Modigliani, Justine

From: Hampston, Edward (DEC) <edward.hampston@dec.ny.gov>
Sent: Thursday, August 13, 2015 10:23 AM
To: Modigliani, Justine
Subject: UPDATE - RE: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

So Scott Cook did get back to me and he is acting for Tim this week, but as I figured the work is primarily with DMR and DEP. The Regional Director is aware of the site and what is going on. He said you guys could call him, but the best contact would be the Regional Permit Administrator (Dave Bimber – number I have is 315-426-7440).

Staff from DEP and DMR have been out there this week and I believe last week. The DEP staffer is a former DEC forester who now works in Permits. During the visit this week, they felt that although a lot of clearing had occurred conditions were good. The site is on the controversial side (like most Mines) but it is going through DEC process.

DEP and DMR staff are planning another site visit Monday (DOW relayed message from RD that you are welcome to join).

Anyway – that's the quick update via Scott. You can always call me, but Dave is probably the best interim bet for up to date info.

Thanks.

From: Modigliani, Justine [mailto:Modigliani.Justine@epa.gov]
Sent: Tuesday, August 11, 2015 12:25 PM
To: Hampston, Edward (DEC)
Subject: FW: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

Hi Ed,

We received a concern about a Mine up in Region 7. We are inclined to check it out in the next couple of weeks, since Katherine will be up in the area, but would like to know what you guys know about it and what your thoughts are. Has this complaint come to your office as well? It seems like they haven't actually be dealing with SPDES folks at DEC but mining permits staff. Let me know. I'm happy to talk to DEC Region 7 directly but thought I'd start with you to see where else this complaint went.

Justine
From: V. Fichera [mailto:vmfichera@gmail.com]
Sent: Tuesday, July 28, 2015 6:57 PM
To: R2_New_Web_Inquiry@epamail.epa.gov; Pohle, David; Modigliani, Justine
Cc: Niver, Robyn; Crawford, Margaret A LRB; Bridget LRB Brown; Robinson, Judy A LRB; aaron.c.smith@usace.army.mil; karl.d.jansen@usace.army.mil; michael.a.busby@usace.army.mil; R2 Web Inquiry; Lynch, Kenneth (DEC); Bimber, David L (DEC); John Clancy; John Zepko; daniel.bishop@dec.ny.gov; david.lemon@dec.ny.gov; steven.joule@dec.ny.gov; CCDistrict01@cayugacounty.us
Subject: Re: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

Dear David Pohle and Justine Modigliani:

Please see the attached pdf of an archaeological report concerning the logged area of the proposed Sanford Road Martville mine, entitled PhaseB. Photos on pages 30 to 42 document the condition of the logged site in April 2015, at the time of the Alliance Archaeological Services' conduct of their second formal study.

The EPA hereby has three sets of views of the approximately ten acre logged area: September 2014 aerial photos from the USDA Web Soil Survey (address 13181 Sanford Road, Martville NY 13111 at http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx) cited in my original email below, the archaeologist's photos of April 2015, and the drone aerial photo of the end of June 2015. These photos show the progression of the logging throughout the entire period that the owner operator was applying for a mining permit from the DEC, disregarding the very stormwater control measures he pledged in his application to respect for that very site. Again, the archaeologist, Nikki Waters, also warned him beforehand not to log in that area and he disregarded her warning as well.

The floor of the area appears very different in each of the photos, but the most distressing are the April and June 2015 photos where the excavated stumps and scattered debris from the logging are clearly apparent in the April shots, in contrast to clustered root balls (typical of grubbing) and new very light vegetation on a rather clear floor which characterize the end of June photo. Despite my complaints to the DEC and the USACE and the availability of this photo documentation to both agencies, it is only the EPA which has taken this complaint seriously. Please note that the DEC should have been concerned as well for the enforcement of the state laws and SPDES permitting, as well, but was not and is not willing to enforce any such laws or the full regulations of SEQR, contrary to the positive assertions concerning their review in your response email below.

In a telephone conversation with Mr. John Clancy of DEC on July 22, 2015, the contact person for the mining permit application boasted that the site visit on June 12, 2015 by DEC personnel and a member of the USACE, et al. found stumps in the area and this, he alleged, disputes, the grubbing of the land -- as if a few scattered stumps could prevent the runoff of silt and sedimentation without berms in place. Further, the archaeological report which DEC did not wait for before issuing its premature Negative Declaration also attests to "excavated stumps," as well. The DEC not only fails to perform due diligence but actually boasts of its negligence in these matters.

