The permittee filed the request on March 10, 1995, and the preliminary permit for Project No. 11445 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7536 Filed 3–27–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5179–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501*et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 27, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #0794.06.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Notification of Substantial Risks Under section 8(e) of the Toxic Substances Control Act (TSCA). (EPA ICR No.: 0794.06; OMB No.: 2070–0046). This is a request for extension of the expiration date of a currently approved collection

Abstract: Under section 8(e) of TSCA, chemical manufacturers, importers, processors, and distributors must immediately inform EPA when they obtain information which indicates that their product(s) may present a substantial risk of injury to health or the environment. Section 8(e) of TSCA is an important and useful tool for early warning and the identification of new substantial risks posed by exposure to chemical substances. The EPA and other Federal agencies use this information to determine and control chemical risks

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 21 hours per initial section 8(e) submission and 4 hours per follow-up/supplemental section 8(e) submission. EPA experience has shown that approximately 2.2 follow-up/supplemental section 8(e) submissions are received on a yearly basis per initial submission. This estimate includes the time needed to review instructions, gather and submit the data needed, and complete and review the collection of information

Respondents: Chemical manufacturers, importers, processors, and distributors

Estimated No. of Respondents: 450

Estimated No. of Responses Per Respondent: 3

Estimated Total Annual Burden on Respondents: 13,400 hours

Frequency of Collection: On occasion

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR #0794.06 and OMB #2070–0046) to:

Sandy Farmer, EPA ICR #0794.06, U.S. Environmental Protection Agency, Information Policy Branch—(2136), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, OMB #2070–0046, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 22, 1995.

Paul Lapsley,

Regulatory Management Division.

[FR Doc. 95–7593 Filed 3–27–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5172–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1716.01; NESHAP for Wood Furniture Manufacturing Operations, 63-JJ; was approved 02/10/95; OMB No. 2060–0324; expires 02/28/98.

EPA ICR No. 0559.05; Application for Reference or Equivalent Method Determination; was approved 01/31/95; OMB No. 2080–0005; expires 01/31/98.

EPA ICR No. 1432.15; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock use of Ozone-Depleting Substances; was approved 01/31/95; OMB No. 2060–0170; expires 09/30/96.

EPA ICR No. 1463.03; National Oil and Hazardous Substances Pollution Contingency Plan (NCP); was approved 01/31/95; OMB No. 2050–0096; expires 01/31/98.

EPA ICR No. 1304.04; Application for Preauthorization of a CERCLA Response Action Claim for CERCLA Response Action; was approved 01/27/95; OMB No. 2050–0106; expires 01/31/98.

EPA ICR No. 0229.09; Discharge Monitoring Report for the NPDES/Sewage Sludge Monitoring Reports; was approved 01/20/95; OMB No. 2040–0004; expires 01/31/98.

EPA ICR No. 1647.01; Exports from and Imports to the United States under the OECD Decision; was approved 01/27/95; OMB No. 2050–0143; expires 01/31/98.

EPA ICR No. 1732.01; Application to or Participation in the National Radon Measurement Proficiency (RMP) Program and/or the National Contractor Proficiency (RCP) Program; was approved 02/02/95; OMB No. 2060–0315; expires 02/28/98.

Dated: March 21, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–7594 Filed 3–27–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5179–6]

Russo Development Corporation Site, NJ; Proposed Amendment to March 21, 1988, Clean Water Act Section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of consideration of amendment of Section 404(c) final determination and request for comment.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is considering amendment of the total site prohibition identified in EPA's March 21, 1988, Final Determination concerning the Russo Development Corporation (Russo) site in Carlstadt, New Jersey, pursuant to Section 404(c) of the Clean Water Act (CWA). EPA is considering amendment of this Final Determination on the basis that compensatory mitigation now proposed by Russo would satisfactorily address the unacceptable adverse effects to wildlife described in the March 21, 1988, document. This amendment would be done as a prerequisite to Russo seeking CWA after-the-fact authorization for the past discharge of fill material into the subject wetlands for the purpose of constructing a warehouse complex, as well as authorization for the future discharge of fill material into remaining wetlands for additional development activities. This proposed action would revise the Section 404(c) prohibition adopted in 1988 to a restriction on discharges at the site based on Russo's meeting the compensatory mitigation requirements specified in this document.

EPA's 1988 Final Determination in this case concerned a 57.5 acre wetland in Carlstadt, New Jersey where Russo proposed to maintain 52.5 acres of unauthorized fill (of which 44 acres have been built upon) and to fill the remaining five acres of wetland of a 13.5 acre parcel to complete a warehouse complex. The Final Determination states that the Russo site was/is very valuable to wildlife from a site specific and cumulative standpoint and, therefore, that its values must be retained. EPA also found that the compensatory mitigation proposed by Russo would not replace those wildlife values that had been and were anticipated to be lost. In the Final Determination, however, EPA indicated that this prohibition could be reconsidered upon demonstration that the adverse effects to wildlife have been satisfactorily addressed.

EPA is requesting comments on this proposed amendment of the Final Determination's total site prohibition to a restriction that would allow specification of the 13.5 acre site as a discharge location provided Russo agrees to deed over an approximately 16 acre parcel of wetlands in Ridgefield, N.J. for preservation, and provide $700,000 for the purpose of enhancing wetlands at this site and on sites to be contained in the Hackensack Meadowlands District mitigation bank. In particular, EPA is interested in comments relating to the currently proposed compensatory mitigation and its ability to replace the wildlife values lost as a result of past fill activities, as well as anticipated losses due to proposed discharges in the subject wetlands.

