troy Meadows of the Passaic River basin (i.e., outside of the Hackensack River basin).

The Corps advised EPA of its intention to issue the permit as requested by the Russo Development Corporation with the mitigation discussed above. EPA Region II reiterated previously expressed objections to the project and requested 2:1 complete and appropriate mitigation to replace the functions and values provided by all 57.5 acres. EPA did not seek removal of the warehouses on the 44 acres that had been illegally filled, since restoration was unlikely to return the site to its previous wetland state.

EPA sought to resolve its concerns through procedures established by the federal agencies under section 404(q) of the Act (see the 404(q) Memorandum of Agreement, November 1985). Section 404(q) directs the Corps and EPA to enter into an agreement to coordinate and expedite permit decision making. In October 1986 correspondence, the Regional Administrator requested notification of the Corps of Engineers permit decision on the Russo application in accordance with these procedures. Accordingly, on December 22, 1986 the Corps submitted a preliminary Notice of Intent to Issue (NII) a permit to EPA and other federal agencies. In response (December 24, 1986), the Regional Administrator requested a meeting with the Division Engineer and suspension of further actions on the permit application. Following their January, 1987 meeting, the New York District Corps reexamined the preliminary NII

and submitted a final NII maintaining the Corps decision to issue a permit without the mitigation EPA considered necessary. In April 20, 1987 correspondence the Assistant Administrator for Water, requested that the Assistant Secretary of the Army (Civil Works) refer the New York District Corps decision to a higher level for re-evaluation. The Assistant Secretary denied EPA's request.

Having exhausted these procedures for resolution of EPA's concerns, the Regional Administrator initiated section 404(c) procedures through which the EPA Administrator may exercise a veto over the specification by the Corps of Engineers of a site for the discharge of dredged or fill material. The Regional Administrator notified the District Engineer and the Russo Development Corp. (May 26, 1987) of his intent to issue a Public Notice on his proposed section 404(c) determination and notified each that there would be a 15 day consultation period to resolve his concern regarding the significant adverse effects. The Corps and the Russo Development Corp. responded (May 27, 1987 and June 10, 1987 respectively) concluding that the project did not pose any unacceptable adverse effects. The consultation period closed on June 11, 1987. Following a review of responses received from the Corps and the applicant, the Regional Administrator concluded that no new information had been provided and, therefore, he was not persuaded that there would be no unacceptable adverse effects from the existing and proposed fill.

IV. Basis for Proposed Determination

A. Section 404(c) Criteria

The Clean Water Act requires that exercise of the final section 404(c) authority be based on a determination of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. The regulations define unacceptable adverse effect:

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR Part 230). (40 CFR 231.2 (e))

The preamble to the 404(c) regulations explains that one of the basic functions of section 404(c) is to police the application of the section 404(b)(1) Guidelines.

Those portions of the guidelines relating to significant degradation of waters of the U.S. (40 CFR 230.10(c)), to minimizing adverse impacts to aquatic resources (40 CFR 230.10(d)) and to the determination of cumulative effects on the aquatic ecosystem (40 CFR 230.11(g)) are of particular importance to evaluating the unacceptability of environmental impacts in this case. Compliance with the Guidelines requires that no discharge of dredged or fill material shall be permitted if it causes or contributes to significant degradation of waters of the U.S. Effects contributing to significant degradation include but are not limited to the loss of wildlife habitat or the loss of a wetland's capacity to assimilate nutrients. Compliance with the guidelines requires that no discharge be permitted unless appropriate and practicable steps have been taken to minimize adverse impacts of the discharge on the aquatic ecosystem. In addition, the guidelines state that the permitting authority should collect and solicit information concerning cumulative impacts and document and consider this information during the decision-making process. Thus, it is appropriate under section 404(c) to take into account whether the project has or will result in significant degradation to aquatic resources, particularly wildlife habitat, or whether the proposed mitigation is adequate to offset the impacts of the Russo project.

B. Impacts to Filling the Russo Site

As discussed previously, the existing and proposed fill has/will replace the wetland soils, vegetation and hydrology with impervious surface resulting in a loss of the site's sediment and toxicant retention capabilities. In addition, the existing and proposed fill is and will be a source of pollutants to adjacent aquatic areas during rainfall events.

Beyond these general but very significant environmental impacts, EPA believes wildlife has and will be significantly affected by the fill at the Russo site. Historical accounts of wildlife use prior to or at the time discharge of the fill list wetland-associated songbirds and waterfowl, woodcock, killdeer, pheasant, rabbit and, occasional grey fox. Loss of 52.5 acres of habitat is likely to have disturbed at least the marsh-related species, particularly in view of development north and west of the project site also encroaching on wildlife habitat. FWS and the Corps have characterized the 52.5 acres of the Russo site as low to moderate habitat prior to its being filled. FWS has explained that this rating is based upon the lack of diversity of wildlife habitat because of

the monotypic vegetative cover. In addition, FWS noted, and EPA agrees, that the site provided the wildlife habitat functions of a Meadowlands wetland and supported wetland-associated wildlife even though the habitat was monotypic. Moreover, FWS considers the five acres Russo seeks to fill to be a good quality wetland.

The five remaining acres which have not yet been filled consist of a 3 acre pond and 2 acres of palustrine emergent marsh with phragmites, cattail, dwarf spikerush, and juncus spp. This freshwater pond with associated emergent vegetation contributes to the diversity of wetlands within the Meadowlands District and provides quality habitat of food and cover to wetland-associated wildlife, especially waterfowl, wading birds, and muskrat. Loss of the additional five acres can therefore be expected to adversely affect wetland associated wildlife.

In addition to the direct loss of the Russo site, there is reason to conclude that there may be more far-reaching repercussions on wildlife values. Because of the extensive past losses of wetlands in the Meadowlands, EPA believes there is cause to conclude that the past and future fill of the Russo site is likely to contribute to cumulative adverse impacts on wildlife. As mentioned above, gradual and continual wetland development has diminished the Meadowlands District's wetlands by 2,721 acres (10,521 to 7,800) and, the Hackensack Meadowlands Development Commission's Master Plan provides for the development of an approximate additional 2,200 acres. The U.S. Fish and Wildlife Service has designated wetland areas within the eastern flyway, a category into which the Hackensack Meadowlands falls, as priority areas in their Waterfowl Management Plan (May 1986). The Service reports that the degradation of migration and wintering habitat have contributed to long-term downward trends in some duck populations. In those periods when the Russo site impounded large areas of water, waterfowl were numerous on the site. In addition, population declines would be expected for those less mobile wetland-associated species such as muskrat and other rodents, reptiles and amphibians. Ecological theory suggests that disturbed animal populations do not necessarily simply shift into remaining habitat. Depending on the habitat's carrying capacity disturbed populations may perish or displace other organisms which may perish.

There is not a great deal of existing information in the record identifying the

specific values and functions provided by the formerly existing wetlands. For that reason EPA strongly encourages the public to submit any relevant information. EPA believes, though, that the Meadowlands environment cannot tolerate the loss of the Russo site unless the ecological values the site served/ serves are compensated for.

In order for filling of the site to be consistent with the section 404(b)(1) Guidelines, EPA believes adequate mitigation must be provided to assure replacement of the wildlife values and functions, thereby stemming the net loss of wildlife habitat in the Meadowlands.¹ Wetland enhancement and creation to provide complete compensation for wetland values lost would constitute appropriate mitigation in this case.

It appears, however, that adequate mitigation will not be provided. Russo has offered only to compensate on a 0.5:1 value-for-value basis by enhancing existing wetlands within the Meadowlands District and to place a deed restriction on 23 acres of wetlands it owns outside the District.

The information provided to date on the proposed mitigation does not identify a particular site and is too limited to evaluate the anticipated ecological gains and the probability of success. Thus, contrary to EPA's and FWS's consistent comments that 1:1 to 2:1 value-for-value compensation is necessary to prevent net loss of wetland values and functions, the proposed mitigation is unlikely to accomplish that goal. Moreover, the deed restriction affords only questionable environmental benefit since the wetland site would already be protected from significant degradation under section 404 in the event that the discharge of fill were proposed.

¹ Since EPA's first response to the Corp's Public Notice of Russo's application for a permit in September, 1985, EPA has consistently stated that mitigation to replace wetland functions and values is required. However, in the fall of 1986, EPA questioned not only the adequacy of Russo's mitigation proposal but also whether there were not, in fact, practicable alternatives to using the Russo site for constructing warehouses. EPA has taken the position that mitigation cannot be used to compensate for avoidable losses; i.e., where there are practicable alternatives to filling a wetland site. Consequently, EPA suggested that (1) mitigation providing value-for-value replacement be required for the 44 acres that have been filled and contain warehouses, (2) restoration be required for the 8.5 acres that have been filled but contain no warehouses and, (3) that a permit be denied to fill the remaining 5 wetland acres. However, assessing the existence of practicable alternatives in the context of an after-the-fact permit raises particularly difficult analytical issues that go far beyond those raised in this particular permit application. Consequently, I have decided not to pursue the practicable alternatives issues in this section 404(c) action.

EPA consequently has concluded that the loss of 57.5 acres of wetlands, taken in the context of the cumulative loss of wetland acreage occurring in the Hackensack Meadowlands, could result in significant loss and damage to wildlife habitat areas. Unless and until the Russo Corporation agrees to provide adequate mitigation as described above, it is EPA's view that an after-the-fact permit for 52.5 acres and a pre-discharge permit for five acres could result in unacceptable adverse impacts to wildlife within the meaning of section 404(c) and 40 CFR 231.2(e). Accordingly, EPA proposes to prohibit the use of the Russo site for discharge of fill material under the conditions reflected in the permit the Corps proposes to issue. Thus, the fill of the five remaining acres of wetlands would be prohibited. In addition, EPA may initiate enforcement action with respect to the unauthorized fill of the 52.5 acres in order to achieve appropriate restoration of or mitigation for the filled area.

V. Solicitation of Comments

EPA would like to obtain comments on: (1) Whether or not the impacts of such discharge would represent an unacceptable adverse effect as described in section 404(c) of the Clean Water Act; (2) the vegetative and hydrologic characteristics of the subject site and observations of or information concerning wildlife on the site prior to and after the placement of fill material; (3) observations of or information concerning wildlife in wetlands similar to the subject site and in the Hackensack Meadowlands in general; (4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; (5) the need for a public hearing and; (6) whether the Regional Administrator should recommend to the Assistant Administrator for Water the determination to prohibit or restrict the discharge of dredged or fill material on the site. Comments should be submitted within 60 days of the date of publication of this Federal Register notice to the person listed above under ADDRESSES. All comments received will be fully considered by the Regional Administrator in making his decision to prepare a recommended determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Daggett,
Regional Administrator.
[FR Doc. 87-17187 Filed 8-6-87; 8:45 am]
BILLING CODE 6640-60-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3087-0142
Title: Hazard Identification, Capability Assessment, and Multi-Year Development Plan (HICA/MYDP) for Local Governments

Abstract: FEMA requires consistent information on the status of State and local emergency management and the impact of FEMA funds on improving capability. HICA/MYDP data has established a nationwide baseline on State and local hazards, current capability, and resource requirements. Data is being used to set program priorities, prepare the FEMA budget, allocate funds, and provide reports to Congress.

Type of Respondents: State or local governments
Number of Respondents: 3,410
Burden Hours: 55,910
Frequency of Recordkeeping or Reporting: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2824, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 87-17953 Filed 8-6-87; 8:45 am]
BILLING CODE 6710-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

June 28, 1987, EPA prepared the Final Determination and Permit Conditions. These conditions require, in part, the installation of an acid gas control device to control 90% of the acid gases, and 65% control of 0.14 lbs per million Btu of the sulfur dioxide emissions. In addition, the permit limits the emission of particulate matter to 0.015 gr/dscf corrected to 12% CO₂. The facility was also allowed to burn municipal solid waste at 110% of its rated capacity (i.e., 2420 tons per day). No other comments were received during the public comment period.

The federal PSD permit (PAD-FL-112) was issued on July 28, 1987, and became effective on September 3, 1987. The effective date of this permit constitutes final agency action under 40 CFR 124.19 (f)(1) and section 307 of the Clean Air Act, for purposes of judicial review. Under section 307 (b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (see section 307 (b)(2)).

If construction does not commence within eighteen (18) months after the effective date, that is, by March 3, 1989, or if construction is not completed within a reasonable time, the permit shall expire and the authorization to construct shall become invalid.

(Sections 160-169 of the Clean Air Act (42 U.S.C. 7470-7479))

Dated: October 1, 1987.

Charles H. Sutfin,
Acting Deputy Regional Administrator.
(FR Doc. 87-23721 Filed 10-13-87; 8:45 am)
BILLING CODE 6560-50-01

(FRL-3276-8)

Science Advisory Board; Water Quality Advisories Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two day meeting of the Water Quality Advisories Subcommittee of the Science Advisory Board will be held on October 22 and 23, 1987. The meeting will begin at 9:00 a.m. on October 22, and will be held in the Laboratory Conference Room of EPA, Region 3, Annapolis Office at 839 Bestgate Road, Annapolis, MD. Adjournment on October 23 will take place no later than 3:00 p.m.

The main purpose of the meeting is to review draft guidelines developed for preparation of water quality advisories for both human health and aquatic life protection. Water quality advisories are

intended to be used as a supplement to development of water quality criteria recommendations under section 304(a) of the Clean Water Act. Advisories are designed to fill the gap between the large number of pollutants and the limited number of criteria documents currently produced, and represent the best scientific judgement given the existing information.

The meeting will be open to the public; however, space is limited. Anyone who wishes to attend, present information to the Subcommittee, or obtain information concerning the meeting should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101-F), Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460, Telephone (202) 382-2552 or FTS 8-382-2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the above address. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than October 19, 1987, in order to be assured of space on the agenda.

Date: October 5, 1987.

Kathleen Conway,
Deputy Director, Science Advisory Board.
(FR Doc. 87-23722 Filed 10-13-87; 8:45 am)
BILLING CODE 6560-50-01

(FRL-3276-1)

Announcement of a Public Hearing on the Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: A public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" was published in the Federal Register and the New Jersey *Star Ledger* on August 7, 1987. (Request for a copy of that notice should be made to the person listed in the section below entitled **FURTHER INFORMATION**.) The August 7, 1987 notice announced the Environmental Protection Agency's (EPA) Region II Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material into wetlands owned by the Russo Development Corporation—71 Hudson Street, Hackensack, New Jersey. The Russo Development Corporation has sought after-the-fact Department of the Army

authorization to maintain 52.5 acres of fill and authorization to discharge additional fill material into the remaining five wetland acres on site in Carlstadt, New Jersey (Block 131.1, Lots 59, 64.01-64.66) for the purpose of constructing warehouses. The Regional Administrator has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into the subject wetlands may have unacceptable adverse effects on wildlife. The Russo site was/and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR 230.3. The site therefore is subject to regulations under section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site.

The Corps of Engineers (COE) advised EPA of its intention to issue a permit as requested by the Russo Development Corporation. Section 404(c) of the Clean Water Act authorizes EPA to prohibit or restrict the discharge of fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that the use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. The purpose of this notice is to announce the scheduling of a hearing to provide the opportunity to comment on the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material onto the subject site pursuant to section 404(c) of the Clean Water Act.

Public Hearing

A public hearing is scheduled for November 5 1987 at the Hackensack Meadowlands Development Commission's auditorium at One De Korte Park Plaza, Lyndhurst, New Jersey from 3 pm to 5:30 pm and continuing at 7 pm after a dinner break. Written comments may be submitted prior to the hearing. Any person may appear at the hearing and present oral or written statements and may be represented by counsel or other authorized representative. Participants will be afforded an opportunity for rebuttal. The Regional Administrator's designee will be the Presiding Officer at the hearing. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examinations of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant. The hearing record will remain open for the submittal of written

comments until November 20, 1987, 15 days from the close of the public hearing. A record of the hearing proceeding shall be made by a verbatim transcript. Copies of the transcript of the proceedings may be purchased by any person from EPA after the close of the comment period. Copies will be available for public inspection at the Region II EPA office, 26 Federal Plaza, New York, NY after the close of the comment period. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

All written statement and information offered in evidence at the hearing will constitute a part of the hearing file which will become part of the administrative record of the Regional Administrator's determination.

DATES: All written comments should be submitted to the person listed under ADDRESSES, below, no later than November 20, 1987, 15 days from the close of the public hearing. Written comments may be submitted to the Presiding Officer at the time of the hearing.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, New York, NY 10278. The public hearing will be held in the Hackensack Meadows Development Commission's auditorium located at One De Korte Park Plaza, Lyndhurst, New Jersey.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264-5170. If you wish to receive a copy of the public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" published on August 7, 1987, please contact Mr. Del Vicario and a copy will be mailed to you.

SUPPLEMENTARY INFORMATION: The August 7, 1987 public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site: reviewed the section 404(c) process, provided a description of the subject wetland site, reviewed the proceedings to date on the subject action, discussed the basis for the proposed determination and, solicited comments.

During the scheduled hearing, EPA would like to obtain comments on: (1) Whether the impacts of the subject discharge would represent an unacceptable adverse effect as described in section 404(c) of the Clean Water Act; (2) the vegetative and

hydrologic characteristics of the subject site and, observations of our information concerning wildlife on the site prior to and after the placement of fill material; (3) observations of or information concerning wildlife in wetlands similar to the subject site and in the Hackensack Meadowlands in general (4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; (5) whether the Regional Administrator should recommend to the Assistant Administrator for Water the discharge of dredged or fill material on the site. Comments should be submitted no later than November 20, 1987 to the person listed above under ADDRESSES. All comments received will be fully considered by the Regional Administrator in making his determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Dagget,
Regional Administrator.
[FR Doc. 87-23712 Filed 10-13-87; 8:45 am]
BILLING CODE 6600-00-02

[FRL-3275-S]

Water Pollution; Final NPDES General Permit for Private Domestic Discharges in East Baton Rouge Parish in the State of Louisiana

AGENCY: Environment Protection Agency.

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Regional Administrator of Region IV is today issuing a Final NPDES General Permit for certain dischargers who treat private domestic wastes. This final NPDES general permit establishes effluent limitations, standards, prohibitions and other conditions on these discharges. The facilities covered by this permit are located in East Baton Rouge Parish within the State of Louisiana. A copy of the permit is reprinted as required by 40 CFR 122.28.

EFFECTIVE DATE: This NPDES general permit shall become effective November 13, 1987.

ADDRESSES: Notifications required under this permit should be sent to the Director, Water Management Division (6W), U.S. Environmental Protection Agency, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell (6W-PS), U.S.

Environmental Protection Agency, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas Texas 75202-2733, (214) 655-7190.

SUPPLEMENTARY INFORMATION: Public notice of the draft permit was published in the Federal Register on July 29, 1987 (52 FR 28337). The comment period closed on August 28, 1987. One comment received from the Louisiana Department of Environmental Quality (LDEQ) who submitted several significant comments on the draft permit. In accordance with 40 CFR 124.17(a)(2), EPA describes and responds to these comments as follows. This response supplements the fact sheet which was published with the draft permit and is incorporated by reference. Changes have been made to the permit as noted in this response.

Comment: LDEQ suggested that EPA should extend coverage of the general permit to public owned treatment works (POTWs) as well as private facilities, because East Baton Rouge Parish has a policy of taking over new subdivision treatment facilities for operation and maintenance after they have been permitted.

Response: EPA clearly states in the fact sheet and the permit that this general permit applies only to private domestic treatment works and not to POTWs. Furthermore, a consent decree is presently being issued in East Baton Rouge Parish to require that most small POTWs be connected to central treatment plants. Therefore, this general permit will not be applied to POTWs. If a private domestic treatment works becomes a POTW, it will no longer be covered by this permit and must be covered by an individual NPDES permit.

Comment: LDEQ points out that the area policy on which the general permit is based covers only facilities discharging to water in the Amite/Comite drainage system and questions if EPA wishes to extend the coverage of the general permit beyond the area policy.

Response: The area policy also applies to the Bayou Manchac drainage system. However, under best professional judgment (BPJ), EPA has applied the limitations under the area policy to the entire East Baton Rouge Parish.

Comment: LDEQ requests that the flow based for assigned limitations be changed from "facility design flow" to "expected flow."

Response: EPA concurs and has made the change.

Comment: LDEQ requests that the permittee be given the choice of fecal coliform limits of 200/100 ml average

APPENDIX D

RESPONSE TO COMMENTS

On August 7, 1987 EPA issued a public notice in the Federal Register and the New Jersey Star Ledger announcing the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material into the Russo site. The notice sought public comment on: 1) whether or not the impacts of the proposed project were unacceptable, 2) observations of wildlife, vegetation, and hydrology on the Russo site prior to and after the placement of fill material, 3) observations of wildlife in the Hackensack Meadowlands in general, 4) what corrective action, if any, could be taken, 5) whether the Regional Administrator should recommend the proposed determination and, 6) the need for a public hearing. The comment period closed on October 6, 1987. EPA received 13 responses to the public notice all in support of the proposed determination to prohibit or restrict the discharge of fill. One, the New Jersey Audubon Society, requested a public hearing. The Regional Administrator considered it to be in the public interest to schedule a public hearing. The October 13, 1987 Star Ledger and the October 14, 1987 Federal Register scheduled a public hearing for November 5, 1987 with the close of the comment period being November 20, 1987. Thirty-two people signed in at the hearing and fifteen spoke. Those in support of the proposed determination outnumbered those in support of the project. Nearly all of the comments addressed the issues raised in the proposed determination. All comments have been read and evaluated by Region II in reaching this recommended determination. The number of responses was not extensive. Indeed, the volume of response provides the opportunity to address each individually, but because similar issues were raised repeatedly they could best be addressed generically. Many comments have been addressed in the body of the recommendation. Finally, some issues raised were not pertinent to the decision.

The organization of this appendix basically follows that of the recommended decision. We first address issues pertaining to the project proposal and the 404(c) process and then proceed, sequentially, to comments about the environmental value of the site, adverse impacts and the recommendation.

PROJECT PROPOSAL

Comment: All responses in favor of the proposed recommendation addressed the fact that the fill was placed without authorization and that EPA action should be an effective deterrent against illegal fill.

EPA Region II Response: Indeed, this 404(c) recommendation is unusual in that it deals with an after-the-fact permit application. Yet, 404(c) action is a mechanism to protect the

environmental integrity of the resources it considers vital. It is not an enforcement action and cannot take into account punitive considerations.

404(c) TO ESTABLISH BROAD POLICY TO DEVELOPMENT

Comment: The Hackensack Meadowlands Development Commission stated that they took no position on the resolution of the specific issues raised in the proposed determination. They commented that EPA should not attempt to use the 404(c) proceeding to establish broad policy applicable to development elsewhere in the Hackensack Meadowlands District.

EPA Region II Response: Section 404(c) is an EPA policy and mechanism to prevent the unacceptable adverse impacts to specific resource which Congress has mandated EPA, under the Clean Water Act, to protect. The policy is implemented on a national level, not simply focused on the Hackensack Meadowlands wetlands. If proposals for development do not comply with the Section 404(b)(1) guidelines and they result in unacceptable adverse impacts to the pertinent resources addressed within the 404(c) regulations, then 404(c) proceedings would be appropriate.

SITE SPECIFIC INFORMATION AND INFORMATION ON THE HACKENSACK MEADOWLANDS

Comment: 44 acres filled of the 57.5 acre project site were not wetlands within the meaning of 33 CFR 323.2(c).

