



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 12 2006

Lt. Colonel Timothy B. Touchette
District Engineer, Buffalo District
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207

Dear Colonel Touchette:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number 2002-01814(0) concerning an application by the New York State Department of Transportation to discharge fill material into wetlands and other waters for the construction of the U.S. Route 219 freeway near the Town of Springville, Erie County, New York.

The applicant proposes to build a three-mile long, four-lane road between Peters Road and the southern terminus of the existing four-lane U.S. Route 219 Expressway. Construction of this road segment will require filling 12.2 acres of federally regulated wetlands, including 7.3 acres forested wetland, 2.6 acres emergent wetland, and 2.3 acres scrub-shrub/emergent wetland. In addition, about 7,190 linear feet of perennial and intermittent streams will be permanently lost due to culverts and fill. Project area wetlands drain to Cattaraugus Creek, a tributary of Lake Erie.

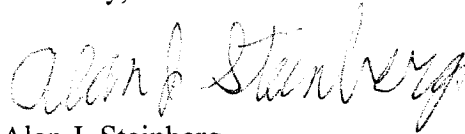
The present application addresses just one of eight Route 219 freeway segments which are planned to extend 28 miles from Springville southwards to Salamanca (Cattaraugus County). The wetland fill required by the entire freeway, according to the 2003 Final EIS, will total 32.1 acres, including 12.5 acres of forested wetland. In contrast, an "upgrade" of the existing two-lane Route 219 to four lanes, including two or three bypasses, would require 11.6 acres (3.3 acres forested) of wetland fill and much fewer stream impacts.

EPA's review of the 2003 Final EIS found that both the new freeway and the upgrade are practicable and feasible, and both would fulfill the project purpose ("improve Route 219 to make travel along the route more efficient"). The upgrade alternative, however, is clearly less damaging to wetlands and streams, and therefore the new freeway is not the least environmentally damaging alternative. Further, the Final EIS did not adequately address freeway-induced development and future wetland fills within the Route 219 corridor, particularly in the interchange areas. Finally, the applicant's "segmented" or "phased" plan for freeway construction is a point of concern. In fact, it could be argued that a new EIS should be conducted to evaluate various upgrade and freeway alignment alternatives for the currently proposed three-mile highway segment.

In summary, EPA believes that the proposed discharge of fill material into 12.2 acres (and ultimately 32.1 acres) of wetlands in the Cattaraugus Creek watershed may have a substantial and unacceptable impact on aquatic resources of national importance. In addition, the applicant has failed to demonstrate compliance with the Clean Water Act Section 404(b)(1) guidelines through avoidance and minimization of adverse impacts to the greatest possible extent. We therefore recommend the denial of a Corps permit for this project. Per part IV 3(b) of the 1992 Section 404(q) MOA, we will provide further comments within 25 calendar days after the end of the Public Notice comment period (January 17, 2005).

If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff contact Mr. Walter Andrews, Chief of the Water Programs Branch, at (212) 637-3880.

Sincerely,

A handwritten signature in cursive script that reads "Alan J. Steinberg".

Alan J. Steinberg
Regional Administrator

cc: USFWS, Cortland, NY