DATES: Written comments concerning this proposed amendment must be submitted to EPA on or before April 27, 1995.

ADDRESSES: Copies of EPA's 1988 Final Determination and relevant documents supporting the proposed modification are available for public inspection upon request at the following locations:

U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, Wetlands Division, 499 South Capitol Street, SW, Fairchild Building, Room 703, Washington, DC 20009

U.S. Environmental Protection Agency—Region II, Water Management Division, 26 Federal Plaza, Jacob K. Javits Federal Building, Room 1137, New York, NY 10278

Comments must be submitted in writing to Joseph P. DaVia, Acting Chief, Elevated Cases Section, Mail Code: 4502F, U.S. EPA, 401 M Street SW, Washington, DC 20460. Written comments may also be sent by facsimile to Mr. DaVia at (202) 260–7546.

FOR FURTHER INFORMATION CONTACT: John Ettinger (EPA) at (202) 260–1190.

SUPPLEMENTARY INFORMATION: On March 21, 1988, the Assistant Administrator (AA) for Water of the United States Environmental Protection Agency (EPA) rendered a final determination which prohibited the designation of 57.5 acres of wetlands as a disposal site for fill material. These wetlands were and are currently owned by the Russo Development Corporation (Russo), and are located in the Hackensack Meadowlands in Carlstadt, Bergen County, New Jersey. The reason cited by the AA for Water for this action was that the discharge of fill would have unacceptable adverse effects, both immediately and cumulatively, to wildlife in the Meadowlands. This action was taken pursuant to Section 404(c) of the Clean Water Act (CWA, U.S.C. 1251 *et seq.*), which authorizes the Administrator (who has delegated this authority to the AA for Water), after notice and opportunity for a public hearing, to prohibit or restrict the use of any defined area as a disposal or discharge site for dredged material or fill. In such a case, the AA for Water must have first determined that such discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Procedural History and Rationale for the Determination

The chronology of the Corps and EPA actions leading up to EPA's 1988 404(c) determination is summarized in the Final Determination of the AA for Water. Briefly, the events are summarized as follows: In 1981, Russo placed 44 acres of fill for the purpose of constructing a warehouse complex in Carlstadt in the Hackensack Meadowlands in Bergen County, New Jersey (44 acre tract). Russo constructed six warehouses and began a seventh on the 44 acre tract. Russo subsequently excavated most of the adjacent 13.5 acre parcel (13.5 acre tract) and then filled 8.5 of the 13.5 acres in order to build more warehouses. The Corps issued a cease and desist order subsequent to his placement of 8.5 acres of fill. Five acres of the 13.5 acre tract remain wetland. Russo excavated two to three acres of the unfilled five acres to remove unsuitable soils and fill with suitable construction material. 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 which announced their investigation of unauthorized fill activity on the 8.5 acres. The Corps subsequently extended enforcement action to the 44-acre tract as well. EPA initially recommended either removal of fill or mitigation to compensate for the wetlands losses. The Corps processed an after-the-fact permit application and issued a public notice on August 28, 1985, proposing to authorize 55 acres of existing fill (later corrected to 52.5 acres) and to authorize the placement of additional fill in the remaining five acres of wetland.

On December 22, 1986, the Corps 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)(l) Guidelines. The permit decision would authorize 0.5:1 value-for-value compensation for the 57.5 acre loss of wetlands. The mitigation proposal would provide for the enhancement of a nearby, unspecified wetland northeast of the project site and would secure the permanent preservation of a 23 acre wetland site in Troy Meadows in the Passaic River basin (to the southwest of

the Hackensack River basin). EPA responded on December 24, 1986, requesting a meeting with the Division Engineer and suspension of further action on the project. The U. S. Fish & Wildlife Service (FWS) also elevated the decision under CWA Section 404(q). Subsequently, EPA and the Corps attempted to negotiate a resolution which would provide a 1:1 value-for-value compensation, but were unsuccessful. Unable to resolve both agencies' concerns, the Corps eventually issued its final Notice of Intent to Issue on March 23, 1987, proposing to authorize 52.5 acres of existing 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 wetlands. Under Section 404(q) of the CWA, EPA requested elevation of the permit decision to national level review on April 27, 1987, and that request was denied by the Department of the Army on May 8, 1987.

Having exhausted administrative procedures to resolve agency concerns, the Regional Administrator for Region II then notified the District Engineer and the Russo Development Corporation on May 26, 1987, 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 the Russo site, based on his belief that the discharge had resulted and would result in unacceptable adverse effects to wildlife. 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 Corps decision to issue a permit be affirmed. The Regional Administrator concluded that no new information had been presented and therefore he was not satisfied that the project would not pose unacceptable adverse impacts.

On August 7, 1987, a public notice was published 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 and closed on October 6, 1987. The notice requested comment on the need for a public hearing. There was response requesting a public hearing, and the holding of a hearing was found to be in the public interest. On October 13 and 14, 1987, a public notice was published 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.