EPA Region II Response: The Corps has determined that the 44 acres are wetlands in its determination to propose issuance of the permit. Regarding the wetland status of the 44 acres Mr. Cascino argues three main points new to EPA: 1) the diking and tide gates implemented by the Mosquito Control Commission removed the site from tidal influence, 2) since that time the site depended upon upland drainage and stormwater run-off as its water source and the dredging and efficiency of ditches on site in intercepting this water source has kept the site dry and upland, and 3) the site has been subject to disturbance and fill from roadwork, gas line work and particularly farming (with the use of heavy farm machinery). Based on these arguments, he concludes that the 44 acres was not wetland. I disagree. This is outside the scope of EPA's Section 404(c) review since the COE has already made the jurisdictional determination. Since he raised these comments, I will note the following with respect to his comments.

First, removal from tidal inundation does not necessarily result in transformation to upland. Second, wetlands can be and indeed are hydrologically driven by watershed run-off. Mr. Cascino argues that the presence of ditches on site made it upland. The COE wetland delineation manual includes the occurrence of drainage ditches as a wetland hydrologic indicator. Obviously,

if ditches occur, water occurs. Drainage ditches should be effective in intercepting surface run-off yet a site may continue to exhibit saturated soils (a hydrologic indicator - one of the parameters in delineating wetlands). As discussed above (hydrology) the soils on the Russo site were comprised of 8 to 20 inches of meadow mat, an organic, moisture retentive soil. Capillary action and seasonal rainfall would have maintained moist to saturated soils. Although ditches may have been effective in draining surface waters, there is no evidence that those ditches were effective in lowering the water table. Therefore, the site would have sustained saturated soils and exhibited that wetland hydrologic parameter. Fill on site precludes verification. Also, in the situation of the Russo site, the ditches ultimately drain to a creek whose outflow is blocked. As described above (hydrology), during storm and flood events surcharged water inundates/inundated the site. The COE's wetland delineation method includes seasonally and ephemerally flooded conditions in its review of wetland hydrologic characteristics. Thus, the occurrence of drainage ditches does not establish the site's status as upland. Third, the fact that the 44 acres were farmed and disturbed does not argue that the site was upland. The history of farming includes extensive farming in wetlands where saturated soils were critical to productivity. This was most likely the case on the Russo site where the wet meadow grasses were harvested for hay on the eastern portion of the 44 acres, and flowers and vegetable crops were harvested from the western portion of the site. Apparently, from historical accounts, the existing soils were not altered, and the groundwater level was not manipulated during farming. Thus, when farming ceased in the early 1970's the hydrologic conditions remained suitable for succession to wet meadow. I note that the previous disturbance has in fact resulted in a succession to wetland conditions highly suitable to wildlife. Therefore, I agree with the COE's finding that the 44 acres are wetland.

Comment: The FWS, New Jersey Audubon Society, Bergen County Audubon Society, and the New Jersey Conservation Foundation responded with a listing of species that have been observed on the site and/or a list of species likely to be observed on site. In addition, they addressed the wildlife habitat value of the Hackensack Meadowlands.

EPA Region II Response: This information has been incorporated into the Regional Administrator's recommendation.

Comment: The Hackensack Meadowlands are valuable and remain as the last expanse of wetlands surrounded by a vast metropolitan area.

EPA Region II Response: EPA has reviewed the cumulative impacts of the proposed project in the context of the Hackensack Meadowlands in this recommendation.

UNACCEPTABLE ADVERSE IMPACT

Comment: The project represented a cumulative loss and/or a significant loss.

EPA Region II Response: The recommended determination argues that the adverse impacts from the proposed project are indeed unacceptable because of the net loss of valuable wetland habitat.

Comment: Issuance of a permit with 0.5:1 mitigation represents a dangerously weak regulatory attitude.

EPA Region II Response: We argue that 0.5:1 mitigation is inadequate, as reflected in the determination.

Comment: The Meadowlands Chamber of Commerce, the mayor of Carlstadt and the Russo Development Commission each concluded that the project poses no adverse impact and the mitigation as proposed compensates for the wetlands lost.

EPA Region II Response: The recommendation addresses Russo's arguments more specifically. In general response, EPA concludes that the project does impose unacceptable adverse impacts to wildlife from the significant degradation of wetland habitat valuable to wildlife, from a cumulative impact to wildlife, and from the net loss of valuable wildlife habitat. EPA does not conclude that the mitigation compensates for the wetland values lost.

CORRECTIVE ACTION TO REDUCE THE ADVERSE IMPACT

Comment: A number of responses sought the removal of all fill and restoration of the complete 52.5 acres. Others stated a preference for restoration and, if that were not feasible, then 2:1 mitigation for the fill on the 44 acres. Most recommended restoration of the 8.5 acres, and all responses in favor of the proposed determination recommended denial of fill in the remaining five acres of wetland. FWS recommended 1:1 mitigation of the 44 acres, restoration of the 8.5 acres and denial of any further fill. A few respondents thought there should, in addition, be fines imposed on Russo. One respondent specified that mitigation should be done within the Hackensack Meadowlands District.

EPA Region II Response: EPA believes that the objectives of the Clean Water Act would best be met by allowing the 44 acres of fill to remain. It is not the intent of 404(c) to be punitive, rather it is to protect the environmental integrity of the subject resources. Region II believes that intent would be best achieved by requiring at least value-for-value mitigation on the 44 impacted acres. EPA does not consider the likelihood of success in retrieving lost wetland values of the 44 wetland acres to be very high. The removal and replacement of wetland soils and the compaction of altered soils from the weight of the warehouses

suggests that restoration efforts would be ineffective. In contrast, the 8.5 acres of fill have not been subject to those extensive disturbances, and I think that the likelihood of success for restoration is much better on this portion of the site. The public notice responses are indeed valid in that the fill was placed illegally. Yet the mechanism for punitive action should be enforcement. An after-the-fact permit application status precluded immediate pursuit of an enforcement action. In the event that the Administrator affirms this recommendation and the Russo Development Corporation does not voluntarily address EPA's concerns, the Regional Administrator may follow up with an enforcement action.

ALTERNATIVES ANALYSIS

Comment: The National Wildlife Federation and the FWS commented that the analysis of alternatives and the water dependency issue should be addressed.

EPA Region II Response: EPA Region II raised the issue of practicable alternatives to using the Russo site for constructing warehouses to the COE. EPA does not have further information on an alternatives analysis. Rather than delay the 404(c) proceeding, we have elected to rest the 404(c) action solely on environmental impacts.

assured, and recommended that the ROD include a statement to this effect.

ERP No. F-UMC-E11019-NC, Cherry 1 Military Operating Area (MOA), Craven, Beaufort, Hyde, Pamlico and Washington Counties, and Core MOA, North Carolina Outer Banks/Cape Lookout National Seashore, Establishment, NC.

Summary: EPA expressed concern about the air use issue and noise impacts. These impacts are expected to increase due to a disproportionate growth rate that is occurring along the coast. EPA recognizes the need for realistic training, but suggests that a close look at any changes such as flying higher during training flight be evaluated. EPA further suggested that the document be supplemented with an evaluation of the cumulative impacts of noise and air use restrictions within the Cherry Point local flying area. (Note—the above summary should have appeared in the 12-4-87 FR Notice.)

ERP No. F-UMT-D54033-MD, Baltimore Northeast Corridor Extension Transit Improvements, Funding, Baltimore County, MD.

Summary: Although EPA comments and UMTA responses were omitted from the final EIS, discussions between the agencies have resolved all of the concerns expressed in the draft EIS. Therefore, EPA has no objection to the implementation of this project.

Dated: December 8, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-28504 Filed 12-10-87; 8:45 am]

BILLING CODE 6880-88-21

[EPL-3301-7]

Extension of the Time Requirements in the 404(c) Regulations for Region II EPA's Decision To Withdraw the Proposed Determination or Prepare a Recommended Determination Concerning the Russo Site; Hackensack Meadowlands, Carlstadt, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that use of the site for discharge or dredged or fill material would have an unacceptable adverse

effect on various resources, including wildlife. EPA's Regional Administrator, Region II, has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into wetlands by the Russo Development Corporation—71 Hudson Street, Hackensack, New Jersey—within the Hackensack Meadowlands in Carlstadt, New Jersey for the purpose of building warehouses may have unacceptable adverse effects on wildlife.

EPA's regulations implementing section 404(c), 40 CFR Part 231, establish procedures to be followed in exercising the Administrator's authority to prohibit or restrict the use of an area as a disposal site. The three major steps in the process are: (1) The Regional Administrator's proposed decision to prohibit or restrict the use of a site; (2) the Regional Administrator's withdrawal of the proposed determination or preparation of a recommended determination to the Administrator to prohibit or restrict use of the site; (3) the Administrator's final decision to affirm, modify, or rescind the regional recommendation. The Regional Administrator issued a public notice (August 7, 1987 Federal Register) and his designee conducted a public hearing (November 5, 1987) on his proposed determination to prohibit or restrict the discharge of fill into the Russo wetlands. The Regional Administrator is now in the process of either withdrawing his proposed determination or preparing a recommended determination to submit to EPA's Administrator. 40 CFR 231.5 directs the Regional Administrator to complete this process within 30 days of the close of the public hearing. This would occur on December 5, 1987.

Pursuant to 40 CFR 231.8, the Administrator or the Regional Administrator may, upon showing of good cause, extend the time requirements of these regulations. Accordingly, this notice announces the Regional Administrator's decision to extend, for 45 days, the completion of this process.

DATES: The 45 day extension would close the time frame referenced in 40 CFR 231.5 on January 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. Environmental Protection Agency Region II, 28 Federal Plaza, New York, NY 10278, (212) 264-5170.

SUPPLEMENTARY INFORMATION: As mentioned above, EPA held a public hearing on November 5, 1987. The section 404(c) regulations direct, in 40 CFR 231.4, the Regional Administrator to consider all public comment in his

decision to withdraw his proposed determination or prepare a recommended determination. EPA received the verbatim transcript of the hearing on December 1, 1987. The three working days between the 1st and 5th of December do not afford adequate time to fully review public comment to the proposed determination and complete the documentation supporting the Regional Administrator's decision. In addition, following a November 8, 1987 request EPA received a copy of the Corps of Engineers Administrative Record on November 20, 1987. Adequate review of this voluminous record and completion of the documentation supporting the Regional Administrator's decision is not afforded within the 30-day time frame stated. The Regional Administrator concludes that these events represent good cause to extend the time requirements of the section 404(c) regulations.

Christopher J. Daggett,

Regional Administrator.

December 4, 1987.

[FR Doc. 87-28557 Filed 12-10-87; 8:45 am]

BILLING CODE 6880-88-21

FEDERAL COMMUNICATIONS COMMISSION

[Report No. CL-88-39]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Frequency Block B in Cumberland, MD-WV (Mkt. #269) and Hagerstown, MD (Mkt. #257) Cellular Markets

December 8, 1987.

From Monday, January 11, 1988 through Friday, January 15, 1988, applications for frequency block B in the Cumberland, Maryland-West Virginia and Hagerstown, Maryland cellular markets will be accepted for filing. Since no eligible applicant filed for these markets during the initial filing window, **BLOCK B ELIGIBILITY STANDARDS DO NOT APPLY TO THIS FILING** and frequency block A or B eligibles may file under this notice.

All applications for these markets will be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (ENTER MARKET NUMBER), P.O. Box 371995M, Pittsburgh, PA 15250-7995.

Applications shipped via common carrier or hand carried must be brought to the following address between the

DEC 7 1987

Ms. Martha Girard
Director of Executive
Agencies Division
Office of the Federal Register
Washington, D.C. 20460

Dear Ms. Girard:

This is to request an expedited Federal Register publication of the public notice entitled "Extension of the Time Requirements in the 404(c) Regulations for Region II EPA's Decision to Withdraw the Proposed Determination or Prepare a Recommended Determination Concerning the Russo Site". EPA's 404(c) Regulations direct the Regional Administrator to have completed the subject process by December 5, 1987 unless he extends the time requirements upon showing of good cause. The enclosed notice announces his decision to extend the time requirements of the regulations. Given that December 5, 1987 has past, we would appreciate publication at the earliest possible date.

Thank you for your attention to this matter.

Sincerely,

Mario Del Vicario,
Chief, Marine and Wetlands Protection Branch

DEC 4 1987

Federal Register Publication of the Announcement of a Time
Extension of the 404(c) Regulations

Christopher J. Daggett
Regional Administrator (2RA)

Vicki Read
Federal Register Officer (PM-223)

Attached is a Federal Register notice (one original and three copies) announcing a time extension of the 404(c) regulations for the Regional Administrator's decision to withdraw his proposed determination or prepare a recommended determination to prohibit or restrict the discharge of dredged or fill material into wetlands owned by the Russo Development Corporation in Carlstadt, New Jersey. A Federal Register typesetting request form is also attached.

If you have any questions on this submittal, please call Mario Del Vicario, Chief, Marine and Wetlands Protection Branch or Kathleen Drake of his staff at 8-264-5170.

Enclosure

bcc: Richard L. Caspe, WMD
Mario Del Vicario, MWP

2WM-MWP:K.DRAKE:sg:12/4/87

WM-MWP

2WM-MWP

2WM-MWP

2WMD

2DRA

2RA

DEC 4 1987

Extension of Time Requirements in
the 404(c) Regulations - Russo 404(c)

Mario Del Vicario, Chief
Marine and Wetlands Protection Branch

Christopher J. Daggett
Regional Administrator

THRU: Richard L. Caspe, Director
Water Management Division

Regulations concerning Section 404(c) procedures, 40 CFR Part 231, direct the Regional Administrator to either withdraw the proposed determination or prepare a recommended determination to prohibit or restrict the discharge of dredged or fill material within 30 days after the conclusion of the public hearing (December 5, 1987) and promptly forward the recommended determination and administrative record to the Administrator for review. Section 231.8 addresses extension of time stating that upon showing of good cause, the Regional Administrator may extend the time requirements of the regulations. The regulations direct that notice of such extension shall be published in the Federal Register and, as appropriate, through other forms of notice.

EPA held a public hearing on the proposed determination on November 5, 1987. Section 231.4 directs the Regional Administrator to consider all public comment in his decision to withdraw or prepare his recommended determination. We received the verbatim transcript of the hearing on December 1, 1987. The three working days between the 1st and 5th of December do not afford adequate time to fully review public comment to the proposed determination and prepare a recommended determination. In addition, following a November 6, 1987 request we received a copy of the Corps of Engineers Administrative record on November 20, 1987. Adequate time to review this voluminous record and prepare a recommended determination is not afforded within the 30-day time frame stated.

We believe that the events discussed above represent good cause to extend the time requirements, as provided in the Section 404(c) regulations. We recommend that the Regional Administrator extend the decision to withdraw the proposed determination or prepare a recommended determination 45 days to January 19, 1988.

In the event that you extend the time requirement, the associated materials required for notification are attached:

- (1) original and (3) copies of the public notice announcing a time extension for the decision to withdraw the proposed determination or prepare a recommended determination;

(2) a Federal Register typesetting request form;

(3) Memo to Ms. Vicki Read transmitting the public notice to the Office of the Federal Register for publication.

A copy of this public notice will be sent directly to the Russo Development Corporation, the Corps of Engineers and to all those who testified at the public hearing or sent written comments to EPA.

And finally, if you concur with our recommendation, please indicate below.

Enclosure

Concur:

Non-concur:

/s/ Christopher J. Daggett

Christopher J. Daggett
Regional Administrator

Christopher J. Daggett
Regional Administrator

bcc: Richard L. Caspe, WMD
Mario Del Vicario, MWP



new jersey audubon society

P.O. BOX 125 • 790 EWING AVENUE • FRANKLIN LAKES, N.J. 07417 • (201) 891-1211

30 November 1987

Mario Del Vicario, Chief
Marine and Wetlands Protection Branch
United States Environmental Protection Agency
Region 11
26 Federal Plaza
New York, New York 10278

Dear Mr. Del Vicario:

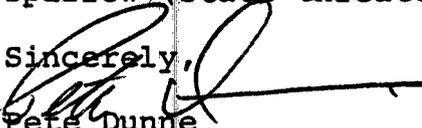
Enclosed is a New Jersey checklist which lists those species now regarded as annual within the State.

I have looked at the habitat and vegetation that was found on the Russo Tract (as it is described in the evaluation of November 1987) prior to filling and alteration. I have checked off those species of birds that would be expected to be found on the site at some time of the year--as summer resident, winter resident or transient.

This list is conservative. I did not include most woodland species since I could not really gauge the extent or composition of the woodlands. It seems that the wooded area is not a major concern or central to the issue of filling wetlands.

The total number of bird species is: 127; notable among them are: pied-billed grebe (state endangered); cooper's hawk (state endangered); northern harrier (state endangered); merlin (state threatened); peregrine falcon (state endangered); great-blue heron (state threatened); short-eared owl (state endangered); cliff swallow (state endangered); sedge-wren (state endangered); bobolink (state threatened); vesper sparrow (state endangered); savannah sparrow (state threatened) and grasshopper sparrow (state threatened).

Sincerely,


Pete Dunne

Director, Natural History Information

CAPE MAY BIRD OBSERVATORY, Box 3, Cape May Point 08212, (609) 884-2736 • LORRIMER NATURE CENTER, 790 Ewing Avenue, Franklin Lakes 07417, (201) 891-1211 • OWL HAVEN, P.O. Box 26, Tennent 07763, (201) 780-7007 • RANCOCAS NATURE CENTER, Rancocas Road, Mount Holly 08060, (609) 261-2495 • SCHERMAN/HOFFMAN SANCTUARIES, Hardscrabble Road, Bernardsville 07924, (201) 766-5787

NOTES

NEW JERSEY AUDUBON SOCIETY
 P.O. Box 125
 790 Ewins Avenue
 Franklin Lakes, N.J. 07417

A CHECK LIST OF NEW JERSEY BIRDS		LOCALITY	Redhead
Y	MO.		
E	DAY		
A			
R			
			Ring-necked Duck
			Gr. Scaup
			L. Scaup
			Corn. Eider
			King Eider
			Hairy-tailed Duck
			Ondouwer
			Black Scoter
			Surf Scoter
			White-winged Scoter
			Corn. Goldeneye
			Barrow's Goldeneye
			Bufflehead
			Hooded Merganser
			Corn. Merganser
			Red-breasted Merganser
			Ruddy Duck
			Black Vulture
			Turkey Vulture
			Osprey
			Am. Swallow-tailed Kite
			Mississippi Kite
			Bald Eagle
			N. Harrier
			Sharp-shinned Hawk
			Cooper's Hawk
			N. Goshawk
			Red-shouldered Hawk
			Broad-winged Hawk
			Sparrow's Hawk
			Pied-tailed Hawk
			Rough-legged Hawk
			Golden Eagle
			Am. Kestrel
			Merrin
			Peregrine Falcon
			Gyr Falcon
			Ring-necked Pheasant
			Wild Turkey
			N. Bobwhite
			Yellow Rail
			Black Rail
			Clapper Rail
			King Rail
			Virginia Rail
			Sora
			Purple Gallinule
			Corn. Moorhen
			Am. Coot
			Sandhill Crane
			Black-bellied Plover
			L. Golden-Plover
			Wilson's Plover
			Semipalmated Plover
			Piping Plover
			Killdeer
			Am. Oystercatcher
			Black-necked Stilt



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

P.O. Box 534
705 White Horse Pike
Absecon, New Jersey 08201
(609-646-9310)

December 3, 1987

Mr. Mario Del Vicario
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10278-0090

Dear Mr. Del Vicario:

This is in response to your letter, dated November 30, 1987, to the Fish and Wildlife Service (Service) requesting further information on wildlife species using the Russo Development Corporation tract in Carlstadt, Bergen County, New Jersey. Additionally, the Service has reviewed the report entitled, "An Evaluation of Wetland Conditions on the Russo Tract Before and After Wetland Filling," prepared for the U.S. Environmental Protection Agency by the Maguire Group Inc., and offer the following comments.

In previous correspondence the Service provided comments regarding the wildlife value of the Russo tract based upon the assumption that the site supported primarily a monoculture of common reed and offered little habitat diversity in its preproject condition. However, the findings presented in the Maguire report refute this assumption. The Service concurs with the conclusion of the Maguire report that the Russo tract did indeed support more diverse habitat than was previously assumed.

The information presented in the Maguire report describes the project site as consisting of a complex of old fields, wet meadows, fields of common reed, mixed emergent marsh and small ponds. The following comprises a list of species which typically utilize such a complex and whose range includes the area of the Russo site for breeding, migration and/or overwintering.

REPTILES

spotted turtle
diamondback terrapin
eastern painted turtle
box turtle
northern watersnake
eastern garter snake
eastern ribbon snake
northern brown snake

AMPHIBIANS

red-spotted newt
northern dusky salamander
northern red salamander
American toad
Fowlers toad
green frog
bull frog
pickerel frog
leopard frog

BIRDS

mallard
black duck
blue-winged teal
gadwall
pied-billed grebe +
American bittern *
common egret
cattle egret
snowy egret
great blue heron *
woodcock
pheasant
bobwhite quail
marsh wren
song sparrow
swamp sparrow
grasshopper sparrow *
Savannah sparrow *
vesper sparrow +
bobolink *
alder flycatcher
Carolina chickadee
ruby-crowned kinglet
gray catbird
yellow warbler
yellow-rumped warbler
American redstart
northern waterthrush
common yellowthroat
northern harrier +
short-eared owl +

- * State-listed threatened
- + State-listed endangered

MAMMALS

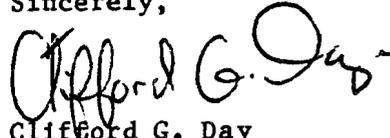
opossum
masked shrew
least shrew
shorttail shrew
starnose mole
eastern mole
raccoon
longtail weasel
mink
musk rat
striped skunk
red fox
gray fox
woodchuck
white-footed mouse
redback vole
meadow vole
meadow jumping mouse
eastern cottontail rabbit

The wetland complex as described in the Maguire report could provide habitat for 5 State-listed threatened, and 4 State-listed endangered species. Although the above is not necessarily a complete list, we believe it is representative of the typical species composition for the habitat type as currently described for preproject conditions at the Russo site.

The Service continues to support a determination to prohibit further fill at the Russo site. Furthermore, we recommend that the U.S. Environmental Protection Agency require adequate compensation for habitat values lost due to the existing 44-acre development.

If you have any questions or require further information, contact Ms. Shari Stevens of my staff. Please continue to keep us informed of your actions concerning this matter.

Sincerely,

A handwritten signature in black ink that reads "Clifford G. Day". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Clifford G. Day
Supervisor

Mr. Peter Dunn
 New Jersey Audubon Society
 Bernardsvill, New Jersey 07924

Dear Mr. Dunn:

This is to follow up your conversation with Kathleen Drake of my staff on the likely association of wildlife with those habitats shown on the enclosed vegetation maps and described in the attached text and plant species list. This vegetation analysis of the 57.5 acre Russo site was prepared from interpretation of stereo aerial photographs taken in 1978. Mapping was also facilitated by the examination of earlier photographs and the ground-truthing of current aerial photography. Although the plant species composition on the 52.5 acres prior to fill can not be determined from interpretation of aerial photography, we conclude that what is seen on site today extended into the remaining 52.5 acres of wetland, with the possible exception that the emergent community may be currently more diverse in association with the 2 to 3 acre pond on site.

Kathleen mentioned drafting a list of wildlife that would be likely to associate with the habitats as described. Would you please send us such a list so that we may be better able to review the value of the Russo site for wildlife.

Thank you for your assistance.