My complaints to the contact person -- that a permit issued to an applicant who has misrepresented his activities and violated standard environmental protection protocols during the permit application period bodes ill for such an applicant's compliance during mining activities -- were likewise rebuffed. That the area which was logged and appears to have been grubbed as well could have impeded the archaeological study was of no concern to the DEC; this citizen's fears that the permit applicant might do the same thing to the areas of the LOM which have not yet been studied -- likewise with no stormwater controls and harming even more areas of the surrounding Sterling Creek and its wetlands -- were met with further disdain. Instead, Mr. Clancy issued a formal memo to the Parks Service indicating that the DEC would not require the completion of all such studies before the issuance of any permit; the intention of the mining division is to simply "condition" this applicant's permit on the later conduct of such studies.

In short, the DEC is not performing due diligence to protect the rest of the land of the projected LOM from the same disregard for the archaeological and stormwater control requirements. Instead, this permit applicant has and will continue to have the blessing of the DEC Region 7 mining division to do what he pleases when he pleases with that land -- no matter at what cost to the wetland, the wildlife and the Sterling Creek and adjoining principal aquifer. Indeed, the Director of Permits for the DEC Region 7 actually put in writing to this citizen that misrepresentations are simply "corrected" in the moving papers for permit applicants; rarely does Region 7 ever issue penalties for such behaviors and false documents. Indeed, this citizen documented manifold misrepresentations perpetrated by the DEC itself as Lead Agency in the SEQR review, paving the path for the

Negative Declaration. Indeed, this same permit applicant received a Negative Declaration for his proposed sister mine in Hannibal on Harris Hill Road, with the DEC ignoring the presence of its own registered wetland on the property and failing even to require an application for a wetland permit.

The USAC, as well, has shown a blatant disregard for the Sterling Creek wetland at that site of a flood hazard area, as well. Taking her cue from the DEC, the USACE representative apparently assured the permit applicant, as she assured me in writing, that she had no problems with his proposed mining activity and only walked the LOM area, ignoring the logged acreage and disdaining to actually descend to the wetland to check for fill, despite my earlier lodged formal complaints.

I would therefore ask the EPA to do as much as possible and to be as thorough as possible in its onsite review of the wetland and the Sterling Creek. The DEC refuses to test the waters for quality, even as it regularly stocks them with Steelhead trout and Pacific salmon, and ignores complaints after now known logging without proper stormwater protection in place. The fish of the Sterling Creek, like the wetland, are on their own and may become decimated in number or die from silted streams, as far as the DEC and the USACE are concerned. Only the EPA appears to consider that there is an obligation to enforce the rule of law.

Please keep me informed of your review. Again, the photographic evidence presented requires a concrete explanation and visual evidence as to where all of the April 2015 documented debris, etc. went during the heavy spring and summer flash flood storms of 2015.

Yours truly,

Dr. V. M. Fichera (PhD)

On Tue, Jul 28, 2015 at 4:18 PM, <R2_New_Web_Inquiry@epamail.epa.gov> wrote:

> Dear Dr. Fichera:
>
> The United States Environmental Protection Agency ("EPA"), Region 2, Wetlands Enforcement Section is in receipt of your formal complaint regarding proposed mining activity at 13181 Sanford Road, Martville, NY. The activity currently involves logging upslope of Sterling Creek, a tributary to Lake Ontario. We have checked our mapping resources, and they indicate forested wetland to the south of the mining site may be under federal jurisdiction.
>
> In the absence of silvicultural "best management practices" for siltation control, siltation and sedimentation resulting from the logging activity on the mine site could constitute illegal fill in the wetland. The discharge of the earthen fill material into wetlands, when the wetlands are "waters of the United States" constitutes a "discharge of pollutants" as defined by Section 502(12) of the Clean Water Act, 33 U.S.C. § 1362(12). Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Clean Water Act. Section 404 of the Clean Water Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to authorize discharges of dredged and fill into navigable waters of the United States. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).
>
> Wetlands perform several ecological functions including flood attenuation, runoff storage, pollutant trapping and water quality improvement. Pollutant trapping aspects of wetlands are well documented and include the removal of suspended solids, dissolved solids, toxics, organic carbon/biological oxygen demand, nitrogen, phosphorus, and trace metals before water moves downstream and ultimately discharges into a larger waterway. The wetlands at this site likely improve water quality and could also serve to store flood waters as well as provide nutrient cycling and plant and animal communities/habitat.