The Regional Administrator forwarded his Recommended Determination to the AA for Water, along with the Administrative Record of the case. The Recommended Determination was adopted by the AA for Water and was incorporated into his final decision. The decision to prohibit the specification of the Russo wetlands as a fill disposal site was based upon findings by the AA for Water that: 1. The wetlands on the Russo tracts were valuable to wildlife because they represented a diverse array of wetland types, types which are rare in the context of the Meadowlands landscape; 2. the wetlands on the Russo tracts supported/support a large mix of species, most of which are declining in New Jersey due in part or whole to a loss and/or deterioration of available habitat (of particular importance was/is the ability of the site to support populations of black duck, a FWS species of special concern, whose populations have declined nationally due to a loss and/or deterioration of available habitat); 3. the loss of this habitat would cause unacceptable impacts to wildlife values unless these values were maintained through mitigation; and, 4. the proposed/required mitigation would neither compensate for the loss of approximately 57.5 acres of valuable wildlife habitat nor constitute appropriate and practicable mitigation. Therefore, the mitigation would not offset the significant wildlife impacts identified. Thus, the fill had resulted and would result in unacceptable adverse impacts to wildlife under Section 404(c) of the Clean Water Act. Accordingly, the AA for Water prohibited the designation of the Russo tracts as a discharge site.

As part of the findings and conclusions which led to the prohibition of the Russo site as a fill discharge site, the AA for Water noted the following:

> In the present case, my findings of unacceptable adverse effects stems [sic] from current and anticipated losses of valuable wildlife habitat that has/will result from direct effects of discharges regulated under Section 404 of the CWA and within the Russo site. As previously stated, however, fill has already been placed on approximately 52.5 acres of wetlands and only 5 acres remain unfilled. Although I have concluded that the wildlife values previously and currently provided by the Russo tract are important enough to preserve, the fact remains that most of the site has been filled and its value to wildlife destroyed. Also, I am mindful that under these circumstances, final action by EPA pursuant to Section 404(c) of the CWA will not prevent the occurrence of most of the unacceptable adverse effect or accomplish reversal of such effects. Further actions will be necessary, either within the context of voluntary compliance by Russo or an enforcement action, to determine the extent of wetland value replacement and pursue compensatory action. The site has been damaged and, indeed, some or all of this damage may be irreversible. In addition, the presence of tenanted warehouses on the unauthorized fill raises other issues that run counter to restoration of the site. Mitigation has been a focal point of discussions with respect to this project during the Corps permit process as well as a contributing factor to my determination of unacceptable adverse effects. If the condition of the Russo tract precludes onsite restoration from a technical or practical standpoint, then EPA would expect to pursue replacement of lost wildlife values elsewhere. Mitigation of lost wildlife values will not be required for any portions of the previously discussed old field areas that are determined to have been uplands.[1]

The AA for Water did note the following:

> I will reconsider this prohibition at the request of EPA's Regional Administrator in Region II upon a showing that the unacceptable adverse effects to wildlife have been addressed to his satisfaction.

Judicial Decisions Related to the Proposed Amendment of EPA's 404(c) Determination

Russo brought suit against the Corps and EPA in U.S. District Court. *Russo Development Corporation v. Thomas et al.*, No. 87–3916 (D.N.J.). In a series of opinions, the court vacated in part and remanded in part EPA's 404(c) decision. In its first decision, the court found the Corps had been arbitrary and capricious in requiring Russo to submit jointly an

[1] As part of the Final Determination, the AA for Water noted that portions of the areas delineated as old field on EPA's map of the Russo site in its pre-discharge condition may have contained uplands, because the information on vegetation at this point was inconclusive and raised the possibility that portions of the old field areas may have been uplands. That consideration did not alter the final decision, which was based on conclusions concerning the extent of the wildlife values provided by the site, nor did it alter conclusions that the proposed/permitted mitigation was inadequate, since the portions of the tract in question comprised a small portion of the impact area. The jurisdictional issue was left unresolved due to Russo's desire for a timely decision by EPA. However, it was noted that the issue might ultimately affect the precise amount of mitigation necessary, since no compensation would be required for areas determined to be uplands, which are not jurisdictional under Section 404.

application for a permit encompassing both the 13.5 and 44 acre sites. The court found that, on the facts of this case, the activities on the two sites did not constitute the ''same project'' under applicable Corps regulations (33 CFR 325.1(d)(2)). To remedy this error, the court stated that it would ''limit the plaintiff's application for a Corps permit and the subsequent grant and veto of the permit to the 13.5 acre parcel.'' 735 F. Supp. 631, 637 (D.N.J. 1989). This decision therefore vacated EPA's Section 404(c) determination as it related to the 44 acre parcel. See also *Id.*, at 639 (''Because of the court's decision that the veto of the 44 acre parcel is void, the question [of the validity of EPA's 404(c) decision] concerns only the 8.5 acre tract.''). The court also held in this opinion that EPA should have considered the New Jersey Coastal Management Program in its 404(c) determination. The court also dismissed Russo's claims that EPA's and the Corps' actions violated Russo's due process rights under the Constitution.

On May 17, 1991, the court ruled on the remainder of Russo's claims in this case. *Russo Development Corporation v. Reilly,* 1991 U.S. Dist. Lexis 20965, 21 ELR 21345. The court first dismissed Russo's claims that EPA and the Corps acted in bad faith, and that the agencies had failed to demonstrate that they had jurisdiction over the 13.5 acre site under the CWA. Consistent with the holding in its 1989 opinion that it was arbitrary and capricious for the Corps and EPA to link the 44 acre and 13.5 acre parcels in their decisions, the court remanded the permitting and veto decisions for further considerations. The court further directed the Corps and EPA to consider, on remand, the precise extent of CWA jurisdiction over the 13.5 acre site and the appropriate mitigation to compensate for impacts to the site. The court also directed EPA to articulate on remand its reasons for any deviations of its decision from the New Jersey Coastal Zone Management Plan.