Sincerely,

Mario Del Vicario, Chief
 Marine and Wetlands Protection Branch

Enclosure

2M-MWP:		CONCURRENCES						
SYMBOL	2M-MWP	2M-MWP	2M-MWP				2DRA	2RA
SURNAME	<i>Drake</i>		<i>MDV</i>					
DATE	<i>11/29/87</i>		<i>11/2/87</i>					

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. Clifford Day
 Field Supervisor
 U.S. Fish and Wildlife Service
 P.O. Box 534
 705 Whitehorse Pike
 Absecon, New Jersey 08201

Dear Mr. Day:

This is to follow up conversation between our staffs regarding the likely association of wildlife with those habitats shown on the enclosed vegetation maps and described in the attached text and plant species list. This vegetation analysis of the 57.5 acre Russo site was prepared from interpretation of stereo aerial photographs taken in 1978. Mapping was also facilitated by the examination of earlier photographs and the ground-truthing of current aerial photography. Although the plant species composition on the 52.5 acres prior to fill can not be determined from interpretation of aerial photography, we conclude that what is seen on site today extended into the remaining 52.5 acres of wetland, with the possible exception that the emergent community may be currently more diverse in association with the 2 to 3 acre pond on site.

As mentioned, our staffs conversed concerning drafting a list of wildlife that would be likely to associate with the habitats as described. Would you please send us such a list so that we may be better able to review the value of the Russo site for wildlife.

Thank you for your assistance.

Sincerely,

Mario Del Vicario, Chief
 Marine and Wetlands Protection Branch

Enclosure

2M-MWP:			CONCURRENCES					
SYMBOL	2M-MWP	2M-MWP	2M-MWP				ZRA	ZRA
SURNAME	<i>Duke</i>	<i>Barne</i>	<i>Mal</i>					
DATE	<i>11/25/77</i>	<i>11/25/77</i>	<i>11/25/77</i>					

United States
Environmental Protection
Agency

Region 2
26 Federal Plaza
New York, N.Y. 10007

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New York
Puerto Rico
Virgin Islands

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Protection
Agency
EPA 335



News Release

87(49) Herman Phillips (212) 264-2515

FOR RELEASE: Tuesday, October 20, 1987

EPA TO HOLD PUBLIC HEARING ON MEADOWLANDS DEVELOPMENT PROJECT
NEW YORK -- The U.S. Environmental Protection Agency (EPA) has
scheduled a public hearing to receive comments on its proposed
determination to prohibit or restrict the Russo Development
Corporation from placing fill in the Hackensack Meadowlands.
The hearing will be in two sessions beginning at 3:00 p.m. and
7 p.m., Thursday, November 5, 1987 in the Auditorium of the
Hackensack Meadowlands Development Commission, One De Korte Park
Plaza in Lyndhurst, New Jersey.

The Corporation, headquartered in Hackensack, has sought an after-
the-fact permit from the U.S. Army Corps of Engineers to maintain
52.5 acres of fill and authorization to fill an additional five
wetland acres at a Meadowlands site in Carlstadt, New Jersey in
order to construct warehouses. Under the Clean Water Act, EPA
can approve or disapprove permit issuance.

"We believe that the unauthorized fill that has already occurred
and the proposed fill will have unacceptable adverse effects on

wildlife," said Christopher J. Daggett, EPA Regional Administrator. "We want to hear what comments interested parties may have on the subject."

Written comments may also be sent until November 20, 1987 to USEPA, (2WM-MWP), 26 Federal Plaza, NYC 10278. Information can be obtained by calling (212) 264-5170.

June 26, 1987, EPA prepared the Final Determination and Permit Conditions. These conditions require, in part, the installation of an acid gas control device to control 90% of the acid gases, and 65% control or 0.14 lbs per million Btu of the sulfur dioxide emissions. In addition, the permit limits the emission of particulate matter to 0.015 gr/dscf corrected to 12% CO₂. The facility was also allowed to burn municipal solid waste at 110% of its rated capacity (i.e., 2420 tons per day). No other comments were received during the public comment period.

The federal PSD permit (PAD-FL-112) was issued on July 28, 1987, and became effective on September 3, 1987. The effective date of this permit constitutes final agency action under 40 CFR 124.19 (f)(1) and section 307 of the Clean Air Act, for purposes of judicial review. Under section 307 (b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (see section 307 (b)(2)).

If construction does not commence within eighteen (18) months after the effective date, that is, by March 3, 1989, or if construction is not completed within a reasonable time, the permit shall expire and the authorization to construct shall become invalid.

(Sections 160-169 of the Clean Air Act (42 U.S.C. 7470-7479))

Dated: October 1, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

[FR Doc. 87-23721 Filed 10-13-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3275-9]

Science Advisory Board; Water Quality Advisories Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two day meeting of the Water Quality Advisories Subcommittee of the Science Advisory Board will be held on October 22 and 23, 1987. The meeting will begin at 9:00 a.m. on October 22, and will be held in the Laboratory Conference Room of EPA, Region 3, Annapolis Office at 839 Bestgate Road, Annapolis, MD. Adjournment on October 23 will take place no later than 3:00 p.m.

The main purpose of the meeting is to review draft guidelines developed for preparation of water quality advisories for both human health and aquatic life protection. Water quality advisories are

intended to be used as a supplement to development of water quality criteria recommendations under section 304(a) of the Clean Water Act. Advisories are designed to fill the gap between the large number of pollutants and the limited number of criteria documents currently produced, and represent the best scientific judgement given the existing information.

The meeting will be open to the public; however, space is limited. Anyone who wishes to attend, present information to the Subcommittee, or obtain information concerning the meeting should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101-F), Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460, Telephone (202) 382-2552 or FTS 8-382-2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the above address. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than October 19, 1987, in order to be assured of space on the agenda.

Date: October 5, 1987.

Kathleen Conway,

Deputy Director, Science Advisory Board.

[FR Doc. 87-23722 Filed 10-13-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3276-1]

Announcement of a Public Hearing on the Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: A public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" was published in the Federal Register and the New Jersey Star Ledger on August 7, 1987. (Request for a copy of that notice should be made to the person listed in the section below entitled **FURTHER INFORMATION.**) The August 7, 1987 notice announced the Environmental Protection Agency's (EPA) Region II Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material into wetlands owned by the Russo Development Corporation—71 Hudson Street, Hackensack, New Jersey. The Russo Development Corporation has sought after-the-fact Department of the Army

authorization to maintain 52.5 acres of fill and authorization to discharge additional fill material into the remaining five wetland acres on site in Carlstadt, New Jersey (Block 131.1, Lots 59, 64.01-64.06) for the purpose of constructing warehouses. The Regional Administrator has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into the subject wetlands may have unacceptable adverse effects on wildlife. The Russo site was and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR 230.3. The site therefore is subject to regulations under section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site.

The Corps of Engineers (COE) advised EPA of its intention to issue a permit as requested by the Russo Development Corporation. Section 404(c) of the Clean Water Act authorizes EPA to prohibit or restrict the discharge of fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that the use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. The purpose of this notice is to announce the scheduling of a hearing to provide the opportunity to comment on the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material onto the subject site pursuant to section 404(c) of the Clean Water Act.

Public Hearing

A public hearing is scheduled for November 5 1987 at the Hackensack Meadowlands Development Commission's auditorium at One De Korte Park Plaza, Lyndhurst, New Jersey from 3 pm to 5:30 pm and continuing at 7 pm after a dinner break. Written comments may be submitted prior to the hearing. Any person may appear at the hearing and present oral or written statements and may be represented by counsel or other authorized representative. Participants will be afforded an opportunity for rebuttal. The Regional Administrator's designee will be the Presiding Officer at the hearing. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examinations of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant. The hearing record will remain open for the submittal of written

comments until November 20, 1987, 15 days from the close of the public hearing. A record of the hearing proceeding shall be made by a verbatim transcript. Copies of the transcript of the proceedings may be purchased by any person from EPA after the close of the comment period. Copies will be available for public inspection at the Region II EPA office, 26 Federal Plaza, New York, NY after the close of the comment period. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

All written statement and information offered in evidence at the hearing will constitute a part of the hearing file which will become part of the administrative record of the Regional Administrator's determination.

DATES: All written comments should be submitted to the person listed under ADDRESSES, below, no later than November 20, 1987, 15 days from the close of the public hearing. Written comments may be submitted to the Presiding Officer at the time of the hearing.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, New York, NY 10278. The public hearing will be held in the Hackensack Meadowlands Development Commission's auditorium located at One De Korte Park Plaza, Lyndhurst, New Jersey.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264-5170. If you wish to receive a copy of the public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" published on August 7, 1987, please contact Mr. Del Vicario and a copy will be mailed to you.

SUPPLEMENTARY INFORMATION: The August 7, 1987 public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site: reviewed the section 404(c) process, provided a description of the subject wetland site, reviewed the proceedings to date on the subject action, discussed the basis for the proposed determination and, solicited comments.

During the scheduled hearing, EPA would like to obtain comments on: (1) Whether the impacts of the subject discharge would represent an unacceptable adverse effect as described in section 404(c) of the Clean Water Act; (2) the vegetative and

hydrologic characteristics of the subject site and, observations of our information concerning wildlife on the site prior to and after the placement of fill material; (3) observations of or information concerning wildlife in wetlands similar to the subject site and in the Hackensack Meadowlands in general (4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; (5) whether the Regional Administrator should recommend to the Assistant Administrator for Water the determination to prohibit or restrict the discharge of dredged or fill material on the site. Comments should be submitted no later than November 20, 1987 to the person listed above under ADDRESSES. All comments received will be fully considered by the Regional Administrator in making his determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Dagget,

Regional Administrator.

[FR Doc. 87-23712 Filed 10-13-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3275-S]

Water Pollution; Final NPDES General Permit for Private Domestic Discharges in East Baton Rouge Parish in the State of Louisiana

AGENCY: Environment Protection Agency.

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Regional Administrator of Region IV is today issuing a Final NPDES General Permit for certain dischargers who treat private domestic wastes. This final NPDES general permit establishes effluent limitations, standards, prohibitions and other conditions on these discharges. The facilities covered by this permit are located in East Baton Rouge Parish within the State of Louisiana. A copy of the permit is reprinted as required by 40 CFR 122.28.

EFFECTIVE DATE: This NPDES general permit shall become effective November 13, 1987.

ADDRESSES: Notifications required under this permit should be sent to the Director, Water Management Division (6W), U.S. Environmental Protection Agency, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell (6W-PS), U.S.

Environmental Protection Agency, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas Texas 75202-2733, (214) 655-7190.

SUPPLEMENTARY INFORMATION: Public notice of the draft permit was published in the Federal Register on July 29, 1987 (52 FR 28337). The comment period closed on August 28, 1987. One comment received from the Louisiana Department of Environmental Quality (LDEQ) who submitted several significant comments on the draft permit. In accordance with 40 CFR 124.17(a)(2), EPA describes and responds to these comments as follows. This response supplements the fact sheet which was published with the draft permit and is incorporated by reference. Changes have been made to the permit as noted in this response.

Comment: LDEQ suggested that EPA should extend coverage of the general permit to public owned treatment works (POTWs) as well as private facilities, because East Baton Rouge Parish has a policy of taking over new subdivision treatment facilities for operation and maintenance after they have been permitted.

Response: EPA clearly states in the fact sheet and the permit that this general permit applies only to private domestic treatment works and not to POTWs. Furthermore, a consent decree is presently being issued in East Baton Rouge Parish to require that most small POTWs be connected to central treatment plants. Therefore, this general permit will not be applied to POTWs. If a private domestic treatment works becomes a POTW, it will no longer be covered by this permit and must be covered by an individual NPDES permit.

Comment: LDEQ points out that the area policy on which the general permit is based covers only facilities discharging to water in the Amite/Comite drainage system and questions if EPA wishes to extend the coverage of the general permit beyond the area policy.

Response: The area policy also applies to the Bayou Manchac drainage system. However, under best professional judgment (BPJ), EPA has applied the limitations under the area policy to the entire East Baton Rouge Parish.

Comment: LDEQ requests that the flow based for assigned limitations be changed from "facility design flow" to "expected flow."

Response: EPA concurs and has made the change.

Comment: LDEQ requests that the permittee be given the choice of fecal coliform limits of 200/100 ml average

DOT 18 1987

Mailing List for Public Notice Announcing
A Public Hearing for the Russo 404(c) Action

Mario Del Vicario, Chief
Marine and Wetlands Protection Branch

Richard Baker, Chief
Permits Administration Branch

Please mail a copy of the October 14, 1987 public notice scheduling a public hearing for November 5, 1987 to those parties listed on the attached list. The public hearing will address the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material into wetlands owned by the Russo Development Corporation. If you have any questions please contact Kathleen Drake of my staff at x-5170.

Thank you for your assistance.

ZWM:K.DRAKE:10/13/87

ZWM-MWP

ZWM-MWP

ZWM-MWP

Mailing List
Public Hearing Notice
Russo - 404(c) Action

Mr. Richard Schaefer
Regional Director
National Marine Fisheries Service
14 Elm Street
Gloucester, MA 01930

Mr. Stan Gorski
National Marine Fisheries Service
Sandy Hook Lab
Highlands, NJ 07732

Mr. John Weingart
Director
Division of Coastal Resources
P.O. Box 1889
Trenton, NJ 08625

Mr. James T. B. Tripp
Environmental Defense Fund
257 Park Avenue South
New York, New York 10010

Mr. Howard Larsen
Regional Director
U.S. Fish and Wildlife Service
1 Gateway Center
Suite 700
Newton Corner, MA 02158

Mr. Clifford Day
Field Supervisor
U.S. Fish and Wildlife Service
P.O. Box 534
705 White Horse Pike
Absecon, NJ 08201

Dr. Richard T. Dewling
Commissioner
New Jersey Department
of Environmental Protection
CN 402
Trenton, NJ 08625

Ms. Margaret Utzinger
The Hackensack River Coalition
P.O. Box 4233
River Edge, NJ 07661-4233

Ms. Ann Galli
Director of Environmental Operations
Hackensack Meadowlands Development
Commission
One DeKorte Park Plaza
Lyndhurst, NJ 07071

Colonel Marion L. Caldwell, Jr.
District Engineer
Corps of Engineers, New York District
Jacob Javits Federal Building
New York, New York 10278-0090

Bridagier General Charles E. Williams
Division Engineer
North Atlantic Division
U.S. Army Corps of Engineers
90 Church Street
New York, New York 1007-2979

Mr. Thomas Gilmore
New Jersey Audubon Society
790 Ewing Avenue
Franklin Lakes, NJ 07417

Mr. Richard Kane
Director of Conservation
New Jersey Audubon Society
790 Ewing Avenue
Franklin Lakes, NJ 07417

Russo Development Corporation
71 Hudson Street
Hackensack, NJ 07601

Mr. Steven Gray, Esq.
Waters, McPherson, McNeill
400 Plaza Drive
Secaucus, NJ 07094

Mr. Thomas Wells
Assistant Director
New Jersey Conservation Foundation
300 Mendham Road
Morristown, NJ 07960

Mr. David H. Hall
President
Bergen County Audubon Society
4 Cavell Place
West Caldwell, NJ 07006

Mr. Anthony Giannantonio, Jr.
Hackensack River Coalition
P.O. 4233
River Edge, NJ 07661-4233

Ms. Ella F. Filippone, Ph.D.
Executive Administrator
Passaic River Coalition
246 Madisonville Road
Basking Ridge, NJ 07920

Mr. David Epstein
Passaic River Coalition
246 Madisonville Road
Basking Ridge, NJ 07920

Ms. Lisa Speer
Senior Project Scientist
Natural Resources Defense Council
122 East 42nd Street
New York, NY 10168

Ms. Mary C. Barber, Ph.D.
The Oceanic Society
1536 16th Street, N.W.
Washington, D.C. 20036

Ms. Janice L. Goldman-Carter
National Wildlife Federation
1412 Sixteenth Street, N.W.
Washington, D.C. 20036-2266

Ms. Julia F. Lamb
Palisades Preservation Coalition
301 Lydecker Street
Englewood, NJ 07631

Ms. Audrey Zapp
Liberty State Park
Public Advisory Commission
242 Stevens Avenue
Jersey City, NJ 07300

Mr. Joseph A. Chesonis
120 74th Street
North Bergen, NJ 07047

Mr. Tony Iannarelli
Environmental Law Clinic
Rutgers Law School
15 Washington Street
Newark, NJ 07102

Ms. Ellie Gruber
League of Women Voters
of New Jersey
208 West Street
Trenton, NJ 08608

- ° Municipal Clerk
Boro of Carlstadt
500 Madison Street
Carlstadt, NJ 07072
- ° Request to please post in their facility

Ms. Marcy Benstock
Clean Air Campaign
150 Nassau Street
Room 2030
New York, NY 10038

Ms. Cara Lee
Scenic Hudson
9 Vassar Street
Poughkeepsie, NY 12601

Mr. John Mylod
Hudson River Sloop Clearwater
112 Market Street
Poughkeepsie, NY 12601

Mr. Henry Tepper
The Parks Council
457 Madison
New York, NY 10022

Ms. April Elsasser
Weehawken Environment Center
400 Park Avenue
Weehawken, NJ 07087

Mrs. A. R. Lamb
Palisades Preservation Coalition
301 Lydecker Street
Englewood, NJ 07631

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

DATE: OCT 06 1987

SUBJECT: Public Notice Announcing a Public Hearing on the
Proposed 404(c) Determination - Russo Development Corp.

FROM: *Mario Del Vicario*
Mario Del Vicario, Chief
Marine and Wetlands Protection Branch

TO: Christopher J. Daggett
Regional Administrator

THRU: *Richard L. Caspe*
Richard L. Caspe, Director
Water Management Division

Attached for your signature are:

(1) original and (3) copies of the public notice announcing a public hearing on the proposed 404(c) determination for the Russo Development Corporation's proposed project in the Hackensack Meadowlands, Carlstadt, New Jersey.

A Federal Register Typesetting Request Form

Memo to Vicki Read transmitting the public notice to the Office of the Federal Register for publication

The notice schedules a public hearing for Wednesday, November 4, 1987, to be held at the Hackensack Meadowlands Development Commission's auditorium, One De Korte Park Plaza, Lyndhurst, NJ from 3 pm to 5:30 pm continued at 7 pm after a dinner break. The notice announces that the Presiding Officer will be the Regional Administrator's designee.

In addition to publication in the Federal Register, the public notice will be published in the New Jersey Star Ledger.

Enclosure

001 6 1887

Federal Register Publication of the Announcement of a Public Hearing on the Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site

/s/ Christopher J. Daggett
Christopher J. Daggett
Regional Administrator (2RA)

Vicki Read
Federal Register Officer (PM-223)

Attached is a Federal Register notice (one original and three copies) announcing a public hearing on the proposed determination, pursuant to Section 404(c) of the Clean Water Act, to prohibit the discharge of fill material into wetlands in the Hackensack Meadowlands, Carlstadt, New Jersey and, a Federal Register Typesetting Request Form.

If you have any questions on this submittal, please call Mario Del Vicario, Chief of the Marine and Wetlands Protection Branch at 8-264-5170.

Enclosure

bcc: James Marshall, OEP
Richard Caspe, WMD
Mario Del Vicario, MWPB

2WMD:K. DRAKE:09/28/87

2WMD:K. DRAKE

2WMD:K. DRAKE

2WMD:K. DRAKE

2WMD

2OEP

2DRA

2RA

Notice: 87-72

Date: October 13, 1987

Announcement of a Public Hearing on the Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site

AGENCY: Environmental Protection Agency

ACTION: Notice

SUMMARY: A public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" was published in the Federal Register and the New Jersey Star Ledger on August 7, 1987. (Request for a copy of that notice should be made to the person listed in the section below entitled FURTHER INFORMATION.) The August 7, 1987 notice announced the Environmental Protection Agency's (EPA) Region II Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material into wetlands owned by the Russo Development Corporation - 71 Hudson Street, Hackensack, New Jersey. The Russo Development Corporation has sought after-the-fact Department of the Army authorization to maintain 52.5 acres of fill and authorization to discharge additional fill material into the remaining five wetland acres on site in Carlstadt, New Jersey (Block 131.1, Lots 59, 64.01-64.06) for the purpose of constructing warehouses. The Regional Administrator has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into the subject wetlands may have unacceptable adverse effects on wildlife. The Russo site was/and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR

230.3. The site therefore is subject to regulations under Section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site.

The Corps of Engineers (COE) advised EPA of its intention to issue a permit as requested by the Russo Development Corporation. Section 404(c) of the Clean Water Act authorizes EPA to prohibit or restrict the discharge of fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that the use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. The purpose of this notice is to announce the scheduling of a hearing to provide the opportunity to comment on the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material onto the subject site pursuant to Section 404(c) of the Clean Water Act.

Public Hearing

A public hearing is scheduled for November 5, 1987 at the Hackensack Meadowlands Development Commission's auditorium at One De Korte Park Plaza, Lyndhurst, New Jersey from 3 pm to 5:30 pm and continuing at 7 pm after a dinner break. Written comments may be submitted prior to the hearing. Any person may appear at the hearing and present oral or written statements and may be represented by counsel or other authorized representative. Participants will be afforded an opportunity for rebuttal. The Regional Administrator's designee will be the

Presiding Officer at the hearing. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examinations of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant. The hearing record will remain open for the submittal of written comments until November 19, 1987, 15 days from the close of the public hearing. A record of the hearing proceeding shall be made by a verbatim transcript. Copies of the transcript of the proceedings may be purchased by any person from EPA after the close of the comment period. Copies will be available for public inspection at the Region II EPA office, 26 Federal Plaza, New York, NY after the close of the comment period. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

All written statements and information offered in evidence at the hearing will constitute a part of the hearing file which will become part of the administrative record of the Regional Administrator's determination.

DATES: All written comments should be submitted to the person listed under ADDRESSES, below, no later than November 19, 1987, 15 days from the close of the public hearing. Written comments may be submitted to the Presiding Officer at the time of the hearing.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. Environmental Protection

Agency Region II, 26 Federal Plaza, New York, NY 10278. The public hearing will be held in the Hackensack Meadowlands Development Commission's auditorium located at One De Korte Park Plaza, Lyndhurst, New Jersey.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264-5170. If you wish to receive a copy of the public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" published on August 7, 1987, please contact Mr. Del Vicario and a copy will be mailed to you.

SUPPLEMENTAL INFORMATION: The August 7, 1987 public notice entitled "Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site" reviewed the 404(c) process, provided a description of the subject wetland site, reviewed the proceedings to date on the subject action, discussed the basis for the proposed determination and, solicited comments.

During the scheduled hearing, EPA would like to obtain comments on:

- 1) whether the impacts of the subject discharge would represent an unacceptable adverse effect as described in Section 404(c) of the Clean Water Act;
- 2) the vegetative and hydrologic characteristics of the subject site and, observations of or information concerning wildlife on the site prior to and after the placement of fill material;
- 3) observations of or information concerning wildlife in wet-

lands similar to the subject site and in the Hackensack Meadowlands in general; 4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; 5) whether the Regional Administrator should recommend to the Assistant Administrator for Water the determination to prohibit or restrict the discharge of dredged or fill material on the site. Comments should be submitted no later than November 19, 1987 to the person listed above under ADDRESSES. All comments received will be fully considered by the Regional Administrator in making his determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Daggett
Regional Administrator



HACKENSACK MEADOWLANDS ENVIRONMENTAL CENTER

Two DeKorte Park Plaza • Lyndhurst, New Jersey 07071
Telephone: (201) 460-8300



LEONARD S. COLEMAN, JR.
Chairman

ANTHONY SCARDINO, JR.
Executive Director

VINCENT P. FOX
Deputy Executive Director

Commissioners:

THOMAS R. BETANCOURT
JAMES A. GALDIERI
RUDOLPH S. MAURIZI
ELEANORE S. NISSLEY
ROBERT T. REID
ARNOLD R. SMITH, P.E.

