Everett, Adolph

From: Filippelli, John
Sent: Monday, March 24, 2014 8:36 AM
To: Everett, Adolph
Cc: Matthews, Joan;Gratz, Jeff;Iglesias, Ariel
Subject: FW: Request for ACOE permits on Soil Safe Project
Attachments: Army Corps Rahway Arch DJ 10_24_2013.pdf

Adolph,

This part of the Soil Safe situation looks like a CWD matter. Please coordinate as necessary. Thanks.

John

John Filippelli
Division Director
Clean Air and Sustainability Division
U.S. EPA - Region 2
(212) 637-3736
filippelli.john@epa.gov

From: Enck, Judith
Sent: Friday, March 21, 2014 3:17 PM
To: Filippelli, John; Plevin, Lisa; Matthews, Joan
Subject: FW: Request for ACOE permits on Soil Safe Project

See attached can epa comment on this?

From: Debbie Mans [mailto:debbie@nynjbaykeeper.org]
Sent: Friday, March 21, 2014 2:33 PM
To: stephan.a.ryba@usace.army.mil
Cc: McCue, Zach (Booker); Schmitz, Jackie (Menendez); Fuller, Janice; debbie@nynjbaykeeper.org; savino@senate.state.ny.us; lanza@senate.state.ny.us; titonem@assembly.state.ny.us; borellij@assembly.state.ny.us; cusickm@assembly.state.ny.us; malliotakisn@assembly.state.ny.us; SMatteo@council.nyc.gov; vignizio@council.nyc.gov; drose@council.nyc.gov; jamesoddo@gmail.com; govcuomo.office@nygovoffice.gov; charles.silver@ag.ny.gov; Enck, Judith; Plevin, Lisa; Flax, Phil; Johnson, Blake (Payne); zoe_baldwin@booker.senate.gov
Subject: Re: Request for ACOE permits on Soil Safe Project

Stephan
My apologies, the original Army Corps letter referenced in the letter attached here. Debbie

Debbie Mans, Executive Director & Baykeeper

NY/NJ Baykeeper
732-888-9870 x2
debbie@nynjbaykeeper.org

On Fri, Mar 21, 2014 at 2:25 PM, Debbie Mans <debbie@nynjbaykeeper.org> wrote:
Stephan
Attached please find a letter from NY/NJ Baykeeper requesting the Army Corps exert its requirements for permits on the proposed Soil Safe project in Carteret, Middlesex County, NJ. I look forward to your response, Debbie

Debbie Mans, Executive Director & Baykeeper
NY/NJ Baykeeper
732-888-9870 x2
debbie@nynjbaykeeper.org

File Copy

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF:

Regulatory Branch

OCT 2 4 2013

SUBJECT: Permit Application Number NAN-2012-01352-ESP
by Rahway Arch Properties, LLC.

Chester Pucillo
Rahway Arch Properties, LLC
7 Nottingham Drive
Florham Park, NJ 07932

Dear Mr. Pucillo:

On December 7, 2012, the New York District of the U.S. Army Corps of Engineers received a request for a Department of the Army jurisdictional determination for the referenced project noted above. This request was made by J. Timothy Kernan, Inc. as consultant for Rahway Arch Properties, LLC. The site consists of approximately 125 acres, in the Rahway River watershed at the Borough of Carteret, Middlesex County, New Jersey. The proposed project would involve capping of six contaminated man-made impoundments.

In the letter received on January 17th, 2013, your office submitted a proposed delineation of the extent of waters of the United States within the project boundary. A site inspection was conducted by representatives of this office on February 26th, 2013 in which it was determined that USACE concurred with the delineation report prepared by J. Timothy Kernan, Inc., dated January 17th, 2013.

