



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 28 2003

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. James R. Walpole  
General Counsel  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
Washington, D.C. 20230

Dear Mr. Walpole:

Thank you for your letter of August 14, 2003 to Acting Administrator Marianne Horinko, requesting the Environmental Protection Agency's (EPA's) comments on the administrative appeal that the Islander East Pipeline Company (Islander East) brought before the Secretary of Commerce pursuant to the Coastal Zone Management Act (CZMA). The appeal requests the Secretary to override the State of Connecticut's objection to Islander East's proposed natural gas pipeline that would extend from an interconnection with an existing pipeline near North Haven, Connecticut, to a terminus on Long Island, New York. I have enclosed the following three EPA comment letters from EPA's New England Regional Office on the proposed project that were previously submitted under the National Environmental Policy Act (NEPA) and Clean Water Act (CWA) section 404 permitting requirements:

September 5, 2003 comment letter to the New England Division of the Army Corps of Engineers regarding Islander East's modified CWA § 404 permit application;

September 30, 2002 comment letter to the Federal Energy Regulatory Commission (FERC) on the final Environmental Impact Statement (EIS); and

May 21, 2002 comment letter to FERC on the draft EIS and the CWA § 404 permit application package.

We believe that the enclosed letters may be relevant to the Secretary's decision, particularly with respect to the coastal effects of this project and the determination of whether there are reasonable alternatives available that would permit the proposed activity to be conducted consistent with Connecticut's coastal zone management policies.

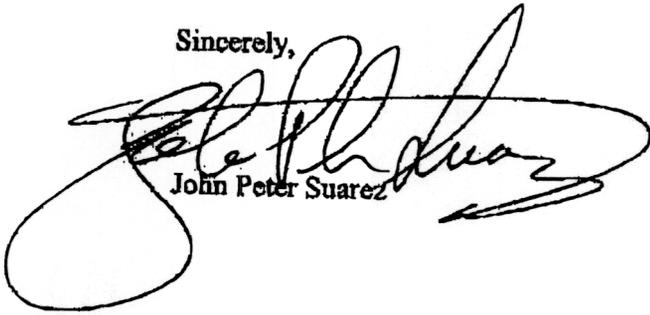
Under the CWA § 404 permitting program, no discharge of dredged or fill material may be authorized if a practicable alternative exists that is less damaging to the aquatic environment. As explained more fully in the enclosed letters, Islander East has not demonstrated that its

modified preferred alternative represents the "least environmentally damaging practicable alternative" for CWA § 404 purposes. Further, Islander East must improve its alternatives analysis, and a variety of alternative routes should be evaluated before a final "least environmentally damaging practicable alternative" determination can be made. Specifically, the applicant should provide a detailed evaluation of alternatives that follow less environmentally sensitive routes, such as alignments adjacent to existing gas, electric, or telecommunication lines, or in other previously disturbed areas; along dredged or maintained channels; that avoid concentrated shellfish habitat, harvesting areas, or other important near-coastal resources; through areas of low benthic biodiversity; and that traverse areas of relatively low water quality. Moreover, even considering currently available information, practicable alternatives to the Islander East proposal exist (e.g., the Eastern Long Island Extension) that would less adversely impact the aquatic environment.

The alternatives test under Section 404 of the CWA closely, although not identically, resembles the alternatives determination that the Secretary must make in determining whether to override a state's consistency objection. In this case, Islander East has not completed an acceptable alternatives analysis pursuant to CWA § 404. We recommend that your final decision reinforce that Islander East prepare a thorough and complete alternatives analysis, consistent with previous comments that EPA submitted.

Thank you again for the opportunity to comment. If you have any questions on the enclosed letters, please feel free to contact me or Carl Dierker, Regional Counsel for EPA's New England Regional Office at (617) 918-1091.

Sincerely,



John Peter Suarez

Enclosures