October 5, 1987

Mr. Mario P. Del Vicario, Chief
Marine and Wetlands Protection Branch
United States Environmental Protection Agency
Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278

Dear Mario:

In response to your request, we would be pleased to allow the Environmental Protection Agency the use of our auditorium for a public hearing on November 4, 1987. The only costs involved would be for security, which is required after normal business hours. Total cost for security would be sixty four (\$64) dollars. Inasmuch as we pay the security company, we will bill you for the costs of security. All payments should be made payable to the Environment Center after you have received the bill.

If you desire any special seating arrangements for the front of the auditorium for the hearing, please contact Mr. Joseph Benintente, Assistant Director of Environmental Operations, at 201-460-8300 to make the arrangements.

Sincerely,

Anne Galli, Director
Environmental Operations

/md

cc: J. Benintente

09/11/87

Mr. Michael Bartlett
Acting Regional Director
United States Department
of the Interior
Fish and Wildlife Service
One Gateway Center, Suite 700
Newton Corner, Massachusetts 02158

Dear Mr. Bartlett:

Thank you for your August 3, 1987 letter supporting the Environmental Protection Agency's (EPA) initiation of the proposed 404(c) determination to prohibit or restrict discharge of fill material into the Russo wetlands in Carlstadt, New Jersey.

As you are aware, we have issued the Public Notice (August 7, 1987) announcing our proposed determination to prohibit or restrict the discharge of fill based on our opinion that the unauthorized discharge and the proposed discharge of fill material have, and will have, unacceptable adverse effects on wildlife. In response to your invitation, we have communicated with your Absecon Field office staff and received their assistance regarding this issue. We plan to continue coordination and call upon Fish and Wildlife in the subsequent weeks during which we will draft the Regional determination to be submitted to the EPA Administrator.

Please advise us of any information in your records and from your knowledge of the Hackensack Meadowlands that you consider pertinent in establishing the wildlife value of the subject wetlands. We look forward to your support and assistance.

Sincerely,

/s/ Christopher J. Daggett

Christopher J. Daggett
Regional Administrator

bcc: James Marshall, OEP
Martha Isaacs, CCO
Richard Caspe, WMD
Mario Del Vicario, MWP

SEP 30 1987

Ms. Anne Galli
Director of Environmental Operations
Hackensack Meadowlands
Development Commission
One De Korte Park Plaza
Lyndhurst, New Jersey 07071

Dear Ms. Galli:

The Environmental Protection Agency is scheduling a public hearing on the Agency's proposed determination to prohibit and restrict the discharge of fill material into wetlands in Carlstadt, New Jersey, owned by the Russo Development Corporation. We would like to request the use of the Hackensack Meadowlands Development Commission's auditorium to conduct this hearing, scheduled for November 4, 1987, from 3:00 p.m. to 5:30 p.m. continuing at 7:00 p.m. after a dinner break.

Please advise me on this matter. You can contact me at 212-264-5170. In addition, I must process the appropriate purchase order requests for any fees associated with conducting the hearing at your facility. Please advise me on the specifics of any associated costs e.g., the name and address of the security company FMDC would employ.

Thank you for your assistance.

Sincerely,

Mario P. Del Vicario, Chief
Marine and Wetlands Protection Branch

2WM-MWP:K.DRAKE:ad:9/29/87

2WM-MWP

2WM-MWP

2WM-MWP

11/2/87
11/2/87

SEP 30 1987

FILE COPY

Public Notice Announcing a Public Hearing on the
Proposed 404(c) Determination - Russo Development Corp.

Mario Del Vicario, Chief
Marine and Wetlands Protection Branch

Richard Baker, Chief
Permits Administration Branch

THRU: Richard Caspe, Director
Water Management Division

Attached is a Public Notice to be published in the New Jersey Star Ledger
and the Federal Register on October 9, 1987. This notice schedules a
public hearing on Wednesday November 4, 1987 on the Regional Administrator's
proposed determination to prohibit or restrict the discharge of dredged
or fill material into wetlands owned by the Russo Development Corporation
in Carlstadt, New Jersey. We will require stenographic services for this
hearing. Therefore, would you please make the necessary arrangements.

In order to comply with EPA regulations regarding the announcement of
public hearings, it is imperative that this notice be published on
or before Friday October 9, 1987. If you have any questions, please
contact Kathleen Drake of my staff at X 5170. Thank you for your
assistance.

Enclosure

bcc: Mario Del Vicario

ZM:K.DRAKE:09/23/87

2004-MWP 2004-MWP 2004-MWP 2004



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

SEP 02 1987

Mr. Victor Bullen
Supervisor, Legal Services
Hackensack Meadowlands Development
Commission
One DeKorte Park Plaza
Lyndhurst, NJ 07071

Dear Mr. Bullen:

The U.S. Environmental Protection Agency, Region II, is currently considering a Section 404(c) action in the Russo case. This is our official request for a copy of your engineering files and any other pertinent information you possess on the Russo site. If copying your files proves burdensome, we will provide EPA personnel to examine and copy the material at HMDC.

Can you provide this material or allow us access to it by September 8, 1987? Please contact Kathleen Drake at 212-264-5170 if you have any problems or questions concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mario Del Vicario".

Mario Del Vicario, Chief
Marine & Wetlands Protection Branch

cc: Thomas Maturano

H. M. D. C.
SEP 2 - 1987
RECEIVED

Telephone Communication
Mr. Steven Gray - Waters, McPherson, McNeill
September 1 and 2, 1987 - K. Drake

Re: Access to the Russo Site

09/1 - 4:30 Mr. Gray not in. Left message requesting access to the Russo site for 09/3.

09/2 - 8:45 Mr. Gray not in. Left message.

09/2 - afternoon Mr. Gray's secretary called back to say that access to site was ok.

Telephone Communication
Mr. Steven Gray - Waters, McPherson, McNeill
August 26, 1987 - K. Drake

Re: Access to the Russo Site

I called asking permission for a site visit to the Russo site on August 27, 1987.

Mr. Gray said he would call his client and return the call.

Mr. Gray called back in the afternoon stating that we could visit the site. Mr. Mark Allison, from the Russo Development Corporation, would accompany us.

[OW-2-FRL-3239-8]

Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site**AGENCY:** Environmental Protection Agency.**ACTION:** Notice.

SUMMARY: Section 404(c) of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. EPA's Regional Administrator, Region II, has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into wetlands by the Russo Development Corporation—71 Hudson Street, Hackensack, New Jersey—within the Hackensack Meadowlands in Carlstadt, New Jersey for the purpose of building warehouses may have unacceptable adverse effects on wildlife. Accordingly, this notice announces the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material at the site and seeks public comment on his proposal.

Public Hearing

EPA will schedule a public hearing if there is a significant degree of public interest, or if Russo Development Corp., as landowner and permit applicant, requests one. If a public hearing is scheduled, public notice of a hearing will be issued and will contain: (1) Reference to this public notice of the proposed determination, (2) the date, time, and place of the hearing and, (3) a brief description of the nature and purpose of the hearing including the rules and procedures.

The public hearing would be scheduled no earlier than 21 days from the date of this notice of proposed determination. Requests for a public hearing should be submitted within 15 days of the date of this notice.

DATES: All comments on this proposed determination to prohibit or restrict the use of the Russo site for the discharge of dredged or fill material should be submitted to the person listed under **ADDRESSES** within 60 days of the date of this notice.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S.

Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264-5170.

SUPPLEMENTARY INFORMATION:**I. Description of the Section 404(c) Process**

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404, 33 U.S.C. 1344. Section 404 authorizes the Secretary of Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary or where warranted by the economics of anchorage and navigation, except as provided in section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

Regulations published in 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resources, he may begin the process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator that there will not be unacceptable adverse impacts or identifies corrective measures satisfactory to the Regional Administrator within 15 days, the Regional Administrator publishes a notice in the Federal Register of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination

or prepare a recommended determination. If he prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA's headquarters for a final decision affirming, modifying, or rescinding the recommended determination. The Corps of Engineers and the applicant are provided with another opportunity for consultation before this final decision is made. It is important to note that this section 404(c) action is being initiated in response to an after-the-fact permit action by the Corps pursuant to 33 CFR 326.3(e) and, therefore, primarily involves existing unauthorized fill. EPA may follow up this section 404(c) action with an enforcement action with respect to the unauthorized fill.

II. Description of the Site**A. Russo Site**

Prior to filling in 1981, the Russo site was characterized by 57.5 acres of palustrine emergent marsh, dominated by common reed (*Phragmites australis*) and blue joint grass (*Calamagrostis canadensis*). Groupings of aspen (*Populus tremuloides*) and ephemeral ponds were interspersed within the tract. The site is situated within a larger palustrine emergent marsh along the Hackensack River commonly referred to as the Empire tract of the Hackensack Meadowlands. This tract was cut off from tidal river flow by dikes placed in the 1920's. The Russo site receives upland drainage and storm water runoff from adjacent areas and transfers this drainage via ditches dredged on site in the 1920's to Moonachie Creek which drains to the Hackensack River. Moonachie Creek has had a tide gate at its confluence with the Hackensack River since the 1920's.

Historically the site has impounded large areas of water. For example, during construction of the western spur of the New Jersey Turnpike from 1969 to 1971 ditches within the Empire Tract were filled with fill material and drainage was blocked. The Empire tract including the Russo site became an impoundment area with standing water. When turnpike construction was finished in 1971 the drainage ditches were re-dredged. No further maintenance of these ditches or those on the Russo site has occurred since then. In addition, severe storm events in conjunction with the inadequate drainage provided by unmaintained ditches on the Russo site have resulted in storm water retention and

impoundment related to storm water back-up upstream of the Moonachie Creek tide gate.

Between 1981 and 1985 the Russo Development Corporation discharged 52.5 acres of fill material, shot rock (a fill mixture of clean dirt and rock) from excavation sites in New York, on the site without Department of the Army authorization. Six warehouses were constructed on 44 of the 52.5 acres of fill and are currently tenanted; 8.5 acres of fill remain undeveloped. The remaining five acres of wetland on site which did not receive fill have developed into a freshwater pond edged by cattail (*Typha* sp.) and common reed. The Russo Development Corporation has sought after-the-fact Department of the Army authorization to maintain the 52.5 acres of fill and authorization to discharge fill material into the remaining 5 wetland acres for the purpose of constructing more warehouses. The Russo site was/ and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR 230.3. The site therefore is subject to regulations under section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site. This permit issuance must be in compliance with the section 404(b)(1) Guidelines.

Currently, muskrat, waterfowl and a variety of rodents have been observed on the remaining five wetland acres on site. Historical accounts of wildlife use, prior to or at the time of discharge of 52.5 acres of fill, list grey fox (occasional), rabbit, pheasant, waterfowl, woodcock, killdeer and, marsh-associated songbirds. In addition, waterfowl utilization was high when the Russo site impounded large areas of water. Prior to discharge of fill the site functioned in sediment and toxicant retention, contributing to water purification. After discharge of fill, 52.5 acres of the site was transformed from a reed, blue-joint grass and interspersed emergent vegetative community into an upland industrial building complex. The discharge of fill resulted in a higher site elevation, a complete change in substrate and hydrology with the consequent loss of occasional open water impoundment, the loss of ephemeral ponds, the loss of wetland vegetation and animal communities associated with wetland habitat, and the loss of sediment and toxicant retention capacities.

B. The Hackensack Meadowlands District

The Russo site is part of the Hackensack Meadowlands ecosystem. The 7,000-8,000 acres of wetlands

contained therein provide habitat for many species of waterfowl, wading birds, shorebirds, passerines, raptors, and various mammals, reptiles and amphibians.

While the Meadowlands perform critical environmental functions, they are under intense development pressure. In fact, the Hackensack Meadowlands Development Commission (HMDC) reports that the wetlands acreage in the Meadowlands District decreased from 10,521 to 7,800 acres between 1972 and 1984. The HMDC Master Zoning Plan provides for development of approximately an additional 2,200 acres of wetlands.

Because of the concern that development in the wetlands and floodplain areas of the Meadowlands would conflict with section 404 of the Clean Water Act, the Fish and Wildlife Coordination Act of 1958, and other federal policies, EPA and the U.S. Fish and Wildlife Service (FWS) presented recommendations to the Corps of Engineers in 1981 concerning potential permit reviews. In particular, EPA and FWS divided the Meadowlands into marginal and critical wetlands categories. The Agencies anticipated that permits could be granted for "marginal wetlands", provided adequate compensation and other appropriate permit conditions were imposed. The Russo site was designated in this category. For "critical, high quality, and extremely productive wetlands," EPA and FWS indicated that they would be likely to recommend permit denial. If a permit were issued, compensation of at least two wetland acres for every acre lost would be necessary.

While the 1981 policy reflected an initial effort to distinguish among wetlands, it was based on a preliminary and limited data base. Consequently, EPA in late 1985 initiated an Advanced Identification study within the Hackensack Meadowlands with the support of other federal and state agencies. The study is evaluating wetland values, as well as impacts of the intense development pressures to these wetlands, in much greater detail. It is EPA's expectation that the results of the study will serve as a template for future section 404 permit decisions in the Meadowlands. During this time frame, HMDC will also be revising its Master Plan for a number of reasons, including the fact that the Master Plan has not been subject to review for consistency with the National Environmental Policy Act and section 404 of the Clean Water Act.

III. Proceedings to Date

For the reasons stated earlier, a Department of the Army permit is required to discharge fill onto the Russo site. The Russo Development Corporation has sought an after-the-fact Department of the Army permit for the existing and proposed work previously described.

The Corps of Engineers issued Public Notice 12360-85690-J1 for this application on August 28, 1985 proposing to maintain the 52.5 acres of unauthorized fill, to authorize 5 further acres of fill for the purpose of constructing warehouses and to require mitigation for the entire 57.5 acres. The Corps has approved Russo Development Corp.'s mitigation proposal which includes enhancement of existing wetlands within the Hackensack Meadowlands to provide a 0.5:1 (enhance:lost) value-for-value compensation for the wetlands lost and a deed restriction securing permanent preservation of 23 wetland acres owned by the applicant in Troy Meadows of the Passaic River basin (i.e., outside of the Hackensack River basin).

The Corps advised EPA of its intention to issue the permit as requested by the Russo Development Corporation with the mitigation discussed above. EPA Region II reiterated previously expressed objections to the project and requested 2:1 complete and appropriate mitigation to replace the functions and values provided by all 57.5 acres. EPA did not seek removal of the warehouses on the 44 acres that had been illegally filled, since restoration was unlikely to return the site to its previous wetland state.

EPA sought to resolve its concerns through procedures established by the federal agencies under section 404(q) of the Act (see the 404(q) Memorandum of Agreement, November 1985). Section 404(q) directs the Corps and EPA to enter into an agreement to coordinate and expedite permit decision making. In October 1986 correspondence, the Regional Administrator requested notification of the Corps of Engineers permit decision on the Russo application in accordance with these procedures. Accordingly, on December 22, 1986 the Corps submitted a preliminary Notice of Intent to Issue (NII) a permit to EPA and other federal agencies. In response (December 24, 1986), the Regional Administrator requested a meeting with the Division Engineer and suspension of further actions on the permit application. Following their January, 1987 meeting, the New York District Corps reexamined the preliminary NII

and submitted a final NII maintaining the Corps decision to issue a permit without the mitigation EPA considered necessary. In April 20, 1987 correspondence the Assistant Administrator for Water, requested that the Assistant Secretary of the Army (Civil Works) refer the New York District Corps decision to a higher level for re-evaluation. The Assistant Secretary denied EPA's request.

Having exhausted these procedures for resolution of EPA's concerns, the Regional Administrator initiated section 404(c) procedures through which the EPA Administrator may exercise a veto over the specification by the Corps of Engineers of a site for the discharge of dredged or fill material. The Regional Administrator notified the District Engineer and the Russo Development Corp. (May 28, 1987) of his intent to issue a Public Notice on his proposed section 404(c) determination and notified each that there would be a 15 day consultation period to resolve his concern regarding the significant adverse effects. The Corps and the Russo Development Corp. responded (May 27, 1987 and June 10, 1987 respectively) concluding that the project did not pose any unacceptable adverse effects. The consultation period closed on June 11, 1987. Following a review of responses received from the Corps and the applicant, the Regional Administrator concluded that no new information had been provided and, therefore, he was not persuaded that there would be no unacceptable adverse effects from the existing and proposed fill.

IV. Basis for Proposed Determination

A. Section 404(c) Criteria

The Clean Water Act requires that exercise of the final section 404(c) authority be based on a determination of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. The regulations define unacceptable adverse effect:

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR Part 230). (40 CFR 231.2 (e))

The preamble to the 404(c) regulations explains that one of the basic functions of section 404(c) is to police the application of the section 404(b)(1) Guidelines.

Those portions of the guidelines relating to significant degradation of waters of the U.S. (40 CFR 230.10(c)), to minimizing adverse impacts to aquatic resources (40 CFR 230.10(d)) and to the determination of cumulative effects on the aquatic ecosystem (40 CFR 230.11(g)) are of particular importance to evaluating the unacceptability of environmental impacts in this case. Compliance with the Guidelines requires that no discharge of dredged or fill material shall be permitted if it causes or contributes to significant degradation of waters of the U.S. Effects contributing to significant degradation include but are not limited to the loss of wildlife habitat or the loss of a wetland's capacity to assimilate nutrients. Compliance with the guidelines requires that no discharge be permitted unless appropriate and practicable steps have been taken to minimize adverse impacts of the discharge on the aquatic ecosystem. In addition, the guidelines state that the permitting authority should collect and solicit information concerning cumulative impacts and document and consider this information during the decision-making process. Thus, it is appropriate under section 404(c) to take into account whether the project has or will result in significant degradation to aquatic resources, particularly wildlife habitat, or whether the proposed mitigation is adequate to offset the impacts of the Russo project.

B. Impacts to Filling the Russo Site

As discussed previously, the existing and proposed fill has/will replace the wetland soils, vegetation and hydrology with impervious surface resulting in a loss of the site's sediment and toxicant retention capabilities. In addition, the existing and proposed fill is and will be a source of pollutants to adjacent aquatic areas during rainfall events.

Beyond these general but very significant environmental impacts, EPA believes wildlife has and will be significantly affected by the fill at the Russo site. Historical accounts of wildlife use prior to or at the time discharge of the fill list wetland-associated songbirds and waterfowl, woodcock, killdeer, pheasant, rabbit and, occasional grey fox. Loss of 52.5 acres of habitat is likely to have disturbed at least the marsh-related species, particularly in view of development north and west of the project site also encroaching on wildlife habitat. FWS and the Corps have characterized the 52.5 acres of the Russo site as low to moderate habitat prior to its being filled. FWS has explained that this rating is based upon the lack of diversity of wildlife habitat because of

the monotypic vegetative cover. In addition, FWS noted, and EPA agrees, that the site provided the wildlife habitat functions of a Meadowlands wetland and supported wetland-associated wildlife even though the habitat was monotypic. Moreover, FWS considers the five acres Russo seeks to fill to be a good quality wetland.

The five remaining acres which have not yet been filled consist of a 3 acre pond and 2 acres of palustrine emergent marsh with phragmites, cattail, dwarf spikerush, and juncus spp. This freshwater pond with associated emergent vegetation contributes to the diversity of wetlands within the Meadowlands District and provides quality habitat of food and cover to wetland-associated wildlife, especially waterfowl, wading birds, and muskrat. Loss of the additional five acres can therefore be expected to adversely affect wetland associated wildlife.

In addition to the direct loss of the Russo site, there is reason to conclude that there may be more far-reaching repercussions on wildlife values. Because of the extensive past losses of wetlands in the Meadowlands, EPA believes there is cause to conclude that the past and future fill of the Russo site is likely to contribute to cumulative adverse impacts on wildlife. As mentioned above, gradual and continual wetland development has diminished the Meadowlands District's wetlands by 2,721 acres (10,521 to 7,800) and, the Hackensack Meadowlands Development Commission's Master Plan provides for the development of an approximate additional 2,200 acres. The U.S. Fish and Wildlife Service has designated wetland areas within the eastern flyway, a category into which the Hackensack Meadowlands falls, as priority areas in their Waterfowl Management Plan (May 1986). The Service reports that the degradation of migration and wintering habitat have contributed to long-term downward trends in some duck populations. In those periods when the Russo site impounded large areas of water, waterfowl were numerous on the site. In addition, population declines would be expected for those less mobile wetland-associated species such as muskrat and other rodents, reptiles and amphibians. Ecological theory suggests that disturbed animal populations do not necessarily simply shift into remaining habitat. Depending on the habitat's carrying capacity disturbed populations may perish or displace other organisms which may perish.

There is not a great deal of existing information in the record identifying the

specific values and functions provided by the formerly existing wetlands. For that reason EPA strongly encourages the public to submit any relevant information. EPA believes, though, that the Meadowlands environment cannot tolerate the loss of the Russo site unless the ecological values the site served/ serves are compensated for.

In order for filling of the site to be consistent with the section 404(b)(1) Guidelines, EPA believes adequate mitigation must be provided to assure replacement of the wildlife values and functions, thereby stemming the net loss of wildlife habitat in the Meadowlands.¹ Wetland enhancement and creation to provide complete compensation for wetland values lost would constitute appropriate mitigation in this case.

It appears, however, that adequate mitigation will not be provided. Russo has offered only to compensate on a 0.5:1 value-for-value basis by enhancing existing wetlands within the Meadowlands District and to place a deed restriction on 23 acres of wetlands it owns outside the District.

The information provided to date on the proposed mitigation does not identify a particular site and is too limited to evaluate the anticipated ecological gains and the probability of success. Thus, contrary to EPA's and FWS's consistent comments that 1:1 to 2:1 value-for-value compensation is necessary to prevent net loss of wetland values and functions, the proposed mitigation is unlikely to accomplish that goal. Moreover, the deed restriction affords only questionable environmental benefit since the wetland site would already be protected from significant degradation under section 404 in the event that the discharge of fill were proposed.

¹ Since EPA's first response to the Corp's Public Notice of Russo's application for a permit in September, 1985, EPA has consistently stated that mitigation to replace wetland functions and values is required. However, in the fall of 1986, EPA questioned not only the adequacy of Russo's mitigation proposal but also whether there were not, in fact, practicable alternatives to using the Russo site for constructing warehouses. EPA has taken the position that mitigation cannot be used to compensate for avoidable losses; i.e., where there are practicable alternatives to filling a wetland site. Consequently, EPA suggested that (1) mitigation providing value-for-value replacement be required for the 44 acres that have been filled and contain warehouses, (2) restoration be required for the 8.5 acres that have been filled but contain no warehouses and, (3) that a permit be denied to fill the remaining 5 wetland acres. However, assessing the existence of practicable alternatives in the context of an after-the-fact permit raises particularly difficult analytical issues that go far beyond those raised in this particular permit application. Consequently, I have decided not to pursue the practicable alternatives issues in this section 404(c) action.