New Information and Developments Supporting Reconsideration of the 404(c) Prohibition

Since 1988, several important pieces of new information concerning the site and concerning wildlife habitat utilization within the Meadowlands have been developed subsequent to the prohibition of the site for fill discharge. These include:

1. A re-evaluation of the extent of wetlands on the 13.5-acre site (April 15, 1992, Corps memorandum). The Corps determined that 3.27 acres of the 13.5 acre site are not considered to have been wetlands, while the remaining 10.23 acres were wetlands prior to disturbance in 1985. Based on the criteria used in this re-evaluation, EPA has re-evaluated the pre-discharge extent of jurisdiction on the 44-acre parcel as well, and finds that approximately 40.7 acres of this tract were wetlands subject to jurisdiction under Section 404 of the CWA.

2. A study of habitat utilization by numerous species of wildlife, particularly birds, of *Phragmites*-dominated habitat in the Meadowlands. This report, Site Survey Report: Ecological Studies, Hartz Mountain Development Corporation Villages at Mill Creek, was prepared in December, 1991 by U.S. EPA Region II and Gannett Fleming, Inc. This study provides detailed information on the wetland characteristics which are of value to wildlife in the Meadowlands, which species use this habitat, and how this habitat is used. Based on this information, a more precise determination can be made of the wetland values lost on the Russo tracts, and what features could be provided in a mitigation proposal to replace those values. In particular, this study provided detailed information on the use of these habitats by black duck, which is a FWS species of special concern. In the Final Determination, the AA for Water's conclusions that the fill would cause unacceptable adverse effects to wildlife were strongly influenced by the impacts of the fill on black duck. Based on this new information, a better estimate of the Russo tract's importance in supporting black duck populations in its pre-discharge state may be made.[2] In addition, habitat attributes which support black duck populations in the Meadowlands have been identified. These habitat attributes can be provided in a mitigation design for the purpose of more predictably increasing habitat value to black ducks. This would provide compensation for the loss to this species and would reduce cumulative impacts to this species.

3. The development of a Mitigation Banking Agreement for the Meadowlands. This agreement is currently being developed and is expected to be completed shortly. Under this agreement, the Hackensack Meadowlands Development Commission (HMDC) would develop and administer several mitigation banks. Some of these would be implemented by performing mitigation on publicly or quasi-publicly owned wetlands (thus not requiring outright purchase of these lands), and HMDC is seeking to acquire additional lands on which to implement mitigation. Since EPA and the Corps would be among the Federal agencies participating in the mitigation banking process, they would be advising HMDC on the design, construction, monitoring and remedial action for mitigation projects on a more comprehensive and consistent scale. Consequently, value replacement, performance, and success could be more predictably and consistently ensured through this mechanism. Thus, mitigation opportunities within the Hackensack River basin, within the area of impact, could be provided where opportunity was previously scarce or unavailable to private developers.

4. Selected terms of a proposed agreement reached between the Corps, EPA and Russo to settle litigation regarding this matter. Under the settlement terms, Russo would deed over, for preservation and enhancement, an approximately 16-acre parcel of wetlands in Ridgefield, NJ, (the Ridgefield tract) located approximately 1.5 miles from the subject Russo tracts. Russo would also provide $700,000 for the purpose of enhancing wetlands, both at this site and on sites contained in the HMDC mitigation bank.

The Final Determination by the AA for Water treated the 44 and 13.5 acre tracts as a single ecological unit for the purposes of evaluating their loss to the ecosystem. As discussed above, the court in *Russo Development Corporation v. Thomas, et al.* invalidated the linkage of the 13.5 and 44 acre parcels by the Corps, and vacated EPA's 404(c) determination as to the 44 acre parcel. Therefore, the proposed amendment to revise EPA's 404(c) determination would amend only the portion of EPA's original 404(c) prohibition that has remained in effect (i.e., for the 13.5 acre parcel). Because the proposed settlement terms discussed above seek to resolve all issues related to both the 44 and 13.5 acre parcels, however, this notice also discusses the adequacy of mitigation as it relates to all of the activities conducted by Russo on the two sites. Russo has agreed to waive any objections to the agencies' consideration of the totality of the impacts of fill at the 44 acre and 13.5 acre sites in their determinations on remand.

Wetland Values Lost, and Outline of Unacceptable Adverse Effects to Wildlife

The Final Determination of the AA for Water identified several habitat features

[2] Black ducks would have used the mixed emergent areas for feeding and resting, which are identified in the January 19, 1988, Recommendation of the Regional Administrator pursuant to Section 404(c) of the CWA.

on the Russo tracts which contributed to their ecological importance. First, several different types of wetland habitat were found on each of the tracts. This juxtaposition of wetland types to each other, as well as to surrounding wetland areas, provided habitat diversity in a landscape that is generally somewhat monotypic in nature. Second, several of the wetland types, viz., wet meadow, mixed emergent, and wooded, are relatively rare in the Meadowlands, and provided habitat for a large mix of species. Many of these species are experiencing population declines within New Jersey, which are attributable in whole or in part to loss and/or deterioration of available habitat. The interspersion of habitat types, along with the relative rarity of those types, made the Russo tracts valuable to wildlife. The breakdown of wetland types by approximate acreage [3] is provided in Table 1 below:

TABLE 1.—ACREAGE (APPROXIMATE) OF WETLAND TYPES COMPRISING THE TWO RUSSO TRACTS IN CARLSTADT, NJ

Wetland type	13.5 acre tract	44 acre tract
Wet Meadow	3.68 ac	21.73 ac
Mixed Emergents	1.14 ac	2.92 ac
Wooded	0.00 ac	0.37 ac
Phragmites	5.41 ac	15.69 ac
Old field (subsequently determined to be non jurisdictional)	3.27 ac	3.30 ac
Total	13.50 ac	44.00 ac

The conclusion and findings of the Final Determination were that unacceptable adverse effects to wildlife were caused by/ would be caused by the fill unless those values are maintained through mitigation. While the quality and importance of the lost wetlands to the lower Hackensack watershed weighed strongly in the AA for Water's decision to prohibit specification of the sites for disposal, perhaps the most significant factor contributing to the finding of the AA for Water was that the impacts were unlikely to be adequately compensated by the proposed/permitted mitigation plan.

The mitigation plan which was originally proposed by Russo during the permit evaluation was considered by EPA to be both inappropriate in type and inadequate in its extent to provide sufficient compensation for the wetlands values lost. The plan comprised two parts: enhancement of offsite wetlands within the Hackensack basin and preservation of wetlands outside the basin. The enhancement component of the mitigation proposal would have provided enhancement of an unspecified acreage of wetlands somewhere to the northeast of the site. Since the location and exact acreage proposed for enhancement were never identified, the existing and post-enhancement wetland values could not be evaluated to determine how much compensation would have been provided by those means.

The other component, which was the proposed preservation of a 23 acre wetland parcel outside the Hackensack River basin, would not have provided any increase in wetland value to compensate for wetland values lost as a result of the filling activity, since the parcel was already a functioning wetland and no other enhancement activity was proposed to provide an increase in value. Furthermore, any wetland value which might have been added to that parcel would not have provided compensation in the watershed where the damage occurred, and so could not have compensated for the loss to the Hackensack River system. Finally, the Corps permit required only 0.5:1 value for value replacement, which would have resulted in, at best, a 50% loss of wetland values as a result of Russo's activities.

Desirability of Obtaining Compensatory Mitigation

Russo's activities on the 13.5-acre site have destroyed almost all of the pre-discharge wetland characteristics of the site. The site was almost completely excavated of its original soil. Eight and one half acres were subsequently filled with shot rock to a depth of several feet. The stone used for fill was of varying sizes, but most of the material would be classified as boulders, according to the Wentworth scale. The fill material has continued to compact and consolidate in the ensuing nine years since the fill activity took place, and it is likely that the underlying soil layers have also compacted. Therefore, the likelihood of restoring this site to its original condition or to a suitable wetland condition is small, and it is not practicable or feasible to consider this as a preferred option. Consequently, offsite mitigation would need to be provided to eliminate the unacceptable adverse effects to wildlife identified in the decision of the AA for Water to prohibit specification of this site under Section 404(c).

Likewise, the 44-acre parcel was filled in 1981 with material of the same type. The soils on this site are more likely to have compacted and consolidated into material unlikely to support site restoration, because the site has been constructed on and has had functioning warehouses with concomitant large vehicle traffic since the early 1980's. This site is even less likely to be restorable to a suitable wetland condition than the 13.5 acre parcel owing to this factor and also to the fact that tenanted warehouses occupy the site. As such, offsite compensatory mitigation would be needed to offset the wildlife values lost as a result of the fill activity.

Mechanisms To Provide Compensatory Mitigation

The changes in circumstances and information described above have improved the ability of Russo to achieve reasonable compensation for wetland wildlife values lost as a result of the unauthorized discharge of fill. One of the main factors which influenced Russo's original mitigation proposal was the alleged difficulty in privately obtaining large tracts of wetlands within the Meadowlands for the purpose of providing compensatory mitigation. This can now be addressed with the use of a mitigation bank, which will obtain and have available large wetlands tracts for the purposes of providing compensatory mitigation. HMDC's proposed mitigation bank will make wetland mitigation on a substantial acreage within the Hackensack River basin, the area of impact, available for purchase. With adequate funding, wetland enhancement through this mitigation bank can be obtained, and will provide significant compensation opportunity.

Under the terms of the settlement discussed above, Russo will provide approximately 16 acres of wetlands which will provide additional compensatory value via enhancement. Thus, between the land to be provided by Russo and the lands available for enhancement in the mitigation bank, sufficient land for mitigation purposes is now reasonably available to provide compensation for the wetlands losses resulting from the discharges of fill on the Russo tracts.

Under the terms of the settlement, Russo also would provide a total of $700,000 for the purposes of implementing compensatory mitigation through the HMDC mitigation bank. A portion of this funding will be spent

[3] The acreages have been calculated based on the wetland map provided in the Maguire Group report entitled, Vegetation Types—1978. Because the extent and description of these types is based on aerial photointerpretation, and not on precise survey, acreages can only be approximate.

providing enhancement to the 16-acre Ridgefield tract. The remainder of the funds will be used to enhance the wetland values of acreage within the HMDC mitigation bank. The means to provide compensation for lost wetland values are therefore available. What remains is to provide a demonstration that adequate compensation, and appropriate compensation, can be provided through this proposal.

