



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

SN 102 88 4111:41

SUBJECT: Stormwater management facilities in New York State

Gary R. McVoy, Ph.D., Director  
Environmental Analysis Bureau  
NY State Department of Transportation  
Building 5, Room 303  
1220 Washington Avenue  
Albany, New York 12232

Dear Dr. McVoy:

This is in response to your February 24, 1994 letter jointly addressed to both undersigned parties.

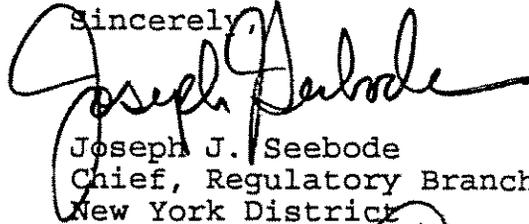
We have determined that the construction of stormwater management facilities entirely in uplands, to meet the requirements of the Clean Water Act (as most recently amended) would generally not be considered waters of the United States. This is in accordance with Title 33 of the Code of Federal Regulations, Part 328.3 (a). Discharges of dredged or fill material into existing facilities which meet the definition of waters of the United States would still be regulated since the construction of such facilities was not necessary to meet the requirements of the Clean Water Act.

In order to avoid confusion, we believe that some sort of tracking system is necessary for newly constructed nonjurisdictional stormwater management facilities. We propose that your agency maintain an inventory in this regard and periodically provide updated lists to this office as well as to the Buffalo and Pittsburgh Districts. An appropriate methodology in this regard can be mutually agreed upon at a later date.

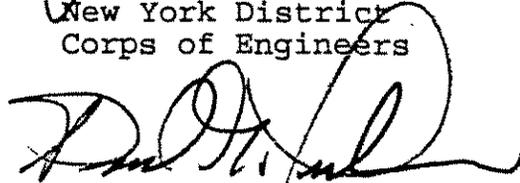
With regard to your request that created wetlands not be considered waters of the United States, we concur that these would not be considered jurisdictional if the sole purpose of their creation is to reduce non-point source water pollution impacts. However, if created/enhanced/restored wetlands would serve this purpose as well as compensation for values lost as a result of permitted wetland filling, these would be considered jurisdictional wetlands subject to Section 404. An example would be wetlands created/enhanced/restored as a form of compensatory mitigation for a permit action.

We trust the foregoing satisfactorily responds to your request. If you have any questions, please contact Mr. James Haggerty, Chief, Eastern Permits Section, New York District at (212) 264-3912 or Ms. Diane Radon, Buffalo District at (716) 879-4433.

Sincerely,



Joseph J. Seebode  
Chief, Regulatory Branch  
New York District  
Corps of Engineers



Paul G. Leuchner  
Chief, Regulatory Branch  
Buffalo District  
Corps of Engineers

CF:  
Raymond Berringer, CEORP-OP-F