EPA consequently has concluded that the loss of 57.5 acres of wetlands, taken in the context of the cumulative loss of wetland acreage occurring in the Hackensack Meadowlands, could result in significant loss and damage to wildlife habitat areas. Unless and until the Russo Corporation agrees to provide adequate mitigation as described above, it is EPA's view that an after-the-fact permit for 52.5 acres and a pre-discharge permit for five acres could result in unacceptable adverse impacts to wildlife within the meaning of section 404(c) and 40 CFR 231.2(e). Accordingly, EPA proposes to prohibit the use of the Russo site for discharge of fill material under the conditions reflected in the permit the Corps proposes to issue. Thus, the fill of the five remaining acres of wetlands would be prohibited. In addition, EPA may initiate enforcement action with respect to the unauthorized fill of the 52.5 acres in order to achieve appropriate restoration of or mitigation for the filled area.

V. Solicitation of Comments

EPA would like to obtain comments on: (1) Whether or not the impacts of such discharge would represent an unacceptable adverse effect as described in section 404(c) of the Clean Water Act; (2) the vegetative and hydrologic characteristics of the subject site and observations of or information concerning wildlife on the site prior to and after the placement of fill material; (3) observations of or information concerning wildlife in wetlands similar to the subject site and in the Hackensack Meadowlands in general; (4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; (5) the need for a public hearing and; (6) whether the Regional Administrator should recommend to the Assistant Administrator for Water the determination to prohibit or restrict the discharge of dredged or fill material on the site. Comments should be submitted within 60 days of the date of publication of this Federal Register notice to the person listed above under ADDRESSES. All comments received will be fully considered by the Regional Administrator in making his decision to prepare a recommended determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Daggett,
Regional Administrator.

[FR Doc. 87-17187 Filed 8-6-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0142
Title: Hazard Identification, Capability Assessment, and Multi-Year Development Plan (HICA/MYDP) for Local Governments

Abstract: FEMA requires consistent information on the status of State and local emergency management and the impact of FEMA funds on improving capability. HICA/MYDP data has established a nationwide baseline on State and local hazards, current capability, and resource requirements. Data is being used to set program priorities, prepare the FEMA budget, allocate funds, and provide reports to Congress.

Type of Respondents: State or local governments

Number of Respondents: 3,410

Burden Hours: 55,910

Frequency of Recordkeeping or Reporting: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87-17953 Filed 8-6-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

AUG 07 1987

Municipal Clerk
Boro of Carlstadt
500 Madison Street
Carlstadt, New Jersey 07072

Dear Sir/Madam:

Enclosed is a copy of the Public Notice describing the Environmental Protection Agency's proposed determination to prohibit or restrict the discharge of dredged or fill material into wetlands owned by the Russo Development Corporation in Carlstadt. Would you please post the enclosed notice in a prominent location available for review by the public. Please note that the comment period closes in sixty days from the date, August 7, 1987, of the notice.

Sincerely,

Mario Del Vicario, Chief
Marine and Wetlands Protection Branch

Enclosure

ZWM-MWP:K.DRAKE:cj 8/7/87

ZWM-MWP ZWM-MWP ZWM-MWP

AUG 07 1987

Dear

Enclosed is a copy of the Public Notice describing the proposed determination to prohibit or restrict the discharge of dredged fill material into wetlands within the Russo Development Corporation property in Carlstadt, New Jersey. Please note that the comment period closes in sixty days from the date of the notice. If you wish to send comments, please address them to me at U.S. EPA Region II, 26 Federal Plaza, New York, New York 10278.

Sincerely,

Mario Del Vicario, Chief
Marine and Wetlands Protection Branch

Enclosure

ZWM-MWP:K.DRAKE:cj 8/7/87

ZWM-MWP

ZWM-MWP

ZWM-MWP

Mr. Richard Schaefer
Regional Director
National Marine Fisheries Service
14 Elm Street
Gloucester, MA 01930

Mr. Stan Gorski
National Marine Fisheries Service
Sandy Hook Lab
Highlands, NJ 07732

Mr. John Weingart
Director
Division of Coastal Resources
P.O. Box 1889
Trenton, NJ 08625

Mr. James Tripp
Environmental Defense Fund, Inc.
475 Park Avenue, South
New York, New York 10016

Mr. Howard Larsen
Regional Director
U.S. Fish and Wildlife Service
1 Gateway Center
Suite 700
Newton Corner, MA 02158

Mr. Clifford Day
Field Supervisor
U.S. Fish and Wildlife Service
P.O. Box 534
705 White Horse Pike
Absecon, NJ 08201

Dr. Richard T. Dewling
Commissioner
New Jersey Department
of Environmental Protection
CN 402
Trenton, NJ 08625

Ms. Margaret Utzinger
The Hackensack River Coalition
P.O. Box 4233
River Edge, NJ 07661-4233

Ms. Ann Galli
Hackensack Meadowlands Development
Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Colonel Marion L. Caldwell, Jr.
District Engineer
Corps of Engineers
New York District
26 Federal Plaza
New York, New York 10278-0090

Bridagier General Charles E. Williams
Division Engineer
North Atlantic Division
U.S. Army Corps of Engineers
90 Church Street
New York, New York 1007-2979

Mr. Thomas Gilmore
New Jersey Audubon Society
790 Ewing Avenue
Franklin Lakes, N.J. 07417

Russo Development Corporation
71 Hudson Street
Hackensack, NJ 07601

Mr. Steven Gray, Esq.
Waters, McPherson, McNeill
400 Plaza Drive
Secaucus, NJ 07094

Mr. Thomas Wells
Assistant Director
New Jersey Conservation Foundation
300 Mendham Road
Morristown, NJ 07960

AUG 05 1987

Delivery Order #02-010A (Contract #86-04-2033) for the
Russo 404(c) Action

Barbara Pastalove, Chief
Environmental Impacts Branch (2PM-EI)

Kevin B. Weaver, Contracting Officer
Facilities and Administrative Management Branch (2PM-FAM)

Thru: Herbert Barrack
Assistant Regional Administrator for Policy and Management (2PM)

Please process the attached material as Delivery Order (DO) #02-010A
for prompt transmittal to our mission contractor, C.E. Maguire, Inc.
The funds required to perform the work associated with this DO (\$20,000)
should be appropriated from the funds in Account Number 7BEM89W211,
Document Control Number W02006.

If you have any questions, please call me at Ext. 1892.

Attachments

cc: M. Del Vicario, 2WM-MWP

2WM-MWP:K.DRAKE:8/4/87:Disk #1

~~2PM-EI~~ 2PM-EI 2PM-EI 2OPM-DD 2OPM

U. S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

JUL 29 1987

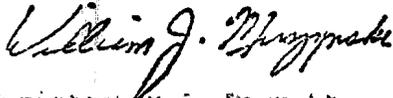
Mr. Steven Gray, Esq.
Waters, McPherson, McNeill
400 Plaza Drive
Secaucus, New Jersey 07094

Dear Mr. Gray:

I am in receipt of your June 10, 1987 response regarding the Environmental Protection Agency's (EPA) intent to publish a public notice on the proposed determination to prohibit or restrict the discharge of dredged or fill material into wetlands in Carlstadt, Bergen County, New Jersey.

After review of your correspondence, I still believe that the discharge of fill material is having and will have an unacceptable adverse effect on the wetland resources provided by wetlands within the proposed project site. Therefore, I am publishing a public notice on the proposed 404 (c) determination which will fully explain the rationale of my position. A copy of the public notice will be mailed to you upon publication.

Sincerely,



Christopher J. Eggert
Regional Administrator

cc: Russ Development Corporation

cc: Martha Isaac, CDD
Dario Del Vicario, WA-MFP
Richard L. Caspe, WMO

United States
Environmental Protection
Agency

Region 2
26 Federal Plaza
New York, N.Y. 10007

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New York
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Agency
EPA 335



News Release

87(37) Herman Phillips (212)264-2515

FOR RELEASE: July 27, 1987

EPA PROPOSES TO DENY A WETLANDS FILL APPLICATION

NEW YORK -- In a highly unusual action, the Region 2 office of the U.S. Environmental Protection Agency (EPA) is proposing to deny a permit which the U.S. Army Corps of Engineers intends to issue for filling in a wetland.

Under Section 404 of the Clean Water Act, the Corps submitted a final notice in March of this year to EPA and other federal regulatory review agencies of its intent to issue a permit to Russo Development Corporation of Hackensack (NJ) to maintain 52.5 acres of wetlands already filled and now partially occupied by six warehouses in the Hackensack Meadowlands in Carlstadt (NJ); to authorize five further acres to be filled for construction of additional warehouses; and to accept Russo's compensation plan to replace only half of the wetlands lost on a value-for-value basis.

EPA, under the same section, proposes to exercise its right to deny the permit and will seek that no fill be placed in the

five acres; that 8.5 acres of the 52.5 acres currently filled be restored; and that the remaining 44 acres be compensated for on a one-for-one, value-for-value, basis.

The Corps maintains that the Russo project meets the requirements of Section 404 of the Act; however, Christopher J. Daggett, Administrator for EPA's Region 2, which includes New Jersey and New York State, said that "our analysis shows that the Russo project has degraded and will continue to degrade the environment and that the proposed compensation would not be an acceptable tradeoff for this damage."

EPA is seeking comments from the public for 60 days after notice is published in the Federal Register, expected shortly. Comments and requests for additional information should be directed to Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, USEPA, 26 Federal Plaza, New York, NY 10278. EPA is seeking comments on: 1) whether the Agency should pursue its intent to deny the permit, 2) what adverse impacts have occurred, 3) what are the pre-impact site characteristics and the occurrence of wildlife, 4) what corrective action, if any, could be taken and, 5) whether the Agency should conduct a public hearing.

Background

Under Section 404 of the federal Clean Water Act, the U.S. Army Corps of Engineers issues permits for certain discharges of dredged or fill material in waterbodies or wetlands. Filling a wetland can result in the contamination of surface and groundwater, the destruction of fish and wildlife, and the elimination of a wetland's capacity to control floods. EPA, under this section of the Act, reviews and comments to the Corps on the Corps' decisions.

Prior to filling in 1981, the Russo site contained 57.5 acres of palustrine wetlands within the primarily estuarine marsh system of the Hackensack Meadowlands. The Meadowlands, which are under intense development pressure, are situated within a highly industrial and residentially developed complex. Thus, the wetlands serve as a refuge for wildlife.

Between 1981 and 1985, Russo filled 52.5 acres without authorization by the Corps. Six warehouses, currently tenanted, were constructed on 44 of the acres; 8.5 acres of fill and 5 acres of wetlands remain on site. Russo proposes to build more warehouses on the 13.5 acres. In 1985, the Corps served a cease-and-desist order to Russo and advised the company to submit an application for an after-the-fact permit for the fill. Russo submitted an application which included provisions for wetland compensation providing one half of the values lost.

The Corps concluded that the requirements of Section 404 of the Clean Water Act were met. The Corps maintained its position and did not resolve EPA's concerns, leaving EPA no alternative but to initiate the denial process.

U.S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

JUL 20 1987

Federal Register Publication of the Proposed Determination to Prohibit or Restrict the Specification of an Area for Use as a Disposal Site

/s/ Christopher J. Daggett
Christopher J. Daggett
Regional Administrator (2RA)

Thea McManus
Federal Register Office (PM-223)

Attached is a Federal Register notice announcing a proposed determination, pursuant to Section 404(c) of the Clean Water Act, to prohibit the discharge of fill material into wetlands in the Hackensack Meadowlands, Carlstadt, New Jersey.

If you have any questions on this submittal, please call Mario Del Vicario, Chief of the Marine and Wetlands Protection Branch at 8-264-5170.

cc: Mario Del Vicario
Richard Caspe

2674-MEDP

2674-MWP

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Notice: 87-43

Date: August 7, 1987

**Proposed Determination to Prohibit or Restrict the Specification
of an Area for Use as a Disposal Site.**

AGENCY: Environmental Protection Agency

ACTION: Notice

SUMMARY: Section 404(c) of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. EPA's Regional Administrator, Region II, has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into wetlands by the Russo Development Corporation - 71 Hudson Street, Hackensack, New Jersey - within the Hackensack Meadowlands in Carlstadt, New Jersey for the purpose of building warehouses may have unacceptable adverse effects on wildlife. Accordingly, this notice announces the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material at the site and seeks public comment on his proposal.

Public Hearing

EPA will schedule a public hearing if there is a significant degree of public interest, or if Russo Development Corp., as

landowner and permit applicant, requests one. If a public hearing is scheduled, public notice of a hearing will be issued and will contain: 1) reference to this public notice of the proposed determination, 2) the date, time, and place of the hearing and, 3) a brief description of the nature and purpose of the hearing including the rules and procedures.

The public hearing would be scheduled no earlier than 21 days from the date of this notice of proposed determination. Requests for a public hearing should be submitted within 15 days of the date of this notice.

DATES: All comments on this proposed determination to prohibit or restrict the use of the Russo site for the discharge of dredged or fill should be submitted to the person listed under Addresses within 60 days of the date of this notice.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264-5170.

SUPPLEMENTARY INFORMATION

I. Description of the Section 404(c) Process

The Clean Water Act, 33 USC 1251 et seq., prohibits the

discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, Section 404, 33 USC 1344. Section 404 authorizes the Secretary of Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary or where warranted by the economics of anchorage and navigation, except as provided in Section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

Regulations published in 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its Section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resources, he may begin the process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination under Section 404(c). Unless the applicant or the Corps persuades the Regional Administrator that there will not be unacceptable adverse impacts or identifies corrective measures satisfactory to the Regional Administrator

within 15 days, the Regional Administrator publishes a notice in the Federal Register of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. If he prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA's headquarters for a final decision affirming, modifying, or rescinding the recommended determination. The Corps of Engineers and the applicant are provided with another opportunity for consultation before this final decision is made. It is important to note that this 404(c) action is being initiated in response to an after-the-fact permit action by the Corps pursuant to 33 CFR 326.3(e) and, therefore, primarily involves existing unauthorized fill. EPA may follow up this 404(c) action with an enforcement action with respect to the unauthorized fill.

II. Description of the Site

A. Russo Site

Prior to filling in 1981, the Russo site was characterized by 57.5 acres of palustrine emergent marsh, dominated by common reed (Phragmites australis) and blue joint grass (Calamagrostis

canadensis). Groupings of aspen (Populus tremuloides) and ephemeral ponds were interspersed within the tract. The site is situated within a larger palustrine emergent marsh along the Hackensack River commonly referred to as the Empire tract of the Hackensack Meadowlands. This tract was cut off from tidal river flow by dikes placed in the 1920's. The Russo site receives upland drainage and storm water runoff from adjacent areas and transfers this drainage via ditches dredged on site in the 1920's to Moonachie Creek which drains to the Hackensack River. Moonachie Creek has had a tide gate at its confluence with the Hackensack River since the 1920's.

Historically the site has impounded large areas of water. For example, during construction of the western spur of the New Jersey Turnpike from 1969 to 1971 ditches within the Empire Tract were filled with fill material and drainage was blocked. The Empire tract including the Russo site became an impoundment area with standing water. When turnpike construction was finished in 1971 the drainage ditches were re-dredged. No further maintenance of these ditches or those on the Russo site has occurred since then. In addition, severe storm events in conjunction with the inadequate drainage provided by unmaintained ditches on the Russo site have resulted in storm water retention and impoundment related to storm water back-up upstream of the Moonachie Creek tide gate.

Between 1981 and 1985 the Russo Development Corporation discharged 52.5 acres of fill material, shot rock (a fill mixture of clean dirt and rock) from excavation sites in New York, on the site without Department of the Army authorization. Six warehouses were constructed on 44 of the 52.5 acres of fill and are currently tenanted; 8.5 acres of fill remain undeveloped. The remaining five acres of wetland on site which did not receive fill have developed into a freshwater pond edged by cattail (Typha sp.) and common reed. The Russo Development Corporation has sought after-the-fact Department of the Army authorization to maintain the 52.5 acres of fill and authorization to discharge fill material into the remaining 5 wetland acres for the purpose of constructing more warehouses. The Russo site was/and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR 230.3. The site therefore is subject to regulations under Section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site. This permit issuance must be in compliance with the 404(b)(1) Guidelines.

Currently, muskrat, waterfowl and a variety of rodents have been observed on the remaining five wetland acres on site. Historical accounts of wildlife use, prior to or at the time of discharge of 52.5 acres of fill, list grey fox (occasional), rabbit, pheasant, waterfowl, woodcock, killdeer and, marsh-associated songbirds. In addition, waterfowl utilization was high when the Russo site impounded large areas of water. Prior to discharge of fill the site functioned in sediment and toxicant

retention, contributing to water purification. After discharge of fill, 52.5 acres of the site was transformed from a reed, blue-joint grass and interspersed emergent vegetative community into an upland industrial building complex. The discharge of fill resulted in a higher site elevation, a complete change in substrate and hydrology with the consequent loss of occasional open water impoundment, the loss of ephemeral ponds, the loss of wetland vegetation and animal communities associated with wetland habitat, and the loss of sediment and toxicant retention capacities.

B. The Hackensack Meadowlands District

The Russo site is part of the Hackensack Meadowlands ecosystem. The 7,000-8,000 acres of wetlands contained therein provide habitat for many species of waterfowl, wading birds, shorebirds, passerines, raptors, and various mammals, reptiles and amphibians.

While the Meadowlands perform critical environmental functions, they are under intense development pressure. In fact, the Hackensack Meadowlands Development Commission (HMDC) reports that the wetlands acreage in the Meadowlands District decreased from 10,521 to 7,800 acres between 1972 and 1984. The HMDC Master Zoning Plan provides for development of approximately an additional 2,200 acres of wetlands.

Because of the concern that development in the wetlands and flood-plain areas of the Meadowlands would conflict with Section 404 of the Clean Water Act, the Fish and Wildlife Coordination Act

of 1958, and other federal policies, EPA and the U.S. Fish and Wildlife Service (FWS) presented recommendations to the Corps of Engineers in 1981 concerning potential permit reviews. In particular, EPA and FWS divided the Meadowlands into marginal and critical wetlands categories. The Agencies anticipated that permits could be granted for "marginal wetlands", provided adequate compensation and other appropriate permit conditions were imposed. The Russo site was designated in this category. For "critical, high quality, and extremely productive wetlands," EPA and FWS indicated that they would be likely to recommend permit denial. If a permit were issued, compensation of at least two wetland acres for every acre lost would be necessary.

While the 1981 policy reflected an initial effort to distinguish among wetlands, it was based on a preliminary and limited data base. Consequently, EPA in late 1985 initiated an Advanced Identification study within the Hackensack Meadowlands with the support of other federal and state agencies. The study is evaluating wetland values, as well as impacts of the intense development pressures to these wetlands, in much greater detail. It is EPA's expectation that the results of the study will serve as a template for future section 404 permit decisions in the Meadowlands. During this time frame, HMDC will also be revising its Master Plan for a number of reasons, including the fact that the Master Plan has not been subject to review for consistency with the National Environmental Policy Act and Section 404 of the

Clean Water Act.

III. Proceedings to Date

For the reasons stated earlier, a Department of the Army permit is required to discharge fill onto the Russo site. The Russo Development Corporation has sought an after-the-fact Department of the Army permit for the existing and proposed work previously described.

The Corps of Engineers issued Public Notice 12360-85690-J1 for this application on August 28, 1985 proposing to maintain the 52.5 acres of unauthorized fill, to authorize 5 further acres of fill for the purpose of constructing warehouses and to require mitigation for the entire 57.5 acres. The Corps has approved Russo Development Corp.'s mitigation proposal which includes enhancement of existing wetlands within the Hackensack Meadowlands to provide a 0.5:1 (enhance:lost) value-for-value compensation for the wetlands lost and a deed restriction securing permanent preservation of 23 wetland acres owned by the applicant in Troy Meadows of the Passiac River basin (i.e., outside of the Hackensack River basin).

The Corps advised EPA of its intention to issue the permit as requested by the Russo Development Corporation with the mitigation discussed above. EPA Region II reiterated previously expressed objections to the project and requested 2:1 complete and appropriate mitigation to replace the functions and values provided by all 57.5 acres. EPA did not seek removal of the warehouses on the 44

acres that had been illegally filled since restoration was unlikely to return the site to its previous wetland state.

EPA sought to resolve its concerns through procedures established by the federal agencies under 404(q) of the Act (see the 404(q) Memorandum of Agreement, November 1985). Section 404(q) directs the Corps and EPA to enter into an agreement to coordinate and expedite permit decision making. In October 1986 correspondence, the Regional Administrator requested notification of the Corps of Engineers permit decision on the Russo application in accordance with these procedures. Accordingly, on December 22, 1986 the Corps submitted a preliminary Notice of Intent to Issue (NII) a permit to EPA and other federal agencies. In response (December 24, 1986), the Regional Administrator requested a meeting with the Division Engineer and suspension of further actions on the permit application. Following their January, 1987 meeting, the New York District Corps reexamined the preliminary NII and submitted a final NII maintaining the Corps decision to issue a permit without the mitigation EPA considered necessary. In April 20, 1987 correspondence the Assistant Administrator for Water, requested that the Assistant Secretary of the Army (Civil Works) refer the New York District Corps decision to a higher level for re-evaluation. The Assistant Secretary denied EPA's request.

Having exhausted these procedures for resolution of EPA's concerns, the Regional Administrator initiated 404(c) procedures through which the EPA Administrator may exercise a veto over the

specification by the Corps of Engineers of a site for the discharge of dredged or fill material. The Regional Administrator notified the District Engineer and the Russo Development Corp. (May 26, 1987) of his intent to issue a Public Notice on his proposed 404(c) determination and notified each that there would be a 15 day consultation period to resolve his concern regarding the significant adverse effects. The Corps and the Russo Development Corp. responded (May 27, 1987 and June 10, 1987 respectively) concluding that the project did not pose any unacceptable adverse effects. The consultation period closed on June 11, 1987. Following a review of responses received from the Corps and the applicant, the Regional Administrator concluded that no new information had been provided and, therefore, he was not persuaded that there would be no unacceptable adverse effects from the existing and proposed fill.

IV. Basis for Proposed Determination

A. Section 404(c) Criteria

The Clean Water Act requires that exercise of the final Section 404(c) authority be based on a determination of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. The regulations define unacceptable adverse effect:

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water

supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR Part 230).

40 CFR 231.2 (e)

The preamble to the 404(c) regulations explains that one of the basic functions of Section 404(c) is to police the application of the Section 404(b)(1) Guidelines.

Those portions of the guidelines relating to significant degradation of waters of the U.S. (40 CFR 230.10(c)), to minimizing adverse impacts to aquatic resources (40 CFR 230.10(d)) and to the determination of cumulative effects on the aquatic ecosystem (40 CFR 230.11(g)) are of particular importance to evaluating the unacceptability of environmental impacts in this case. Compliance with the Guidelines requires that no discharge of dredged or fill material shall be permitted if it causes or contributes to significant degradation of waters of the U.S. Effects contributing to significant degradation include but are not limited to the loss of wildlife habitat or the loss of a wetland's capacity to assimilate nutrients. Compliance with the guidelines requires that no discharge be permitted unless appropriate and practicable steps have been taken to minimize adverse impacts of the discharge on the aquatic ecosystem. In addition, the guidelines state that the permitting authority should collect and solicit information

concerning cumulative impacts and document and consider this information during the decision-making process. Thus, it is appropriate under 404(c) to take into account whether the project has or will result in significant degradation to aquatic resources, particularly wildlife habitat, or whether the proposed mitigation is adequate to offset the impacts of the Russo project.

B. Impacts to Filling the Russo Site

As discussed previously, the existing and proposed fill has/will replace the wetland soils, vegetation and hydrology with impervious surface resulting in a loss of the site's sediment and toxicant retention capabilities. In addition, the existing and proposed fill is and will be a source of pollutants to adjacent aquatic areas during rainfall events.