Based on the material submitted and the observations of the representatives of this office during the February 26th, 2013 site visit, this site has been determined to contain jurisdictional waters of the United States based on the presence of wetlands determined by the occurrence of hydrophytic vegetation, hydric soils and wetland hydrology according to criteria established in the 1987 "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 that are either adjacent to or part of a tributary system; the presence of a defined water body (e.g. Creeks) which is part of a tributary system; and the fact that the location includes property below the mean high water mark of a water body as determined by known gage data or by the presence

File Copy

of physical markings including, but not limited to changes in the character of soil, destruction of terrestrial vegetation, and the presence of debris or other characteristics of the surrounding area.

These jurisdictional waters of the United States are shown on the attached drawings titled "Rahway Arch Properties-Site Remediation", sheets 1 and 2, prepared by J. Timothy Kernan, Inc. dated February 27th, 2013 and last revised August 1st, 2013. These drawings indicate that there are four (4) principal wetland areas and four (4) tributaries to the Rahway River on the project site with a total of approximately 42 acres and are considered to be waters of the United States. These wetlands/tributaries are as follows:

Wetland 1 (depicted as flag numbers WL A1-A107) is located in the north, northwest and east sections of the property and is approximately 13.95-acres within the subject property. Wetland 2 (depicted as flag numbers WL B1-B9) is located in the southwest section of the property and is approximately 0.05-acres within the subject property. Wetland 3 (depicted as flag numbers WL C1-C32) is located in the eastern section of the property and is approximately 13.16-acres within the subject property. The Rahway River Tidal Marsh is located along the northeast section of the subject property, immediately adjacent to the Rahway River and is approximately 5.52-acres within the subject property. Deep Creek is located in the eastern section of the property, oriented in an approximate north to south direction, and is approximately 3.14-acres (2,438 linear feet) within the subject property. Neds Creek is located in the eastern section of the property, oriented in a northwest to southeast direction, and is approximately 0.24-acres (474 linear feet) within the subject property. A tributary to Deep Creek is located in the eastern section of the property, oriented in a northeast to southwest direction and is approximately 3.33-acres (1,929 linear feet) within the subject property. Cross Creek is located in the southwest section of the property and is approximately 2.28-acres (1,117 linear feet) within the subject project.

It should be noted that, in light of the U.S. Supreme Court decision (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178, January 9, 2001), the areas identified as Impoundments 1, 2, 3, 4, 5, and 6, shown on the above referenced drawings, do not meet the current criteria of waters of the United States under Section 404 of the Clean Water

File Copy

Act. The Court ruled that isolated, intrastate waters can no longer be considered waters of the United States, based solely upon their use by migratory birds.

This determination regarding the delineation shall be considered valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

This determination was documented using the Approved Jurisdictional Determination Form, promulgated by the Corps of Engineers in June 2007. A copy of that document is enclosed with this letter, and will be posted on the New York District website at: http://www.nan.usace.army.mil/business/buslinks/regulat/index.php?jurisdet.

This written Corps jurisdictional determination (JD) has been conducted to identify whether a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.). If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed is a combined Notification of Appeal Process (NAP) and Request For Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

Michael G. Vissichelli, Regulatory Appeals Review Officer
North Atlantic Division, U.S. Army Engineer Division
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, New York 11252-6700

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Park 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by _____. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

This delineation/determination may not be valid for the

File Copy

wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

It is strongly recommended that any development of the site be carried out in such a manner as to avoid the discharge of dredged or fill material into the delineated wetlands and waters of the United States. If the activities proposed for the site involve such discharges, authorization from this office may be necessary prior to the initiation of the proposed work. The extent of such discharge of fill material will determine the level of authorization that would be required.

In order for us to better serve you, please complete our Customer Service Survey located at: http://www.nan.usace.army.mil/business/buslinks/regulat/index.php?survey.

If any questions should arise concerning this matter, please contact Craig Spitz, of my staff, at (917) 790-8522.

Sincerely,

//signed//

Stephan A. Ryba
Chief, Eastern Section

Enclosure
Cc: Kernan Consulting Engineers