Potential siltation and sedimentation impacts of this proposed mining activity are currently being reviewed by the New York State Department of Environmental Conservation. The United States Army Corps of Engineers is currently reviewing the potential for fill impacts, if any, of the proposed mine to the wetlands. With regard to your immediate concerns of siltation and sedimentation in the wetlands from stormwater runoff, we are referring your inquiry to the Region 2 stormwater compliance program for consideration.

For further information, you may contact Justine Modigliani, Chief of the Compliance Section, Water Compliance Branch of the EPA Region 2 office at the following address, email, and telephone number:

DECA-WCB-CS
290 Broadway
Floor 20
New York, NY 10007

Office #: 212-637-4268
Email: modigliani.justine@epa.gov

Or you may obtain further information from the following website:

http://www.epa.gov/owow/wetlands/

If you have any questions, please contact David Pohle, Wetlands Enforcement Coordinator, by telephone at (212) 637-3824 or e-mail at Pohle.David@epa.gov.

Sincerely,

David Pohle

Web Inquiry
Sent

From	"V. Fichera" <vmfichera@gmail.com>
Delivered Date	07/23/2015 03:53 PM
Subject	Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

Nota Bene:

The email below contains information concerning the status of the land at 13181 Sanford Road in Martville from September 2014 through June 2015, providing suspicion of runoff silt and sedimentation in the adjoining wetland and creek.

The documentation herein provides evidence of logging pre-October 2014, which could have endangered

the habitat of the Indiana myotis bat and potentially other endangered species in the wetland and the stream. The USDA photographs at its Soil Map Website from September 14, 2014 (cf. http://websoilsurvey.nrcs.usda.gov/app/ for the above address) show the intermediate stage of logging and the attached amateur drone photo shows the final grubbed status of approximately ten acres of the land above the national wetland and the Sterling Creek as of June 29, 2015 -- after the heavy snows and flash flood rains of the spring which almost certainly would have resulted in fill in the wetland and stream waters.

My personal conversation with the Alliance Archaeological Services owner (cf. email below) provides additional evidence of the timeline and of the lack of any storm water pollution control measures at the site subsequent to the logging and grubbing of the land by the permit applicant. The archaeologist also revealed that the permit applicant cleared the area with intentional disregard for the possible endangerment of the requisite archaeological studies because she verbally warned him about the area; his disregard of the logging, archaeological, and storm water protection protocols likely thereby threatened habitats of the endangered bat and other species, as well. The DEC was receiving multiple written assurances from the permit applicant throughout the period of June 2014 to May 2015 that the entire area was wooded, with the exception of the earlier mine location, and that the applicant would respect storm water pollution control practices; the controls apparently did not take place, as attested to both by the photographic evidence and the testimony of the archaeologist.

Please also consult the NFWS wetland finder maps as well as the DEC Christopher Construction map (cf. attached) which both clearly indicate the presence of a Federal palustrine wetland and protected Sterling Creek bordering the steep slopes upon which the permit applicant intends to mine gravel sixty feet deep above the wetland. If the Army Corps of Engineers has written documentation of a subsequent formal delineation of the wetland to justify the permit applicant's quoting the Army Corps as saying "There is no wetland there," please provide the name and date of the relevant documents so that I may add a request for their inspection to my July 5, 2015 formal FOIA request of the Army Corps which has not yet been acknowledged by the Buffalo District.

I would like to suggest that the NFWS and the Army Corps and the EPA consult the information contained on the NFWS wetland finder map as well as the attached DEC-generated map so that your multi-agency review and recommendations may be coordinated and include the Federal wetland and protected stream. I remind all parties that the information from these government maps and photographs, supplemented by amateur drone photography, supports my earlier and instant formal complaints to the Army Corps and to the NFWS that there may have been violations of the Federal laws and regulations which your agencies are sworn to protect by investigation and enforcement. To these I add the instant complaints to all three agencies, to include as well the EPA.

To date, the Army Corps of Engineers has failed to reply to correspondence, formal complaints, and evidence presented in these matters since the latter part of June 2015. The Army Corps of Engineers representative who visited the LOM on June 12, 2015 has, by her own admission, only walked the Life-of-Mine area, never visiting the wetland below. Therefore, the allegations proffered by the permit applicant that "There is no wetland there" are, to date, unsubstantiated by the Corps with any documentation in any of its minimal correspondence to the undersigned to date.

I therefore expect to receive responses to my FOIA request of the Corps, and to my formal complaints in these matters before both Federal agencies, with all agencies performing due diligence in these important environmental matters where the DEC, as well, has failed to perform due diligence in the NYS SEQR process, as documented in detail in correspondence sent to both the NFWS and the Army Corps of Engineers.