Beyond these general but very significant environmental impacts, EPA believes wildlife has and will be significantly affected by the fill at the Russo site. Historical accounts of wildlife use prior to or at the time discharge of the fill list wetland-associated songbirds and waterfowl, woodcock, killdeer, pheasant, rabbit and, occasional grey fox. Loss of 52.5 acres of habitat is likely to have disturbed at least the marsh-related species, particularly in view of development north and west of the project site also encroaching on wildlife habitat. FWS and the Corps have characterized the 52.5 acres of the Russo site as low to moderate habitat prior to its being filled. FWS has explained that this rating is based upon the lack of diversity of wildlife

habitat because of the monotypic vegetative cover. In addition, FWS noted, and EPA agrees, that the site provided the wildlife habitat functions of a Meadowlands wetland and supported wetland-associated wildlife even though the habitat was monotypic. Moreover, FWS considers the five acres Russo seeks to fill to be a good quality wetland.

The five remaining acres which have not yet been filled consist of a 3 acre pond and 2 acres of palustrine emergent marsh with phragmites, cattail, dwarf spikerush, and juncus spp. This freshwater pond with associated emergent vegetation contributes to the diversity of wetlands within the Meadowlands District and provides quality habitat of food and cover to wetland-associated wildlife, especially waterfowl, wading birds, and muskrat. Loss of the additional five acres can therefore be expected to adversely affect wetland associated wildlife.

In addition to the direct loss of the Russo site, there is reason to conclude that there may be more far-reaching repercussions on wildlife values. Because of the extensive past losses of wetlands in the Meadowlands, EPA believes there is cause to conclude that the past and future fill of the Russo site is likely to contribute to cumulative adverse impacts on wildlife. As mentioned above, gradual and continual wetland development has diminished the Meadowlands District's wetlands by 2,721 acres (10,521 to 7,800) and, the Hackensack Meadowlands Development Commission's Master Plan provides for the development of an

approximate additional 2,200 acres. The U.S. Fish and Wildlife Service has designated wetland areas within the eastern flyway, a category into which the Hackensack Meadowlands falls, as priority areas in their Waterfowl Management Plan (May 1986). The Service reports that the degradation of migration and wintering habitat have contributed to long-term downward trends in some duck populations. In those periods when the Russo site impounded large areas of water, waterfowl were numerous on the site. In addition, population declines would be expected for those less mobile wetland-associated species such as muskrat and other rodents, reptiles and amphibians. Ecological theory suggests that disturbed animal populations do not necessarily simply shift into remaining habitat. Depending on the habitat's carrying capacity disturbed populations may perish or displace other organisms which may perish.

There is not a great deal of existing information in the record identifying the specific values and functions provided by the formerly existing wetlands. For that reason EPA strongly encourages the public to submit any relevant information. EPA believes, though, that the Meadowlands environment cannot tolerate the loss of the Russo site unless the ecological values the site served/serves are compensated for.

In order for filling of the site to be consistent with the section 404(b)(1) Guidelines, EPA believes adequate mitigation must be provided to assure replacement of the wildlife values and

functions, thereby stemming the net loss of wildlife habitat in the Meadowlands. */ Wetland enhancement and creation to provide complete compensation for wetland values lost would constitute appropriate mitigation in this case.

It appears, however, that adequate mitigation will not be provided. Russo has offered only to compensate on a 0.5:1 value-for-value basis by enhancing existing wetlands within the Meadowlands District and to place a deed restriction on 23 acres of wetlands it owns outside the District.

*/ Since EPA's first response to the Corp's Public Notice of Russo's application for a permit in September, 1985, EPA has consistently stated that mitigation to replace wetland functions and values is required. However, in the fall of 1986, EPA questioned not only the adequacy of Russo's mitigation proposal but also whether there were not, in fact, practicable alternatives to using the Russo site for constructing warehouses. EPA has taken the position that mitigation cannot be used to compensate for avoidable losses; i.e., where there are practicable alternatives to filling a wetland site. Consequently, EPA suggested that (1) mitigation providing value-for-value replacement be required for the 44 acres that have been filled and contain warehouses, (2) restoration be required for the 8.5 acres that have been filled but contain no warehouses and, (3) that a permit be denied to fill the remaining 5 wetland acres. However, assessing the existence of practicable alternatives in the context of an after-the-fact

The information provided to date on the proposed mitigation does not identify a particular site and is too limited to evaluate the anticipated ecological gains and the probability of success. Thus, contrary to EPA's and FWS's consistent comments that 1:1 to 2:1 value-for-value compensation is necessary to prevent net loss of wetland values and functions, the proposed mitigation is unlikely to accomplish that goal. Moreover, the deed restriction affords only questionable environmental benefit since the wetland site would already be protected from significant degradation under Section 404 in the event that the discharge of fill were proposed.

EPA consequently has concluded that the loss of 57.5 acres of wetlands, taken in the context of the cumulative loss of wetland acreage occurring in the Hackensack Meadowlands, could result in significant loss and damage to wildlife habitat areas. Unless and until the Russo Corporation agrees to provide adequate mitigation as described above, it is EPA's view that an after-the-fact permit for 52.5 acres and a pre-discharge permit for five acres could result in unacceptable adverse impacts to wildlife within the meaning of Section 404(c) and 40 CFR §231.2(e).

*/ (Footnote Continued)

permit raises particularly difficult analytical issues that go far beyond those raised in this particular permit application. Consequently, I have decided not to pursue the practicable alternatives issues in this Section 404(c) action.

Accordingly, EPA proposes to prohibit the use of the Russo site for discharge of fill material under the conditions reflected in the permit the Corps proposes to issue. Thus, the fill of the five remaining acres of wetlands would be prohibited. In addition, EPA may initiate enforcement action with respect to the unauthorized fill of the 52.5 acres in order to achieve appropriate restoration of or mitigation for the filled area.

V. Solicitation of Comments

EPA would like to obtain comments on: 1) whether or not the impacts of such discharge would represent an unacceptable adverse effect as described in Section 404(c) of the Clean Water Act; 2) the vegetative and hydrologic characteristics of the subject site and observations of or information concerning wildlife on the site prior to and after the placement of fill material; 3) observations of or information concerning wildlife in wetlands similar to the subject site and in the Hackensack Meadowlands in general; 4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; 5) the need for a public hearing and; 6) whether the Regional Administrator should recommend to the Assistant Administrator for Water the determination to prohibit or restrict the discharge of dredged or fill material on the site. Comments should be submitted within 60 days of the date of publication of this Federal Register notice to the person listed above under ADDRESSES. All comments received will be fully considered by the Regional Administrator in

making his decision to prepare a recommended determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Daggett
Regional Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

21 1987

DATE:

SUBJECT:

Public Notice - Proposed 404(c) Determination
Russo Development Corporation

FROM:

Mario Del Vicario
Mario Del Vicario, Chief
Marine and Wetlands Protection Branch

TO:

Christopher J. Daggett
Regional Administrator

THRU:

Richard L. Caspe, Director
Water Management Division *RAC*

Attached for your signature are one original and three copies of the Public Notice announcing a proposed 404(c) determination for the Russo Development Corporation's proposed project (Hackensack Meadowlands, Carlstadt, New Jersey).

The notice requests public comment on EPA's proposed action and on the environmental quality of the Russo site. No public hearing is scheduled in this notice. If the Russo Development Corp. requests and/or there is significant public interest in a public hearing, a follow-up notice scheduling a public hearing will be issued.

The subject public notice will be submitted for publication in the Federal Register and appropriate local newspaper(s) distributed in the Carlstadt, New Jersey area.

JUL 17 1987

Public Notice for Proposed 404(c) Determination,
Russo Development Corporation

Mario Del Vicario, Chief
Marine and Wetland Protection

Richard A. Barker, Chief
Permit Administration Branch

Attached is a Public Notice to be published in the New Jersey Star Ledger. The notice announces the Regional Administrator's proposed 404(c) determination to prohibit or restrict the discharge or fill into wetlands in Carlstadt, Bergen County, New Jersey proposed by the Russo Development Corporation. Section 404(c) procedures require publication of the public notice at least once in a daily or weekly newspaper of general circulation (40 CFR 231.3 (d)(1)).

The Public Notice is also being published in the Federal Register pursuant to the 404(c) procedures. The notice announces a 60-day comment period starting from the date of publication in the Federal Register. Therefore, we would like to coordinate with you and the Star Ledger in order to coincide publication in the newspaper and Federal Register.

Office of the Federal Register (OFR) informs me that publication occurs within 3 to 4 days of receipt of the notice. As soon as I am informed of the projected Federal Register publication date, I will inform you.

If you have any questions please contact Kathleen Drake of my staff at 264-5170. Thank you for your assistance.

Enclosure

cc: Richard L. Caspe, WMD
Charlie Hoffmann, ORC-WGL

2WM-MWP:K.DRAKE:sg:7/15/87 Disk #2

2WM-MWP 2WM-MWP 2WM-MWP

Level of Effort Contract with C.E. Maquire Regarding Russo 404(c) Action

Richard L. Caspe, P.E., Director
Water Management Division

Herbert Barrack, Assistant Regional Administrator for
Policy and Management

As you are aware EPA has initiated a 404(c) action for the unauthorized discharge of fill material into wetlands within Hackensack Meadowlands by the Russo Development Corporation. As a result, Dave Davis of the Office of Wetlands Protection has made a verbal commitment to provide the Region with \$20,000 to be used for obtaining contractor assistance with regard to this action. The contractor would be responsible for conducting a literature search and collecting historical information on the wildlife habitat value of the Russo site.

With your concurrence, I would like to have these funds committed for a level of effort contract with C.E. Maquire. C.E. Maquire is presently under contract with EIB, and I have instructed Mario Del Vicario (MWPB) to coordinate this action with Bob Hargrove (EIB) should you concur with my request.

In order to expedite the 404(c) action, I would appreciate it if you would advise me of your decision as soon as possible.

bcc: Mario Del Vicario

(Shaded areas are for use of procurement office only)

Page of

	US Environmental Protection Agency Washington, DC 20460		1. Name of Originator Maric Del Vicario		2. Date of Requisition 7/20/87	
	Procurement Request/Order		3. Mail Code 2WM-MWP		4. Telephone Number 212-264-5170	
6. Signature of Originator 				7. Recommended Procurement Method <input type="checkbox"/> Competitive <input type="checkbox"/> Other than full and open competition <input type="checkbox"/> Sole source small purchase		
8. Delivery to (Project Manager) Robert Hargrove		9. Address USEPA, Region II 10278 26 Federal Plaza, New York, NY		10. Mail Code 2WM-EIB		11. Telephone Number 212-264-6723
12. Financial Data a. Appropriation 687/80108		b. Servicing Finance Office Number 22		NOTE: Item 12(d) Document Type - Contract = "C," Purchase Order = "P"		
FMO Use (c) (13 digits)		D T (d)	Document Control Number (e) (6 digits)	Account Number (f) (10 digits)	Object Class (g) (4 digits)	Amount (h) Dollars Cents
		X	W02006	7BGM89W211	2535	20,000 00
13. Suggested Source (Name, Address, ZIP Code, Phone/Contact) C.E. Maguire, Inc. 1 Court Street New Britain, CT 06051				14. Amount of money committed is: <input checked="" type="checkbox"/> Original <input type="checkbox"/> Increase <input type="checkbox"/> Decrease		15. For Small Purchases Only: Contracting Office is authorized to exceed the amount shown in Block 12(h) by 10% or \$100, whichever is less. <input type="checkbox"/> Yes <input type="checkbox"/> No

16. Approvals			
a. Branch/Office David G. Davis, Director Date 7/24/87		d. Property Management Officer/Designee Date	
b. Division/Office Bernard L. Mason, Chief Date 7/29/87		e. Other (Specify) Date	
c. Funds listed in Block 12 and Block 15 (if any) are available and reserved (Signature of Certifying Official) Date		f. Other (Specify) Date	

17. Date of Order		18. Order Number		19. Contract Number (if any)		20. Discount Terms	
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21. FOB Point		22. Delivery to FOB Point by On or before (Date)		23. Person Taking Order/Quote and Phone No.	
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24. Contractor (Name, address, ZIP Code)		25. Type of Order <input type="checkbox"/> a. Purchase <input type="checkbox"/> b. Delivery provisions on the reverse are deleted. The delivery order is subject to the terms and conditions of the contract. (See Block 19)		Reference your quote (See Block 23) Please furnish the above on the terms specified on both sides of this order and on the attached sheets, if any, including delivery as indicated.	
		c. <input type="checkbox"/> Oral <input type="checkbox"/> Written <input type="checkbox"/> Confirming			

26. Schedule							
Item Number (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Estimated Unit Price (e)	Unit Price (f)	Amount (g)	Quantity Accepted (h)
	Russo 404(c) Action Contract No. 68-04-2033 This delivery order is for the Section 404(c) action proposing to prohibit or restrict the discharge of fill into wetlands owned by the Russo Development Corporation.					20,000.00	
						Totals	

*Comments: 1 permit under Transmittal Memo
to State for Bureau of Marine Conservation
to issue permit*

Attachment A Delivery Order No. 02-010A

Project Officer: William P. Lawler
(212) 264-6721

Project Monitor: Robert Hargrove
(212) 264-6723

Environmental Impacts Branch
U.S. Environmental Protection Agency
26 Federal Plaza, Room 501
New York, New York 10278

I. Background

The Clean Water Act, 33 USC 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, Section 404, 33 USC 1344. Section 404 authorizes the Secretary of Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary or where warranted by the economics of anchorage and navigation, except as provided in Section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

On March 23, 1987 the Corps of Engineers submitted to EPA and other federal agencies a Notice of Intent to issue a permit to the Russo Development Corporation proposing to maintain 52.5 acres of unauthorized fill, to authorize 5 further acres of fill for the purpose of constructing warehouse and to require mitigation for the entire 57.5 acres. The Corps has approved Russo Development Corporation's mitigation proposal which includes enhancement of existing wetlands within the Hackensack Meadowlands to provide a 0.5:1 (enhance:lost) value-for-value compensation for the wetlands lost and a deed restriction securing permanent preservation of 23 wetland acres owned by the applicant in Troy Meadows of the Passiac River basin (i.e., outside of the Hackensack River basin).

The Regional Administrator notified the District Engineer and the Russo Development Corp. (May 26, 1987) of his intent to issue a Public Notice on his proposed 404(c) determination and notified each that there would be a 15 day consultation period to resolve his concern regarding the significant adverse effects.

The Corps and the Russo Development Corp. responded (May 27, 1987 and June 10, 1987, respectively) concluding that the project did not pose any unacceptable adverse effects. The consultation period closed on June 11, 1987. Following a review of responses received from the Corps and the applicant, the Regional Administrator concluded that no new information had been provided and, therefore, he was not persuaded that there would be no unacceptable adverse effects from the existing and proposed fill.

II. Statement of Work

A. General Requirement

The contractor will review and summarize existing information pertaining to the wildlife habitat quality and the occurrence of wildlife in wetlands within the Hackensack Meadowlands District and specifically the Russo project site, in Carlstadt, New Jersey.

B. Deliverables:

1. The Contractor will identify sources of information (e.g., local environmental groups, technical experts/naturalists, and EPA and HMDC files (including data for DO #02-007 A/B) on the historical (i.e., within the last 10 years) and current wildlife occurrence in and habitat quality of the wetlands in the HMDC district with specific focus on the Russo property in Carlstadt, N.J.
2. The contractor will review sources of information identified in Deliverable 1 by 9/1/87.
3. The contractor will submit to the Project Monitor five copies of a report summarizing Deliverables 1 and 2 by 9/14/87. The report will include an annotated bibliography of reviewed literature and data, and present a comparison of wildlife occurrence and habitat quality in wetlands of 1) pre-versus post-disturbance conditions of the Russo property and, 2) both conditions in 1 versus the current conditions in both palustrine and estuarine wetlands in the HMDC district.
4. Within a week of receipt of EPA comments on Deliverable 3, the contractor will submit to the Project Monitor 25 copies of the final report which incorporates revisions to the draft report based on EPA comments.
5. The Contractor will consult with EPA's Project Monitor for technical direction as needed.

C. Materials Provided by EPA

1. Summary of file history.
2. Information on 404(c) proceedings to date.
3. File and report material from DO #02-007-A and B

III. Contractor Reporting Requirements:

Progress reports shall be prepared by the contractor for distribution to EPA and shall cover the work performed within one invoice period to allow correction with costs incurred by the contractor. In addition, a log of meetings, phone calls, and visitations to reference sources shall be appended to the report. The contractors shall be prepared to discuss work completed after submittal of the report with the Project Monitor via telephone calls or meetings.

IV. Contractor Responsibilities:

The work shall be in accordance the National Environmental Policy Act (NEPA) of 1969 and its implementing regulations from the Council of Environmental Quality (40 CFR Part 1500-1508), and EPA (40 CFR Part 6); EPA's 404 (b)(1) Guidelines (40 CFR Part 230); and EPA procedures for 404(c) (40CRF Part 231).

V. Summary of Deliverables and Performance Schedules.

<u>Deliverable</u>	<u>Date Due</u>	<u>Addresses</u>	<u>Copies</u>
A. Progress Reports	Within 10 days of close of invoice	Contracting Officer Project Officer	1 1
B. Completion of Literature and Data Review	Sept. 1, 1987	N/A	N/A
C. Draft Report	Sept. 14, 1987	Project Monitor	5
D. Final Report	One (1) week after receipt of EPA's comments on draft report	Project Monitor	25

VI. Cost Estimates and Ceilings

A. Labor:

<u>Category</u>	<u>Skill Level</u>	<u>Est. Direct Labor Hours</u>	<u>Rate</u>	<u>Cost</u>
Project Administrator	PL-4	12	57.21	686.52
Project Manager	PL-3	80	46.52	3,721.60
Environmental Scientist	PL-3	240	44.91	10,778.40
Clerk Typist		48	24.60	<u>1,180.80</u>

Labor Ceiling Amount: \$16,367.32

B. Other Direct Costs:

1. Travel

a. Per Diem - 25 days @ \$75/day \$1,875.00
b. Transportation \$1,200.00

2. Report Reproduction \$250.00

3. Miscellaneous \$307.68

C. Other Direct Cost Ceiling Amount: \$3,632.68

Delivery Order Ceiling Amount: \$20,000.00

APPENDIX
RECORD OF INTERVIEWS

MAGUIRE GROUP INC. MEMO OF TELECON

9/11/87 11:15 AM

Caller: David Westcott, MGI

Called: Shari Stevens, USFWS
P.O. Box 534
Absecon, NJ 08201
(609) 646-9310

Topic: Russo Tract

Shari said she was not familiar with the tract before it was filled. She said the 44 acres was already filled and developed when she first went out there. She went out in response to a violation notification on the 13 acres beside the 44 acres. She discovered at that time that there had been a 1981 violation on the site.

In 1981, F&W wrote to COE reporting the violation and COE responded. COE notified F&W that there was a violation, but apparently took no action.

Shari said when she saw the site it was highly disturbed. The site had been graded and vegetation largely removed. This would be September/October 1985. The next spring when she saw the site it had been vegetated with such plants as dwarf spike rush and other valuable plants for wildlife. It had a Phragmites fringe perimeter. The wetland portions were just beginning to grow vegetation.

Shari said she has seen Great Blue Herons, Cattle Egret, and Great Egret on the site. She has also seen Harrier hunting on the Empire Tract directly adjacent and classified the Russo Tract as good Harrier hunting ground because of the large rodent population it supports.

She said she has also seen pheasant there and song sparrow, swamp sparrow, mockingbird, and redwing blackbird. She said she has heard, but not seen, bobwhite quail on the site. She said the area is suitable for marsh wren nesting. Bob-o-link, an endangered species, has also been seen on the Empire Tract adjacent to the site.

She has seen Mallards, Blue Teal, Black Ducks and Gadwall there. She said Don Smith told her there were breeding Mallards and Black Ducks there.

She said that what is out there now is a diversity of habitats which is extremely valuable given the dominance of Phrag. in other areas. If this came in as a retroactive application, F&W would have to deny it.

Shari said she asked Bill Zinny of NWI to take a look at the site about a year ago. He did so at her request, providing her with a map drawn from the 1978 photography showing wetland in the area. She agreed to see if she could find this and send me a copy.

I thanked her for her assistance. She said call her again if she can be of further help.

MAGUIRE GROUP INC. MEMO OF TELECON

9/8/87 3:20 PM

Caller: David Westcott, MGI

Called: Don Smith
Hackensack Meadowlands Development Commission
(201) 460-1700

Topic: Russo Tract

I asked Don if he was familiar with the Russo Tract before filling occurred. Don said he hunted and trapped the Russo Tract before the area was filled. I asked how he would characterize the vegetation. He said it was mostly panicum and bluejoint with some phragmites. Two small ponds near Fraterelli in SW corner. Two together amounted to about a quarter of an acre. Water was 10 - 12" deep and seasonal.

A few muskrat were on the site. Mostly upland species, rabbits and pheasant. Don said the tract was more like the grass and shrub fields in the Losen Slote basin than the phragmites of the Empire Tract.

When Commerce Boulevard was constructed, the topsoil on the site was stripped off and one to one and one-half feet of the topsoil was removed. It was stockpiled on site. At least one pile of soil still remains. This led to impoundment of "sheet water" an inch or two deep after rains. This would dry off after a few days. Road did not lead to overall flooding of the meadows.

I asked about the area east of Central Blvd. where the fill has most recently been placed. Before placement of latest fill, that area was mostly panicum and bluejoint, not solid phragmites. Excavation has changed the vegetation there. Don said he has trapped muskrat from the tract. He said there are racoons in the area also, but he has not tried to trap them. Leg hold traps are prohibited in New Jersey. He is reluctant to risk losing a live trap in the area.

MAGUIRE GROUP INC. MEMO OF TELECON

9/8/87 11:15 AM

Caller: David Westcott, MGI

Called: George Potera
Environmental Resources Management
999 West Chester Pike
West Chester, PA
(215) 696-9110

Topic: Russo Tract

I asked George if he was familiar with the Russo Tract and described its location. He said he is familiar with tract. Said the Empire Tract is "pure Phragmites". Said this is characteristic of Hackensack Meadowlands. ERM was a subcontractor to Grenier Engineering Science, Tampa, FL (813) 879-1711.

Grenier was overall site contractor. Gerry Roberts or Rick Morse who works for Gerry would know about report. They are in the process of finalizing it still. George worked on project about two years ago. Said there was some fill placed in the area south of Commerce Blvd., but the balance of the area was marsh.

I asked about vegetation. George said the fill along Commerce Boulevard was excess material from road construction. Balance of tract was largely undisturbed marsh.

He has walked the site and flown with a helicopter. Vast bulk of the area was Phragmites. Phragmites dominated. Some very narrow marsh mallow fringe along the Moonachie Creek. Near the Turnpike there was some marsh grasses (said manna grass). George said he would have noticed if there was any significant amount of other vegetation.

George said he gained access via the ditches and via a helicopter. This was used to ground truth analysis performed from aerial photographs taken in 1983. George dug out the photographs and said he had mapped the area as phragmites. He told me about the turnpike causing "environmental stress" through flooding. George was senior biologist on the project.

I asked about wildlife. George said he saw numerous ring-neck pheasants. Clearly a breeding population. Lots of rabbits. Fox scat but no foxes. WWTP lawns support large population of Canada Geese. George said the area had changed some of his preconceptions about the value of Phragmites for wildlife. It actually seemed to support a very diverse wildlife population.