Determination of Adequate Compensation

The additional information on habitat values in the Meadowlands which was provided in the EPA study previously referenced provides useful guidance for the appropriate design of mitigation sites in the Meadowlands. A mitigation design which incorporates the habitat features identified by this study as valuable is likely to provide a greater guarantee of success in achieving the goal of no net loss in wetland values. Such a design would be directly tailored to wildlife needs in the Meadowlands, and is thus appropriate to compensate for the particular values lost from the Russo tracts. For example, open water areas which are interspersed among and surrounded by *Phragmites* were found to be preferentially used as resting/feeding habitat by overwintering black ducks, *Anas rubripes,* a FWS species of special concern. The open water provides necessary feeding/resting habitat, while the associated *Phragmites* provides shelter from winter winds, thus reducing caloric requirements and stress on this species. Mitigation designed to increase hydrologic flow and provide open water areas interspersed with *Phragmites* will greatly increase the value of those tracts to black duck populations in the Meadowlands. Such a component responds directly to one of the wildlife losses of concern identified by the AA for Water in the Final Determination, and will provide compensation for this loss. While the exact location of the acreage proposed for enhancement has not yet been specified, the mitigation bank locations which are being evaluated by HMDC have the similar habitat features and are generally good candidates for enhancement. The candidate sites are large tracts, mostly dominated by a monoculture or near-monoculture of *Phragmites.* Most of the proposed bank sites have a reduced or nonexistent flow and interspersion of water, or have been cut off from tidal inundation. A variety of different mitigation activities are able to be performed on such sites and will provide good compensation for wildlife values which were lost/are being lost from the Russo tracts.

Since the mitigation banks are not yet functioning, the precise type and amount of mitigation that will be performed to compensate for the wetlands values lost from the Russo tract has yet to be determined. However, outlined below in Table 2 is an example mitigation strategy that would likely be feasible to implement with the funding made available by Russo for mitigation activities. EPA believes, moreover, that such a mitigation strategy would adequately compensate for wetland losses experienced on the Russo tracts.

TABLE 2.—WETLAND TYPES, BY ACREAGE, WHICH WERE LOST FROM THE RUSSO 13.5-ACRE TRACT, AND ENHANCEMENT ACTIVITIES WHICH WOULD PROVIDE ADEQUATE COMPENSATION FOR THOSE LOSSES

Wetland type lost (acres)	Enhancement activity	Habitat improvement which will result from the enhancement activity
Mixed emergents/open water (1.14 ac).	Excavation of two 1-acre ponds or meandering channels in *Phragmites* fields; planting/seeding with emergent species at fringe.	Diverse ponds or watercourses attractive to waterfowl and muskrats, able to provide winter shelter and improved feeding.
Wet meadow (3.68 ac)	Remove *Phragmites* on 4 ac and excavate to maintain a permanently saturated hydrologic regime; seed with mixture of wet meadow species. In tidal areas, an alternative would be establishment of high salt marsh. Since there is less plant diversity in a high salt marsh, 6 acres of enhancement would be recommended.	Creation of habitat valuable to raptors and species such as woodcock and pheasant; possible provision of nesting habitat for certain species of waterfowl. Wet meadow would directly replace lost habitat type.
Phragmites, unbroken field (5.41 ac).	*Either* excavation of 5.41 ac from upland to create regularly saturated habitat and planting or seeding with suitable wetland emergents, *or* excavation and eradication of approximately 5.5 acres of tidal, unbroken *Phragmites* to average mean water and planting or seeding with *Spartina alterniflora* and shrubs.	Creation of saturated system of emergents which would provide the same functions as *Phragmites.* Enhancement to a *S. alterniflora* marsh increases value seasonally to wildlife, but more plant diversity is needed since enhancement is occurring on a functioning wetland. Shrub layer provides this.

Three types of wetland habitat are believed to have existed on the 13.5-acre site prior to Russo's fill activities; viz., mixed emergent, wet meadow, and *Phragmites.* Since 3.27 acres, which was identified by aerial photography as ''old field'' has been determined by the Corps to have been a non-wetland area, a determination with which EPA concurs, no compensation is required for fill activity which occurred on this portion of the site.[4]

The excavation of two, one-acre ponds or approximately two acres of meandering channel will provide two acres of valuable feeding/resting habitat for waterfowl, particularly black duck. The mixed emergent areas originally present on the 13.5-acre site totalled 1.14 acres. This acreage, however, was divided among three areas, and was less likely to be attractive to waterfowl than a single pond or watercourse of the same size. Since an existing wetland, which has functional values of its own, will be excavated to create the ponds or channel, it will lose some functional value as a result of the excavation activity. The creation of an additional acre of open water is likely to offset any losses associated with the enhancement activity itself. The cost of such an enhancement is likely to be low, since only the fringe of the ponds would be seeded, and would probably not exceed $5,000/acre, based on EPA Region II's best estimates of cost.

The enhancement of approximately four acres of *Phragmites* monoculture to provide a frequently saturated wet meadow will restore the same acreage of wet meadow that was lost from the site. As an alternative, should the proposed mitigation site be tidal, a tidal high salt marsh, dominated by *Spartina patens* and *Distichlis spicata,* can be established. High salt marsh is also a remnant habitat in the District, and

[4] This is consistent with the findings and guidance of the AA for Water set forth in the Final Determination.

would provide many of the same values to wildlife as wet meadow (i.e., attractive to raptors, small mammals, etc.) but is not usually as species-rich in plants, including those with food value to wildlife, as a freshwater wet meadow. Consequently, this type of compensation should be established at a 1.5:1 acreage replacement, since it represents out-of-kind mitigation, and would not have as many functions as the habitat for which it is providing compensation.