- Dr. V. M. Fichera (PhD)

Adjunct Professor

Binghamton University-SUNY

---------- Forwarded message ----------
From: **V. Fichera** <vmfichera@gmail.com>
Date: Thu, Jul 23, 2015 at 12:23 AM
Subject: Re: Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)
To: "Clancy, John M (DEC)" <john.clancy@dec.ny.gov>
Cc: "Perazio, Philip (PARKS)" <Philip.Perazio@parks.ny.gov>, "Vandrei, Charles (DEC)" <charles.vandrei@dec.ny.gov>, "cjf9679@yahoo.com" <cjf9679@yahoo.com>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, "Nikki Waters, Alliance Archaeology" <nwaters@alliancearchaeology.com>, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Mcginn, Barbara A (DEC)" <barbara.mcginn@dec.ny.gov>, Clint Halftown <clint.halftown@gmail.com>, timtwoguns@verizon.net, RachelPolansky@localsyr.com, neil@wayuga.com, Randy Lawrence <tsterlin@twcny.rr.com>, lsomers2@twcny.rr.com, Lisa Cooper <lcooper2@nycourts.gov>

Dear John Clancy:

It was my impression in speaking to both Mr. Perazio of the Parks Service and Mr. Vandrei, a DEC archaeologist, that the OPRHP's recommendation is that the entire Life of Mine area be subject to the archaeological studies before the formal granting of a mining permit to ensure the process of preservation of possible Native American heritage artifacts and remains within the area of the LOM.

I should add that Ms. Nikki Waters of Alliance Archaeological Services, who performed the first two of the studies of the four required "phase" areas of the proposed Martville mine, informed me in a phone conversation on July 2, 2015 that, while she was engaged in the first onsite study last fall, she warned the mine operator not to log or grub the next planned area for investigation before she had the opportunity to conduct the second area study. She recounted to me her surprise to discover that her warning was not heeded: when she went to the site for the second study around April 2015, she discovered that the land had already been cleared, that no runoff protection berms had been established, etc. She did feel that, luckily, she was able to find enough undisturbed land to do the requisite diggings. Indeed, aerial photos of the site, both from the USDA on September 14, 2014 and from a private amateur drone operator on June 29, 2015, confirm her statements.

It would appear that to avoid a repetition of this (and any/all such applicant) operator's "misunderstanding" of the expected protocols, the DEC should follow the recommendations of its own archaeologist, as well as the Parks Service, that all permit applicants complete the requisite archaeological studies for the entire proposed Life of Mine area before a mining permit is granted, for the protection of Native American heritage, the land itself, and to ensure compliance with the SEQR process.

Among other interested parties, I have cc'ed on this communication the Cayuga Nation leaders with whom I have been in contact concerning these matters.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

On Wed, Jul 22, 2015 at 4:59 PM, Clancy, John M (DEC) <john.clancy@dec.ny.gov> wrote:
Hello Mr. Perazio. Thank you for your inquiry.

Our review on the above referenced mining permit application continues.

If a DEC mined land reclamation permit is issued, a permit condition would be included, specifically stating that an archeological investigation must be conducted in respect to cultural resources and reviewed/approved by NYS OPRHP prior to expansion of the mine into areas that have not yet been investigated.

Appropriate mitigation measures to protect cultural resources would be required, if and as needed, based on OPRHP's recommendations.

Thank you for the opportunity to clarify.

Respectfully yours,

John

From: Perazio, Philip (PARKS)
Sent: Wednesday, July 22, 2015 1:26 PM
To: Clancy, John M (DEC)
Cc: Vandrei, Charles (DEC); cjf9679@yahoo.com; V. Fichera
Subject: Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)

Mr. Clancy,

I am contacting you regarding the above-reference project. We have reviewed archaeological reports for two segments of this property. However, it is our understanding that the life of mine permit under review by DEC encompasses a larger area than what we have reviewed. We would like to inquire whether DEC will require that the remainder of the permit area be subjected to archaeological investigation before the permit is issued or if a stipulation will be included that an investigation be conducted prior to expansion of the mine into areas that have not yet been investigated.

Thank you for your attention to this matter.

Philip A. Perazio
Historic Preservation Program Analyst – Archaeologist

Division for Historic Preservation

New York State Parks, Recreation & Historic Preservation

Peebles Island State Park, P.O. Box 189, Waterford, NY 12188-0189

518-268-2175

Philip.Perazio@parks.ny.gov

www.nyparks.com/shpo