MAGUIRE GROUP INC. MEMO OF TELECON

9/11/87 1:30 PM

Caller: David Westcott, MGI

Called: Richard Kane
Director of Conservation
NJ Audobahn
Sherman Hoffman Sanctuaries
Bernardsville
(201) 766-5787

Topic: Russo Tract

Mr. Kane said he had no first-hand knowledge of the Russo site. He said he is not immediately aware of any members who would likely have first-hand knowledge of the site.

He suggested we contact Bergen County Waterfowlers. He recommended we talk to Don Smith. He said his information pertains mostly to the areas south of Route 3. There is less information available on the sites north of Rte 3.

Mr. Kane suggested we call some of the other local conservation organizations for information. He suggested we talk to the Hackensack River Coalition also.

I thanked him and said we would be happy to hear from him if he should come upon any further information which might be of use. I suggested that he call Mario with any further information.

MAGUIRE GROUP INC. MEMO OF TELECON

9/8/87

Caller: David Westcott, MGI

Called: Frattarelli Bros. Top Soil
206 Washington Ave., Carlstadt
(201) 438-5288

Topic: Russo Tract

11:00 - I spoke with Jeanette. She said Mr. Fratarelli (Jim) would not be available until later this afternoon. She asked what I want, offered to help. I explained purpose of call. She said she knows the tract and Jim did farm it at one time. She suggested I call back about 4:00 pm when Jim will be back.

4:20 - I called back. No answer.

MAGUIRE GROUP INC. MEMO OF TELECON

Field Visit Report

9/9/87 RUSSO TRACT

To: Bergen County Mosquito Control Commission

By: Dave Westcott & Clint Webb

10:35 - Visited the Bergen County Mosquito Control Commission. Buddy Erenberg out in the field. Expected return at 11:00. Examined aerial photograph taken 4/7/51 of Meadowlands.

Note that lands in project area east and west of Washington Ave. (Rte 503) is clearly agricultural. No agriculture evident east of Moonachie Creek. Small light-colored mounds all along Moonachie Creek look like dredge spoil or muskrat mounds. Mosquito ditch running NE and SW south of site drains to Moonachie Creek. Old oxbows evident beside the Creek south of the site.

Buddy arrived at 11:00. He showed us a variety of maps of the area. We took photostats of 1914 and 1916 maps. These show narrow upland fringe east of Washington Ave. (then Moonachie Ave.). 1914 maps show white cedar south of site east of Moonachie Creek.

Buddy suggested that Carlstadt Sewer Commission might have good mapping because they put in a sewer line recently. Commerce Ave. originally ended west of the creek. It was later extended. He said the piles adjacent to the ditches are cast off dredge spoils from digging the ditch. Buddy confirmed that the area used to burn periodically. He said the fire department doesn't try to put out these fires. They merely protect the edges of development.

We took photostats of several maps provided by Buddy.

MAGUIRE GROUP INC. MEMO OF TELECON

REPORT OF FIELD VISIT
RUSSO TRACT

9/9/87 D. Westcott & C. Webb

After visiting the Bergen County Mosquito Control Commission (see separate report), we went to HMDC for the purpose of reviewing their files on the Russo Tract. We arrived there just shortly before noon.

We were assisted there by Debbie Lawlor. She and "Aaron" pulled all of the HMDC files related to Russo Development Corporation. We examined these and photocopied excerpts from those files pertaining to properties on Commerce Ave. and Central Ave.

There was little material of any value for our investigations in these files. We did copy soils and foundation studies prepared for Lawrence Russo by Biggs Engineering.

We obtained stereo aerial photography from 1969, 1978, March of 1985 and September of 1985 for review. I used the 1978 aerial photography to prepare vegetation maps. I sketched the vegetation boundaries directly on diazo prints of the 1978 photography. Overall, the vegetation patterns are quite clear when viewed in stereo. We were not able to obtain the photo pairs, but we did make photostatic copies of them.

We chatted briefly with the head of drafting while looking for maps of the area. He provided us with a vegetation map prepared by his predecessor in "the mid 1970s".

We also inquired about reports prepared by Don Smith and Mark Krause reporting on the history of mosquito ditching in the meadowlands. Debbie was not aware of any such report.

We departed HMDC at about 4:20 PM.

REPORT OF MEETING

Meeting Date: September 17, 1987

Meeting Place: Jim Fraterelli's office, Carlstadt, NJ

Purpose: Interview Jim Fraterelli with regard to past conditions on the Russo Tract

Attendees: Jim Fraterelli; Chris Mason & David Westcott of Maguire Group

We explained to Mr. Fraterelli that we were investigating the Russo Tract for EPA. He said he was somewhat familiar with Russo's permit problems on that site. We told him we were particularly interested in his recollections of site conditions prior to filling. He said he and his family have lived and worked in the immediate vicinity for many years. Portions of the Russo tract, and two nearby tracts (belonging to Lynch and Escalano) were farmed during Fraterelli's life. The last farming took place about fifteen years ago. Fraterelli said his family grew mostly flowers and some vegetables while adjoining farmers grew mostly truck crops (vegetables). These farms were mostly located right off of Washington Avenue, west of Moonachie Creek, although Fraterelli's family did farm some of the area directly across the creek. In addition to cultivated crops, Mr. Fraterelli said that both salt hay and blueben were cut from fields farther to the east of Washington Avenue.

When asked about surface water ponding on the site Mr. Fraterelli said the area was "...meadows, not too wet, with mostly grasses", and that there were "patches of Phragmites in puddles of water" on parts of the site. He said the tract would be flooded once every year or so during and after bad storms. He said the fields were favored by hunters because of the abundance of game, and that a gun club owned property nearby.

REPORT OF MEETING

Meeting Date: September 17, 1987

Meeting Place: William Van Saders home, Little Ferry, NJ

Purpose: Interview Bill Van Saders with regard to past conditions on the Russo Tract

Attendees: William Van Saders, Chris Mason & David Westcott of Maguire Group

We explained the purpose of our research and asked Mr. Van Saders to recount any recollections of the Russo Tract. He said he was very familiar with the Russo Tract and the surrounding area since his family had farmed several tracts in the area and he has hunted the Russo Tract and adjoining parcels for over fifty years. We all decided it would be good to drive over to the Russo Tract so Mr. Van Saders could point out particular areas he was talking about. We did so. He said that only Fraterelli and one other farmer had cultivated small tracts to the east of Moonachie Creek. The area to the east to the creek was mostly "wet meadow and blue ben", specifically, a mixture of "cat-tail, foxtail, grassland and blueben". When asked how wet the Russo Tract was prior to filling, he said that large areas would flood once or twice a year after storms but that the flood water would drain away in a day or two. He said the site was wet enough that he always wore boots when hunting the site, and that conditions were wet enough towards the south and east sides of the site that he occasionally took ducks from small pools which occurred there.

He said the Russo Tract was "a real good place to hunt because of the variety" of wildlife. He hunted pheasant, rabbit, and duck on the site. Specific ducks he has seen on the site are mallards, black ducks, and teal. Other birds he has seen there include woodcock, rail birds and marsh hawk (northern harrier). He also said he even found a dead bald eagle frozen in the vicinity of the site in the winter of 1934. The variety of wildlife remained good up until recent times. Mr. Van Saders said he stopped hunting the site when nearby warehouse employees called the police because he was hunting near their building with a shotgun.

Telephone Communication
Don Smith - HMDC
June 18, 1987 - K. Drake

Re: Historical Account of the Russo Site

I spoke to Don on the certification of George Cascino accounting characteristics of the Russo site.

Re: harvesting hay. A farmer and son harvested salt hay prior to and 2-3 years only after placement of dikes along the Hackensack River. Subsequent to that, farmers may have harvested blue joint grass. Thought farming efforts simply tilled soil; did not change soil.

Re: hydrology. Cascino maintains that efficiency of surrounding dikes, tidegates and mosquito ditches kept area dry and free from ponding. Don stated:

1) after severe storm events and hurricanes there was back-up from Moonachie Creek tide gate and overflow on site. Not annually.

2) Subsequent to warehouse construction (north of Empire Road, to the northeast of Russo's warehouses) some drainage ditches had been blocked and ponds near those warehouses had developed - fed from upland runoff. Otherwise there were only a few ponds on site.

3) During the NJ Turnpike western spur construction, the NJTA surcharged the drainage ditches with sand, and the Russo site, in fact the entire Empire tract, had standing water. Good duck use during that 3 year period (1969-1971). At the close of NJTA work the ditches were re-dredged and the site was well drained.

4) Subsequent to the turnpike the Sports Authority complex was installed. Siltation resulted in the creek into which drainage from Russo site fed. The mosquito ditches remained unmaintained from NJTA period on and exhibited some settling in.

5) In the dry years (non-storm events), the site frequently burned (nearly yearly fires).

APR 16 1987

Decision to Issue a Department of Army Permit to Russo Development Corporation.

/s/ Christopher J. Daggett
Christopher J. Daggett
Regional Administrator

Lawrence J. Jensen
Assistant Administrator

I am writing to you in response to the decision letter dated March 23, 1987 by Colonel Marion L. Caldwell, Jr. to issue a Department of the Army Permit to the Russo Development Corp. This after-the-fact permit maintains as completed the unauthorized discharge of fill material into 52.5 acres of freshwater wetlands and authorizes the placement of fill material into an additional five acres of freshwater wetlands for the purpose of office/ warehouse construction.

It is our determination that the proposed 1:2 value for value wetland mitigation proposal does not compensate for the loss of the 57.5 acres of wetlands and is inconsistent with both Region II and New York District practices. Region II has made every attempt to work with the New York District to resolve this matter, but has been unsuccessful.

I am very concerned with the potential precedent setting implications of the New York District's determination to issue a permit over our objections and to reward an applicant for an unauthorized activity. Had this proposal been made prior to any illegal activity, Region II would have recommended denial or if the 404 (b)(1) guidelines were met, we would have sought, at a minimum, 1:1 value for value compensation.

My staff informs me that this action meets the criteria for elevation under the Memorandum of Agreement (MOA) dated November 12, 1985 between the Environmental Protection Agency (EPA) and the Corps of Engineers (COE). Therefore, in accordance with the MOA, I request that you proceed with this referral. Attached is the transmittal letter which refers the 404 (q) action to the Assistant Secretary of the Army.

Attachment

bcc: Richard L. Caspe (WMD)
Mario Del Vicario (WM-MWP)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northeast Region
Federal Building
14 Elm Street
Gloucester, MA 01930-3799

APR 20 1987

Colonel Marion L. Caldwell
District Engineer
New York District
U.S. Army Corps of Engineers
26 Federal Plaza
New York, New York 10278-0090

Dear Colonel Caldwell:

I have examined your letter and accompanying information dated March 23, 1987, which discusses your intent to issue a Department of the Army permit on behalf of Russo Development Corporation to maintain 52.5 acres of fill on wetlands and to fill an additional 5 acres of wetlands in the Hackensack Meadowlands adjacent to Moonachie Creek and several unnamed tributaries in Carlstadt, Bergen County, New Jersey.

Our major disagreement with your decision is your acceptance of the applicant's mitigation plan. As described on page 1 of the Memorandum for the Record (MFR) as well as in previous correspondence, mitigation consists of a deed restriction on a 23-acre wetland at Troy Meadows and an offer to enhance some yet-to-be-found wetlands near the project site at a 0.5:1 value-for-value ratio. Those conditions and the lack of overall specificity remain contentious.

Many agencies admit that the project site wetlands and associated resources have minimal values compared to other coastal wetlands. However, it should not be forgotten that, in spite of such evaluations, they are functioning wetlands with great potential for improvement. In fact, site visits show them to be non-tidal palustrine wetlands because of man-made dikes which preclude tidal inundation. Were the dikes to be breached, it is likely that habitat values would increase dramatically. This is typical of many wetlands in the Meadowlands where tidal inundation is precluded or controlled through physical contrivances. Unfortunately, the commonly used wetland evaluation systems do not adequately recognize potential productivity.

Page 12 of the MFR discusses an informal agreement to resolve these issues by working toward a mitigation plan with no net loss of wetlands. With the Russo project, this is not a perfect solution since it condones unauthorized filling and allows additional filling for a project which has no relevance to water or water access. However, it is an approach which is somewhat more reasonable in balancing public costs with public benefits, and one that is certainly preferable to the proposed plan.



Stan Eurski

The MFR implies that all three federal resource agencies had to agree to work toward the informal agreement or it would not be pursued by your office. Based on that philosophy, the Corps dropped the concept when the U.S. Fish and Wildlife Service declined to pursue the agreement. Although only two agencies remain interested, we urge the Corps to reconsider its decision. Without an established informal agreement, the public benefits of valuable resources will not be served.

In light of our finding that the mitigation plan is inadequate, we continue to object to issuance of a permit. However, since this is a project which more closely affects resources and policies of other agencies, we will not pursue further review of your decision. Should EPA decide to exercise oversight authority under Section 404(c) of the Clean Water Act, we will provide technical assistance as requested.

Sincerely Yours,

Signed Jan C. Rittgers

for Richard H. Schaefer
Acting Regional Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

APR 1 7 1987

In Reply Refer To:
FWS/ES

Memorandum

To: Assistant Secretary for Fish and Wildlife and Parks
From: Director
Subject: Permit Referral - Russo Development Corporation, Unauthorized and Proposed Filling of Wetlands, Hackensack Meadowlands, Bergen County, New Jersey

Attached is a letter to the Assistant Secretary of the Army (Civil Works) requesting higher level review of the subject permit. This request is based on the need for a policy level review of issues of national significance, specifically the Army Corps of Engineers' policy in dealing with projects that contravene the provisions of section 404 of the Clean Water Act. At issue is the continued filling of wetlands over a period of several years during which, despite numerous reports of the unauthorized activity by the Service, the Corps failed to exert its enforcement authority.

Referral of this issue is extremely important not only due to the potential cumulative impacts of similar actions by the District Engineer, but also to support the Environmental Protection Agency (EPA). We understand that the EPA is also referring this permit decision under section 404(q) and is requesting a mitigation plan similar to that proposed by the Service.

This referral letter is due in Assistant Secretary Dawson's office by April 20, 1987.

Attachment



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 20, 1987

Mr. Robert K. Dawson
Assistant Secretary of the Army
(Civil Works)
Department of the Army
Washington, D.C. 20310

Dear Mr. Dawson:

This letter concerns public notice (No. 12360-85-690-J1) issued by the New York District, Army Corps of Engineers (Corps) on August 28, 1985, describing an application for a section 10/404 permit by Russo Development Corporation. The applicant wishes to retain unauthorized fill material placed on 52.5 acres of wetland and to deposit an additional 5 acres of fill into wetlands adjacent to the existing violation at the applicant's facilities in the Hackensack Meadowlands, Carlstadt, Bergen County, New Jersey. I request your review of the District Engineer's decision on this matter as provided for in the 1985 Memorandum of Agreement between our agencies.

The Hackensack Meadowlands District represents the last remaining expanse of wetlands in this portion of the State. Once extending over most of the 19,000 acre district, the Meadowlands have been drastically reduced by development. The remaining 7,000 acres of wetlands provide habitat for many species of waterfowl, wading birds, shorebirds, passerines and raptors. Since the Meadowlands are along the route of the Atlantic flyway, they are used extensively during migration.

The criterion for elevation is the necessity for policy-level review of issues of national significance, specifically the Corps' policy in dealing with those who contravene the provisions of section 404 of the Clean Water Act. In this case, wetland filling occurred over a period of several years during which, despite numerous reports of the unauthorized activity by the U.S. Fish and Wildlife Service (Service), the District Engineer failed to exert his enforcement authority. In spite of the above, the District Engineer now intends to authorize the existing fill and to allow the developer to place additional fill on wetlands.

The District Engineer's decision to issue an after-the-fact permit is based on his determination that the warehouses constructed on filled wetland are "...serving the public benefit by creating positive economic benefits..." and outweighs the adverse environmental impacts. However, the economic argument presented is contingent upon the existence of the unauthorized

fill. Allowing the presence of an illegal fill to influence the public interest decision sends a clear signal to future developers that by completing their projects without authorization they will assure future permit issuance.

In addition, the District Engineer is unwilling to require adequate compensation for the existing fill as per the recommendations of three Federal review agencies, a decision again based predominantly on economic factors. The District Engineer has specified that 50 percent of the pre-project habitat value is the maximum compensation he will require, because it represents the maximum amount of compensation that the permit applicant can afford to provide. This line of reasoning is contrary with the objectives of the Clean Water Act and the Fish and Wildlife Coordination Act; subordinates the protection of public resources to the convenience of the applicant; assures continued losses of public resources without adequate biologically justifiable mitigation, and contradicts the letter and spirit of the Memorandum of Agreement between our agencies.

The mitigation proposal as outlined by the Service (1:1 compensation for the fish and wildlife resource values associated with the 44-acre parcel of filled wetland currently supporting warehouses, removal and restoration of the 8.5-acre undeveloped fill and denial of the requested additional 5-acre fill) would compensate for the loss of habitat resulting from the unauthorized filling of wetlands. The economic benefits of committed capital and existing construction by the applicant can still be realized while concurrently mitigating impacts to resources. Implementation of mitigation and permit issuance are not mutually exclusive and, although economic benefits to the applicant need to be considered, they need not be maximized at the expense of public fish and wildlife resources.

In conclusion, I request that you review the decision to issue this section 10/404 permit, and require the District Engineer to include the mitigation proposal as outlined by the Service as a condition for an after-the-fact permit including 1:1 compensation for the fish and wildlife resource values associated with the 44-acre developed parcel, removal and wetlands restoration of the undeveloped 8.5-acre fill and denial of the additional 5-acre fill. The precedent to be set by the existing permit issuance could have significant adverse impacts on fish and wildlife resources, and on the success of the section 404 permit program itself.

I appreciate your consideration of this matter and look forward to an amicable resolution.

Sincerely,

Acting

Susan Reese
Assistant Secretary for Fish
and Wildlife and Parks

Enclosure

FOUR POINT STATEMENT

Russo Development Corporation
Illegal Fill Permit Elevation

1. Project Description

The applicant seeks approval to retain 52.5 acres of fill placed in wetlands without prior Army Corp of Engineers (Corps) authorization, and to place an additional 5 acres of fill in wetlands adjacent to the existing violation. Applicant proposes to mitigate for lost wetland values by providing compensation on a 0.5:1 basis and deed-restriction of an existing wetland tract in another basin. The purpose of the fill is to create fastland for construction of commercial buildings. Of the 52.5 acres of existing fill, 44 acres are currently occupied by tenanted buildings, the remaining 8.5 acres of fill are unoccupied. The 5-acre area proposed to be filled supports additional wetlands, including a vegetated shallow water non-tidal pond.

2. Resources

The 57.5-acre tract previously consisted of palustrine emergent wetlands, dominated by common reed. The National Wetland Inventory originally designated the area as estuarine emergent, but due to the influence of tide gates and other man-made obstructions, tidal inundation of the area ceased approximately 60 years ago. The project site is adjacent to an approximate 200-acre tract of wetlands, also palustrine emergent and supporting predominantly common reed. The 3-acre pond now established on site was formed as a result of excavation associated with the illegal activity. The pond is vegetated with cattails, dwarf spikerush and Juncus spp. and provides habitat for breeding waterfowl and wading birds.

Although most of the wetlands on site probably had moderate to low value for wildlife due to the existence of a common reed monoculture, the pond area provides higher value by contributing to habitat diversity.

3. Fish and Wildlife Enhancement Issues

Our major objection to the district's decision to issue this permit is the precedent to be set by authorizing an illegal fill and allowing placement of additional fill based on economic factors relating to the presence of the existing violation. This action appears to encourage illegal activity since the mitigation required is less than would be acceptable had the project gone through the Federal review process. Future applicants may use this decision as justification for providing less than value-for-value mitigation. Considering the extensive development pressure already on wetlands, this action would be interpreted as an invitation for more illegal filling at minimal cost to the violators.

The basis of this elevation is the need for policy level review of the following issues:

a. The need to review the District Engineer's policy for dealing with those who violate Federal law. This illegal activity was first reported to the district by the Service in 1981. The district responded in writing that subsequent to district inspection it was determined that a violation did exist and that the owner had been directed to cease work. No further correspondence regarding the violation was received. In 1984, the case was again brought to the district's attention as one of the cases documented in the Service's "Assessment of the Corps of Engineer's Section 404 Permit Program in Northern New Jersey". Again, no significant effort was made to investigate the violation. In 1985, district inspectors visited the site, but were unable to make a conclusive determination regarding jurisdiction. Filling and construction activities continued until a Cease and Desist Order was finally issued. The District Engineer now intends to authorize a violation that has been continuing in excess of 5 years and further states his intention to allow the violator to fill an additional 5 acres of wetlands.

b. The precedent to be set by issuance of this permit would encourage developers to proceed with projects in wetlands prior to obtaining Corps authorization since this permit establishes that the economics of having the existing fill play a major role in the Corps public interest determination. To illustrate, the District Engineer's Statement of Findings contains a considerable discussion of the amount of money the applicant could lose if this permit were denied due to the expense of removing the illegal fill which he placed without Corps authorization. Further, the District Engineer goes on to state that the adverse impacts upon the public interest associated with permit denial are "mostly socio-economic" and outweigh the adverse impacts on the public interest associated with the loss of the wetlands on site. The violator proceeded with construction at this site without prior Corps' authorization. His venture represents speculation and should not be a major factor in the public interest determination.

c. Issuance of this permit as proposed would authorize 52.5 acres of illegal fill. Mr. Russo has refused to provide adequate mitigation for the existing violation, yet this permit if issued, would allow the filling of even more wetlands. We do not believe the economic benefits of an individual should not take precedence over the public benefits provided by wetlands.

d. Failure to give full consideration to recommendations during the review process. Throughout the negotiations on this project, the Service, Environmental Protection Agency and National Marine Fisheries Service have specified conditions that would remove objections to issuance of this permit.

Recommendations for Resolution

The District Engineer's decision should be reviewed at a higher level. This Department recommends that a permit not be issued for this project as proposed. The violation case should be resolved by requiring: (1) value-for-value compensation for the existing occupied fill (44 acres), (2) removal of fill material and restoration of the 8.5 acres of unoccupied fill, and (3) denial of authorization for additional fill.

4. Field and Regional Office Coordination

March 26, 1981 The Fish and Wildlife Service (Service) confirms a February 19, 1981 visit by Service personnel to the New York Corps District advising them of a violation.

April 17, 1981 The Corps' responds to the Service that their inspection had revealed that a violation did exist. Letter further stated that the property owner had been directed to cease work at the site and that the case would be processed according to regulation.

August 1984 "Assessment of the Corps of Engineers' Section 404 Permit Program in Northern New Jersey," discusses this project on pages 96-98.

April 22, 1985 Request from the Corps for the Service comments on violation and review of Summary of Facts.

August 28, 1985 Corps issues Public Notice # 12360-85-690-J1 describing application to retain 52.5 acres of illegal fill and placement of additional 5 acres of fill by Russo Development Corporation.

Sept. 30, 1986 Environmental Protection Agency (EPA) responds to Public Notice recommending 2:1 mitigation for entire project parcel.

Dec. 3, 1985 The Corps' letter to the Service transmitting mitigation plan involving enhancement of a 16-acre parcel owned by the Township of Lyndhurst.

Dec. 24, 1985 The Service responds to mitigation proposal: insufficient to compensate for the damage done.

March 5, 1986 The Corps transmits to the Service the detailed mitigation package.

March 19, 1986 The Corps requests final agency comments.

April 10, 1986 The Service responds to the Corps: compensation is inadequate, deed-restriction in Parsippany is inappropriate. Maintained position for full compensation for existing and proposed fill. If applicant does not accept, we recommended denial of a permit for further fill, removal and restoration of the unoccupied fill and fines be levied for the remaining illegal fill.

July 8, 1986 Interagency meeting with the Service, EPA, and the Corps to discuss subject project. The Corps indicated that they were leaning toward issuance of a permit. The Service maintained that its objections would stand until 1:1 mitigation was achieved.

Sept. 30, 1986 The Corps issues a Preliminary Permit Decision (PPD). Indicated that despite the recommendations of all the review agencies, the Corps would issue permit for legalization of the 44 occupied acres, allow construction on the 8.5 filled acres and allow the remaining 5-acre pond/wetland to be filled. In exchange, the applicant would provide mitigation for 50% of the value of the site before the project commenced.

Oct. 16, 1986 Interagency meeting with the Service, EPA, Corps, applicant, attorneys for applicant, and consultant for applicant. This meeting constituted informal consultation under the 1985 Memorandum of Agreement (MOA). The applicant offered mitigation for 25-30 acres of the parcel, he did not believe that he should have to mitigate for the entire 57.5-acre parcel. The Corps requested all agencies to provide acceptable conditions for permit issuance within 15 days.

Oct. 20, 1986 The Service responds to PPD recommending removal and restoration of the 8.5-acre unoccupied fill, and full mitigation for the remaining 44 acres and no filling of the 5.0-acre pond/wetland.

Dec. 22, 1986 The Corps transmits Notice of Intent To Issue (NOII). Commencement of formal consultation period.

Dec. 24, 1986 Acting Regional Director (Service), requests that NOII not be published.

Jan. 6, 1987 Meeting between Regional Office (Service), and North Atlantic Division Engineer in accordance with the 1985 MOA.

Jan. 14, 1987 The Division's letter to Acting Regional Director (Service), stating that Division had directed the District to reevaluate decision with respect to specific parts of the record.

March 23, 1987 The Corps transmits NOII, and revised Statement of Findings, Environmental Assessment and 404(b)(1) Compliance Analysis.

April 9, 1987 Regional Director (Service), requested elevation.

Summary of COE Documentation Supporting the Decision to
Issue a Permit to Russo Development Corp.
Submitted March 23, 1987

AVAILABILILTY OF PRACTICABLE ALTERNATIVES

I. No Action

- a) Administrative Record includes information from applicant which justifies the need for additional fill into 5 acres of waters of the U.S.
- b) Applicant has secured "most necessary government approvals".
- c) Considerable effort and expense has been expended by the applicant on site plans and obtaining approvals.
- d) The applicant had purchased all steel necessary for construction of a proposed seventh warehouse prior to issuance of Cease and Desist. Steel work is custom designed, not salvagable, and is being stored.
- e) For marketability reasons construction should occur on 13.5 acre location as close to the intersection of Central and Commerce Boulevards.
- f) Earlier facilities were poorly designed. Marketability would be enhanced by being as far away from these as possible.
- g) Non-contingent contract to purchase signed January 9, 1985 prior to issuance of March 25, 1985 COE Cease and Desist.
- h) January 21, 1987 site visit to unfilled portion of site; determination that habitat of average value. On this basis discharge of fill would not have an unacceptable impact.

II. Minimizing Activity - Removal of 8.5 acres of fill on Lots 66.01 and 66.02.

Economic Loss to Applicant

- a) Monies on land purchase, developing engineering plans, and partial construction in excess of \$1 million.
- b) Purchase price of 13 acre tract = \$300,000/acre
- c) Fill discharge which has occurred has not had a substantial adverse impact the aquatic environment.
- d) Would not acheive the basic project purpose.

III. Complete Fill Removal

Not practicable. Adverse economic impact upon applicant, build: tenants and employees. Losses in the millions.

IV. Alternate Sites

- a) Service area is Metropolitan New Jersey and New York area.
- b) Companies are migrating to the Meadowlands and proximate areas because these areas are economically viable for expansion and relocation.
- c) Unnamed case example in which the Meadowlands was the only economically viable location.
- d) Primary reason for location by tenants is close proximity of major access routes.
- e) Business indicates a specific desire to expand and relocate in Hackensack Meadowlands.
- f) Russo a middle business man whom potential tenants who want to locate in the Meadowlands approach.
- e) Conclusion that reasonable area to search for minimum of 10 acres is 5-mile radius of project site and any location within the Hackensack Meadowlands beyond this radius.
 - 1) Real Estate consultants' affidavit in which 6 sites identified but not available because:
 - a) existing environmental problems.
 - b) proposed sale of two sites for development by developers
 - c) proposed rezoning
 - d) lack of major roadway accessibility
 - 2) COE study for dredged material disposal sites provides further indication of the scarcity of sites.
 - 3) COE recognizes that other sites beyond the 5-mile radius may be available but those areas would not be as accessible to the major arterial roadways serving the northern N.J. and N.Y. area. Therefore not practicable to fulfill project purpose.
- f) Conclusion: no available alternate sites within a reasonable area beyond the Meadowlands.

- g) No alternate sites within Hackensack Meadowlands District
 - 1) Already developed.
 - 2) Acreage too small.
 - 3) 140 acres left is unavailable due to legal problems.
 - 4) 207 acres not for sale or access to applicant.
 - 5) Remaining area already classified as wetland.

POTENTIAL IMPACTS ON PHYSICAL-CHEMICAL CHARACTERISTICS

Substrate

- a) The direct effect of filling has been the loss of 52.5 acres of palustrine emergent wetlands.
- b) Fill consists of shotrock, a mixture of clean dirt and rock.
- c) Additional fill would be from same source. No adverse impacts expected other than the adverse effects from the direct loss of 57.5 acres of wetland.

POTENTIAL IMPACTS ON SPECIAL AQUATIC SITES

- a) 52.5 acres of filled wetlands were of low value. That loss constitutes only a minor adverse impact.
- b) 5 wetland acres to be filled are of moderate value therefore fill would likewise be a minor adverse impact.
- c) These impacts would be partially offset.
- d) Impacts are minor in nature and are not expected to contribute to significant degradation of the aquatic ecosystem.

ACTIONS TO MINIMIZE ADVERSE EFFECTS

- a) No substantial adverse effects have resulted from the discharge of fill
- b) Applicant employed all practicable measures to minimize the adverse effects of fill
 - 1) Alternatives analysis proves no practicable alternatives to filling all 57.5 acres.
 - 2) Providing mitigation is only means to minimize adverse impact.

MITIGAION

- a) Permanent deed restriction on 23 acres parcel of wetlands in Troy Meadows, Morris County, N.J.
- b) 1:2 value for value compensation for the 57.5 acre site.
 - 1) Great expense of securing land in the Hackensack Meadowlands District and nearby areas in northern NJ.
 - 2) In view of this information and nature of project site the mitigation provides a reasonable degree of compensation for loss of 57.5 acres of low to moderate value wetlands.
- c) Reliance on 1981 red and green map

EPA POSITION

- Alternatives Analysis

COE conclusions remain unsubstantiated in terms of the specifics of cost, technological feasibility and logistics.

The alternatives analysis argues a preferred alternative rather than the practicability of alternatives.

Conclusions rely on economic arguments which do not account for profits gained from the six warehouses which EPA has not requested be removed.

- Potential Impacts

404(b)(1) Guidelines Subparts b through g directs that the loss of wetlands functioning as wildlife habitat and in water purification is a significant adverse effect.

Adams Function and Value Assessment results on the 52.5 acres argue a high likelihood that the site functioned as wildlife habitat and in sediment toxicant retention. Assessment results for the remaining five acres argue a high likelihood that these wetland acres function as wildlife and fisheries habitat and in flood flow alteration.

- Mitigation

1:2 value for value compensation does not minimize a significantly adverse effect.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

Honorable Robert K. Dawson
Assistant Secretary of the Army
(Civil Works)
The Pentagon - Room 2E570
Washington, D.C. 20310-0103

Dear Mr. Dawson:

I am today requesting review, by higher authority in the Department of the Army, of the decision by Colonel Marion L. Caldwell Jr., District Engineer, New York District, to issue a Department of the Army Section 404 permit to the Russo Development Corporation for the purpose of warehouse construction. This after-the-fact permit would retain the previously unauthorized discharge of fill material into 52.5 acres of freshwater wetlands and would authorize the filling of an additional five acres of wetlands of the Hackensack Meadowlands, Carlstadt, Bergen County, New Jersey.

This request is in accordance with the procedures established in the Memorandum of Agreement (MOA) dated November 5, 1985 between the Administrator of EPA and the Secretary of the Army pursuant to Section 404(q) of the Clean Water Act (33 U.S.C. §1344(q)). After a thorough review of available information relevant to this case, we have determined that this referral meets the criteria in the MOA for elevation under Section 5.b.1. based upon our findings that there has been insufficient interagency coordination at the District level, including a procedural failure to coordinate and resolve stated EPA concerns regarding compliance with the Section 404(b)(1) Guidelines. Specifically, EPA believes that the permit as proposed would result in the loss of functioning wetlands, the loss of which contributes to significant degradation of the waters of the United States, and therefore does not comply with Section 230.10(c) of the Guidelines.

Throughout the permit review process EPA has offered to discuss resolution of these issues in a manner that would comply with the Guidelines. However, the interagency coordination process did not afford the opportunity to fully discuss such resolution. EPA recommendations and concerns have consistently not been addressed during the interagency coordination and permit review process. EPA has been advised of the New York District's intended action through decision documents without prior communication addressing EPA concerns.

We are also referring this proposed permit decision because we have determined that it meets the criterion under Section 5.b.3 of the MOA regarding environmental issues of national importance requiring policy level review. We consider this criterion applicable for three reasons. First, we believe that there has been an insufficient examination of practicable alternatives to the proposed discharge as required under [40 CFR Part 230.5(c)]. The 404 (b)(1) Guidelines prohibit the discharge of dredged or fill material if there are practicable alternatives to the proposed discharge which would have less adverse impact on the aquatic ecosystem [§230.10 (a)]. In addition, the project as proposed does not fit the criteria for water dependency [§230.10(a)(3)] which state that for activities which do not require access or proximity to or siting within a special aquatic site, practicable alternatives are presumed to be available unless demonstrated otherwise. Second, the issue of mitigation has remained an unresolved concern of EPA's throughout the permit review process. The proposed permit, contrary to the requirements of 40 CFR PART 230.10(d) fails to require appropriate and practical steps to minimize the adverse impacts of the discharge on the aquatic ecosystem. The District Engineer has specified that fifty percent of the praproject habitat value is the maximum compensation that he will require. This is inconsistent with past New York District practice on unauthorized discharges, and is also half of the mitigation required in practice by the District for applicants authorized to discharge through normal permit procedures. We are concerned that the precedent which would be established should this permit be approved in its present form would encourage potential applicants to engage in unauthorized filling to avoid both appropriate and practical steps to minimize adverse impacts and the normal permit application processing requirements. Third, the issuance of an after-the-fact permit for 52.5 acres of wetland fill which also allows the filling of an additional five acres, coupled with what EPA regards as inadequate compensation for these losses, would be detrimental to the enforcement programs conducted by both the Corps of Engineers and the EPA.

Section 5.b.1. Criteria

Section 230.10(c) of the Section 404(b)(1) Guidelines requires that no discharge shall be permitted if it causes or contributes to significant degradation of waters of the United States. We believe that the filling of 52.5 acres of freshwater marsh has significantly impacted the functions and values of the Meadowlands/Hackensack River ecosystem, since it has resulted in the loss of wildlife habitat and has adversely affected the ability of this ecosystem to retain toxic materials and sediments, retain nutrients, act as a flood storage area and support wildlife such as migratory waterfowl and songbirds. The proposed filling of five additional acres of wetland will cause further impacts to an ecosystem that has already suffered significant losses in diversity, productivity and stability as a result of human activities and disturbance.

Prior to filling in 1981, the Russo site was determined from aerial photography and related U.S. Fish and Wildlife Service documents to be characterized by palustrine emergent marsh habitat, dominated by common reed (Phragmites australis), and blue joint grass (Calamagrostis canadensis). Groupings of aspen (Populus tremloides) and ephemeral ponds were interspersed throughout the tract. The Russo site is part of a much larger tract known as the Empire Tract. As part of the Advanced Identification initiative undertaken by EPA in cooperation with the New York District in 1985, the adjoining Empire tract was evaluated using the Adams wetlands functional assessment methodology. This methodology is widely used and accepted by Federal agencies, including EPA and the Corps. The results of the Empire tract functional assessment determined a high probability that the tract functions to retain sediments and toxics, supports high general wildlife value and high value for migratory waterfowl. In addition, the site was found to have a high opportunity for floodflow alteration. Based on the best data available, it is logical to assume that before the Russo site was developed, it possessed the same or similar values as those found on the overall Empire tract, of which it is a part.

A functional assessment conducted on the remaining, presently undisturbed, five acres of the Russo site determined similar or higher probabilities for these and other functions. The U.S. Fish and Wildlife Service (FWS) has characterized the remaining five acres proposed for fill as Resource Category 2 habitat. Resource Category 2 habitat is characterized as being of high value, relatively scarce or becoming scarce on a national or ecoregion basis. The FWS Fish and Wildlife Mitigation Policy (46 F.Reg. 7644) recommends no net loss of in-kind habitat value for Resource Category 2 Habitat.

The Hackensack Meadowlands represent the last remaining expanse of wetlands in this portion of New Jersey. Formerly encompassing 20,000 acres, the Meadowlands District wetlands have been significantly reduced by development and use as sites for landfills. Almost all the usable upland is developed or has been slated for development. Only 8000 acres of wetlands remain of the 20,000 acres that comprise the Hackensack Meadowlands District. Many of these remaining wetlands have already been adversely impacted by development and landfill activities. Nevertheless, the Meadowlands continue to function as important habitat for waterfowl, wading birds, shorebirds, passerines, raptors and small mammals. EPA supported water quality improvement programs such as sewage treatment and non-point source pollution control activities are contributing to maintenance and improvement of water quality and ecological values in the Meadowlands. To approve the permit as proposed, in light of the cumulative impacts and continued threat to the remaining wetland resources of the Meadowlands, is inconsistent with the Guidelines' requirement to prevent fill activities which cause or contribute to significant degradation of the waters of the United States.

Section 5.b.3 Criteria

The basic project purpose described for the Russo site in the permit application is warehouse construction and associated offices and roads. This project purpose clearly does not require access or proximity to or siting in a special aquatic site, and is therefore not water dependent as defined in 230.10 (3) of the Guidelines. Under the Guidelines, practicable alternatives are presumed to be available unless demonstrated otherwise. Had the applicant applied for a permit to discharge on the acreage illegally filled, the Guidelines would have presumed the availability of an upland alternative unless otherwise demonstrated.

We believe that the District's analysis of the availability of a practicable alternative is inadequate and inconsistent with the intent of the Guidelines. "Practicable" as defined in §230.3 of the Guidelines, means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. It is our concern that the analysis undertaken by the District placed inappropriate weight to limitations proposed by the Russo Corporation in defining project purpose, and thus severely limited the alternatives considered, contrary to the intent of the 404 (b)(1) Guidelines. As indicated in the Statement of Findings, the Corps limited the consideration of project sites to a five mile radius of the preferred site. This constraint de facto limited considerations to the Meadowlands area, where the remaining undeveloped sites are largely wetlands. Access to major arterial roadways was also considered in the alternatives analysis. The end result of the practicable alternatives analysis as conducted by the District was to narrow the project purpose from "warehouse construction..." to "warehouse construction within five miles of the preferred site, with access to major arterial roads, with lower land costs than adjacent areas because alternative upland sites are scarce, etc.". These conditions, as defined by the applicant, limit practicable alternatives analysis to the preferred alternative. For the District to accept these limitations in their alternatives analysis is contrary to the letter and intent of the Guidelines.

This case also entails important enforcement and mitigation aspects pursuant to Section 5.b.3. of the MDA. Russo Corporation illegally discharged 44 acres of fill in the early 1980's. Combined with their 8.5 acre illegal discharge in 1986, the total unauthorized discharge amounts to 52.5 acres. Region II initially discussed an EPA enforcement action whereby the Regional enforcement policy of 2:1 mitigation for impacts would apply. (Removal and restoration was unlikely due to the existence of tenanted warehouses on the 44 acres.) The Corps District is aware of this 2:1 policy and has in fact been involved with previous EPA enforcement actions in the Hackensack Meadowlands where 2:1 mitigation was required. The policy is soundly based on the need to prevent a violator from benefiting from his illegal action. Federal treatment of illegal dischargers should not place law-abiding citizens at a disadvantage with those who choose to ignore the law. Since a 1:1 mitigation requirement is usually placed on normal permit requests which unavoidably impact special aquatic sites, we are concerned that a precedent is being established by this action which would benefit the illegal violator by only requiring one-half the mitigation normally required of an applicant.

Concerning the additional 13.5 acres on the Russo site, the record clearly indicates that the Russo Corporation was on notice regarding §404 permit requirements prior to their illegal fill activity on the 8.5 acres. The Corps issued a cease and desist (C&D) order in April, 1985. The Corps maintains that although Russo secured loan monies for the tract in August, 1985 subsequent to Corps C&D issuance, Russo was under contractual obligation to buy that tract or suffer a monetary penalty clause for no-sale contained in a purchase contract signed in January, 1985. This penalty clause has bearing only on the actual purchase of the property. Russo, having already received the Corps C&D order, was on notice of §404 requirements yet chose to discharge illegally nonetheless. Even under normal permit circumstances, the full Guidelines requirements of avoidance, minimization and compensation for unavoidable impacts would apply with 1:1 mitigation for impacts permitted on the site. The District Engineers' specification that 50 percent of the preproject habitat value is the maximum compensation he will require on this illegal fill again disadvantages the applicant seeking to operate legally.

We do not believe that it has been demonstrated that the permit as proposed to be issued complies with the Section 404(b)(1) Guidelines, and conclude that it would authorize significant adverse environmental impacts from a site-specific as well as a cumulative standpoint. We are also concerned with the manner in which the 404(b)(1) Guidelines have been applied by the Corps in this case, and the implications for impeding this Agency's ability to implement its enforcement authorities and responsibilities under Section 309 and 404 of the Clean Water Act. For these reasons, the decision to issue this permit presents important implications to the Meadowlands and to the Section 404 program nationwide and therefore, I believe, warrants additional review.

Sincerely,

Lawrence J. Jensen
Assistant Administrator

cc: Christopher J. Daggett



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0103

8 MAY 1987

Mr. Lawrence J. Jensen
Assistant Administrator
Office of Water
Environmental Protection Agency
Washington, D. C. 20460

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OFFICE OF
WATER
MAY 12 1987

Dear Mr. Jensen:

Thank you for your letter of April 20, 1987, to the Honorable Robert K. Dawson, Assistant Secretary of the Army, concerning your request for higher level review of the New York District Engineer's decision to issue a permit to the Russo Development Corporation to retain 52.5 acres of fill and place an additional 5 acres of fill in wetlands in the Hackensack Meadowlands. On May 4, 1987, Secretary Dawson assumed the post of Associate Director of Natural Resources, Energy and Science, Office of Management and Budget. The Secretary of the Army appointed me as Acting Assistant Secretary of the Army (Civil Works) effective May 4, 1987.

You have requested evaluation of this decision under the 1985 Memorandum of Agreement (MOA) because you believe there has been insufficient coordination, including a failure to resolve EPA's concerns regarding compliance with the 404(b)(1) Guidelines. You also state that the project raises environmental issues of national importance requiring policy level review.

After carefully reviewing the record in this case, and having given full consideration to your arguments, I have decided not to elevate the decision and have so advised the Corps of Engineers. My reasons for not elevating the decision are given below. Additionally, I have enclosed a copy of the Corps statement of findings to assist you in reaching a decision on whether to exercise your Section 404(c) authority.

Interagency Coordination. You are concerned that the permit as proposed would result in loss of functioning wetlands contributing to significant degradation of waters of the U. S. under 40 CFR 230.10(c). You state that your field staff offered to

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the aquatic ecosystem." As you are aware, paragraph 5(d) of the 404(q) MOA clearly states that the Army Corps of Engineers has the authority to determine compliance with the 404(b)(1) Guidelines on a case-by-case basis.

Environmental Issues Requiring Policy-Level Review. You raised several issues under this criteria. First, you do not believe that the district did a sufficient examination of alternatives. You state that the district placed inappropriate weight to limitations proposed by the Russo Corporation in defining project purpose and thus limited the range of alternatives considered. You quoted criteria such as the 5-mile radius and access to major arterial roadways as inappropriate. The district considered sites within a 5-mile radius because this area reasonably coincided with accessibility to both the New York and northern New Jersey market areas and to major arterial access. These are logistical factors that need to be considered for this type of development no matter who the developer. The district also considered sites outside this radius in the Meadowlands District, and also reviewed an earlier study by its Water Quality Branch researching potential dredged material disposal sites. The canvass area included over 100 square miles. In my opinion, the district did a comprehensive job in evaluating alternatives. Moreover, I believe that the district correctly determined practicability of alternatives from the perspective of the applicant after considering cost, existing technology and logistics in light of overall project purposes.

You also raised concerns over the adequacy of the mitigation involved especially in light of both agencies' enforcement programs. Region II's concept of a punitive 2:1 mitigation policy should be more appropriately addressed through our negotiations on the enforcement MOA or as part of the interagency mitigation policy. However, for this case, there is not, as you state, a clear record that Mr. Russo knowingly or callously placed the 8.5 acres of fill in wetlands. The Corps did not clearly delineate wetland boundaries to Mr. Russo with the initial verbal cease and desist order. Further, this area is a marginal wetland characterized by a species (Phragmites

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australis) common to both wetland and upland areas. Given these circumstances, the Corps did not believe that punitive measures would be appropriate.

It is my opinion that the district has complied with the Corps present mitigation policy at 33 CFR 320.4(r) and with the 404(b)(1) Guidelines. Since our differences on these same issues are currently being discussed at the headquarters level by an interagency working group, it is not appropriate to elevate the decision on Mr. Russo's application. The district acted within existing policy and, therefore, there is no basis to elevate this issue for higher level review.

Finally, I would like to address your description of the wetland values. You state that, as the result of using the Adamus evaluation technique on the adjacent "Empire" tract, the Russo property most likely had a high general wildlife value, a high value for migratory waterfowl and a high opportunity for floodflow alteration. Our Waterways Experiment Station is currently working with Dr. Adamus to improve and simplify this method. One point stressed in the Adamus method is that where the results for a certain area are intuitively wrong or conflict with expert opinion, the method should not override that opinion. The Fish and Wildlife Service has stated in two separate letters that the area already filled had low value for wildlife habitat. The reason for this apparent contradiction may be that the Empire tract is not all that similar to the Russo property. Based on the Adamus evaluation, which admittedly is preliminary since not all the involved agencies have reviewed the results, the Corps found that the Empire tract is slightly lower, wetter, contains more interspersion of open water areas, and is characterized by Spartina sp. in areas closer to the Hackensack River. Also, while the Adamus results indicate that the property may have a high opportunity for floodflow alteration, that factor is meaningless unless the area has a moderate to high likelihood of being flooded. The Corps found that this is not the case and that the wetlands did not serve as a valuable flood water storage area.

In accordance with the terms of the MOA, the Corps will not take final action until 10 working days from the date of this letter in order to give you an opportunity to initiate 404(c) before the permit is issued.

Sincerely,



John S. Doyle, Jr.
Acting Assistant Secretary of the Army
(Civil Works)

Enclosure