The remaining 5.4 acres of the 13.5-acre tract was dominated by *Phragmites*. The creation of a 5.4 acre emergent marsh from upland would offset this loss. If enhancement is the technique used (as is likely), then the replacement vegetation for *Phragmites* must be twice as valuable to wildlife to provide value-for-value compensation for wildlife. Based on EPA studies, *Spartina* marsh habitat is more attractive to wading birds and waterfowl, and is of equal value to certain passerine species. *Phragmites*-dominated habitat can be doubled in its value to most wildlife species if it is enhanced to provide an equal acreage of *Spartina alterniflora*/scrub-shrub marsh, and it is interspersed with the other proposed habitat types. Therefore, conversion of approximately 5.5 acres of uniform *Phragmites* to *S. alterniflora*/scrub-shrub salt marsh will compensate for the wildlife value of the 5.41 acres of *Phragmites* marsh lost from the Russo 13.5-acre tract, and will result in no net loss of wildlife value for the acreage lost.

Estimates for the eradication of *Phragmites*, excavation and seeding of other species (such as *Spartina* or hydrophytic herbaceous forbs, such as those found in wet meadow habitats) varies, but are expected to average about $20,000/acre, based on EPA Region II's best available information. Approximately nine acres of such enhancement would be required to provide the suggested wet meadow and *S. alterniflora*/scrub-shrub marsh. (The land acquisition for mitigation activities will already have occurred when these activities are expected to be implemented.) Adequate funds would therefore be available to provide the requisite enhancement to ensure a value-for-value replacement.

The balance of the funds would go toward providing replacement of wetland wildlife value lost as a result of filling the 44-acre tract. An example mitigation strategy that would likely be feasible to implement with the resources made available by Russo, and which would provide compensation for wildlife values lost from the 44-acre tract is listed in Table 3.

TABLE 3.—WETLAND TYPES, BY ACREAGE, WHICH WERE LOST FROM THE 44-ACRE TRACT, AND ENHANCEMENT ACTIVITIES WHICH WOULD PROVIDE ADEQUATE COMPENSATION FOR THOSE LOSSES

Wetland type lost (acres)	Enhancement activity	Habitat improvement which will result from the enhancement activity
Mixed emergents/open water (2.92 ac).	Excavation of 6 acres of open water habitat (ponds and/or channels) in *Phragmites* fields; planting/seeding with other emergent species at fringe..	Diverse ponds or watercourses attractive to waterfowl and muskrats, able to provide preferred winter shelter and improved feeding.
Wooded (0.37 ac) ..... *Phragmites* areas (15.69 ac)	Planting of approximately 3 acres of shrub/tree layer on 16.5 ac Ridgefield tract	Provides nesting opportunities for waterfowl/passerine species, as well as buffer from developed area. Fruit-bearing shrubs greatly increases wildlife food value.
Wet meadow (21.73 ac)	Removal of *Phragmites* on 22 ac and excavation to achieve seasonally saturated hydrologic regime with some ponded areas. Seeding with a mixture of wet meadow grasses and forbs. Alternatively, establishment of 33 ac of high salt marsh	Creation of habitat valuable to raptors and species such as woodcock and pheasant; possible provision of nesting habitat for certain species of waterfowl. Direct replacement of habitat type lost.

The rationale for the types of enhancements suggested for the 44-acre tract is essentially the same as for the proposal for the 13.5-acre tract. The one component which is different is the proposal to mitigate for the loss of approximately 15.7 acres of homogeneous *Phragmites* fields and for the loss of 0.37 acres of wooded habitat by providing approximately three acres of a shrub/woody vegetation layer on the 16.5 acre Ridgefield tract. The Ridgefield tract is essentially a monoculture of *Phragmites*; however, it contains abundant marsh/open water tidally influenced complexes. As previously mentioned, this type of *Phragmites*/open water mosaic provides feeding and resting areas to waterfowl on a year round basis, but is especially valuable to overwintering waterfowl because it provides them not only with feeding and resting areas but also with shelter from severe weather, thus lowering their expenditure of calories. Consequently, its existing wildlife value is good in context of the Meadowlands as a landscape. However, it does not provide any nesting opportunities for birds requiring trees and shrubs. Neither does it contain any substantial source of fruits or seeds which are used as preferred foods by wildlife such as pheasant, woodcock, etc., which were believed to have been on the 44-acre tract prior to filling. Both the nesting and food values to wildlife are largely lacking in the immediate vicinity of the Ridgefield tract. By providing the woody vegetation layer, at an acreage ten times that which was lost on the 44-acre tract, this value is not only replaced for the woody vegetation that was lost, but also enhances the entire 16.5-acres and provides wildlife value that has never been on that parcel. When considered in conjunction with the valuable open water mosaic present on that site, we believe that the enhancement will increase the value of the Ridgefield site sufficiently to compensate for the loss of the 15.7 acre homogeneous *Phragmites* field and .37 acres of wooded wetlands.

Most of the wetlands on the 13.5-acre tract have already been filled and converted to upland; the entire tract has been disturbed from its original condition. If the prohibition on fill is amended to allow the proposed settlement to proceed, it is likely that Russo would be permitted to complete his activity on site. The calculation of mitigation includes considerations based on the complete loss of the tract's wetlands value.

Proposed Action and Consistency With the New Jersey Coastal Zone Management Plan (CZMP)

In its May 17, 1991 opinion, the court in *Russo Development Corp v. Reilly*, No. 87–3916, held that EPA was arbitrary and capricious for failing to articulate its reasons for deviating from the New Jersey Coastal Zone Management Plan (CZMP) in the Agency's 404(c) determination. The

Agency's decision was remanded to EPA in part on this ground.

Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) prohibits a Federal permit from being issued for an activity affecting any land or water use or natural resource of the coastal zone of that state until the applicant furnishes a certification that the activity is consistent with an approved CZMP, and the State concurs in the certification or waives review. This portion of the CZMA is implemented in the Corps regulations by 33 CFR 325.2(b)(2). Because the Corps' regulations adequately address the CZM consistency requirement, EPA did not duplicate § 325.2(b)(2) in the 404(b)(1) Guidelines.

The Hackensack Meadowlands District Master Plan is the Coastal Zone Management Plan for the Meadowlands District, and the current plan zones the 13.5 acre parcel for development. Because EPA's 404(c) determination, if it is finalized as proposed today, would no longer preclude the Corps from authorizing fill activity on the 13.5 acre parcel, such an action would appear to be consistent with the Master Plan. Of course, under section 307(c)(3)(A) of the CZMA and 33 CFR 325.2(b)(2), it is the State that ultimately would have the authority to determine consistency of a new permit proposal with the applicable plan.

Conclusions

The Final Determination by the AA for Water contemplated a reconsideration of the prohibition upon a showing that adequate mitigation could be provided to offset unacceptable impacts to wildlife. Russo has proposed the following mitigation to compensate for impacts of the fill activity: (1) Deed over an approximately 16 acre parcel of wetlands in Ridgefield, N.J. for preservation, and (2) provide $700,000 for the purpose of enhancing wetlands at this site and on sites to be contained in the Hackensack Meadowlands District mitigation bank. Since there will be Federal oversight of the type of enhancements performed, as well as the design, construction, and implementation of the mitigation activities, and since the funding provided for mitigation would be applied to enhancement alone [5], the mitigation activities would be applied to sufficient acreage, and would be of appropriate kind and quality, to provide adequate compensation for losses of wetlands values which resulted/are resulting from the unauthorized fill.

Unlike the proposal in the original permit, all of the compensation proposed will involve an increase in value and will be located within the lower Hackensack River basin (the location of the impact). Furthermore, the proposed combinations of mitigation activities will ensure that a mosaic of different habitats, which was an important factor contributing to the wildlife value of the Russo tracts, will be restored elsewhere within the relevant area of the impact. Finally, the above proposals will provide adequate acreage of the different wetland types to compensate for the extent of wildlife values lost on the Russo tracts. Therefore, under the terms of the settlement, there would be no significant loss of wetland values which would not be offset by appropriate and adequate mitigation. There would, we believe, no longer be unacceptable adverse effects to wildlife from this activity. The prohibition on specifying the Russo tracts as disposal sites for fill would no longer be necessary to prevent unacceptable adverse effects to wildlife and the aquatic ecosystem. EPA therefore proposes that, conditional upon a binding agreement by Russo to provide the funds and land preservation discussed above, the Section 404(c) prohibition on specification of the 13.5-acre site for fill material be removed, and a restriction be imposed that would allow specification of these areas as disposal sites provided Russo implements the mitigation plan discussed above.

Dated: March 21, 1995.

Robert Perciasepe,

Assistant Administrator for Water.

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[5] Costs for enhancement vary widely, but private contractors generally range from $10,000–$20,000/acre in this area to implement mitigation, based on an informal EPA Region II survey of costs. In this case, monitoring will be overseen by agency personnel, which reduces the cost. Because the mitigation activities will occur over a large number of acres, there is an economy of scale involved in design and construction, since mobilization/demobilization and design costs will be distributed over many participants. Finally, since there would be a large pool of wetlands acreage available for enhancement, wetlands to be enhanced using Russo's funds can be strategically chosen so that the value increase of Russo's portion of the mitigation may be maximized.

[FRL–5179–8]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300g–2, and 40 CFR part 142, Subpart B-Primary Enforcement Responsibility, that the State of South Dakota has revised its Public Water System Supervision (PWSS) Primacy Program. South Dakota's PWSS program, administered by the Office of Drinking Water of the Department of Environment and Natural Resources, has adopted regulations for total coliforms, surface water treatment, Phase II (7 inorganic and 26 organic chemicals), Phase IIb (1 inorganic and 4 organic chemicals), and Phase V (5 inorganic and 18 organic chemicals) that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141 for total coliforms (**Federal Register** Vol. 54, No. 124, June 29, 1989, Pg. 27544–27568), surface water treatment (**Federal Register** Vol. 54, No. 124, June 29, 1989, Pg. 27486–27541), Phase II (**Federal Register** Vol. 56, No. 20, January 30, 1991, Pg. 3526–3597), Phase IIb (**Federal Register** Vol. 56, No. 126, July 1, 1991, Pg. 30266–30281), and Phase V (**Federal Register** Vol. 57, No. 138, July 17, 1992, Pg. 31776–31849). The Environmental Protection Agency (EPA) has completed its review of South Dakota's primacy revisions and has determined that they are no less stringent than the NPDWRs. EPA therefore approves South Dakota's primacy revisions for Total Coliforms, Surface Water Treatment, Phase II, IIb, and V Rules. This determination shall become effective April 27, 1995.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before April 27, 1995. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: William P. Yellowtail, Regional Administrator, c/o David Schmidt (8WM–DW), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief