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Use/Production. (G) Dispersively used coating. Prod. range: 80,000–100,000 kg/yr.

P 89–64

Manufacturer. Confidential.
Chemical. (G) Styrenated functionalized methacrylic polymer.
User/Production. (S) Vehicle in automotive refinished topcoat. Prod. range: 215,000–259,000 kg/yr.

P 89–65

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–66

Importer. Confidential.
Chemical. (G) Ethanaminum.
Use/Import. (G) Ambient suspended particle collector/conditioner. Import range: Confidential.

P 89–67

Importer. Confidential.
Chemical. (G) Styrnen acryl copolymer.
Use/Import. (G) Binder resin of toner. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species(Rat).

P 89–68

Manufacturer. Confidential.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Coatings. Prod. range: Confidential.

Date: November 8, 1988.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

FR Doc. 88–26726 Filed 11–17–88; 8:45 am]

BILING CODE 6560-50-M

[FRL 3478–4]

Proposed Determination to Prohibit, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: Ware Creek, James City County, VA

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: EPA Region III is proposing to take action under section 404(c) of the Clean Water Act (CWA) to prohibit, deny, or restrict specification or use of certain Ware Creek waters in the area of James City County, Virginia, as a disposal site for dredged or fill materials in connection with construction of an impoundment for County Water Supply. The waters of the United States which are subject to the proposed section 404(c) action include those which would be affected by a dam proposed to be constructed across Ware Creek approximately 1,000 feet downstream from the confluence of Ware Creek and France Swamp. This section 404(c) action is being proposed because EPA Region III has reason to believe that filling and inundating the above-described waters of the United States, including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas. Furthermore, the EPA has reason to believe that alternatives are available to James City County which will meet projected water supply needs at less environmental cost and which are economically feasible. In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has determined that a public hearing on this proposed section 404(c) action would be in the public interest.

Purpose of Public Notice: The Regional Administrator of EPA Region III is giving notice of this proposed section 404(c) action and of a public hearing to consider the action. EPA Region III is soliciting information, comments and observations on any and all aspects of this issue and particularly on whether filling and/or inundating the above-described Ware Creek waters, including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas. Data or observations of particular concern to this proposed section 404(c) action include the vegetative, hydrologic and other ecological characteristics of the project area including the proposed lake impact area and balance of the Ware Creek watershed and observations of, or information concerning, fish and wildlife (including but not limited to endangered, or threatened species) utilizing the project area and recreational use (including hunting and fishing) of the project area.

Public Comment: Notice of the location and date for the public hearing for this proposed section 404(c) action will be published in the **Federal Register** within 21 days of the date of this notice. Comments may be submitted prior to the hearing or presented orally and/or in writing at the hearing. The hearing record will remain open until close of business 15 days following the public hearing. Written comments will be accepted until that time. Comments submitted prior to, or after the hearing, or requests for copies of the proposed determination should be submitted to EPA Region III's designated Record Clerk, Ms. Clara Haraburda, Environmental Assessment Branch (3ES40), U.S. EPA, 841 Chestnut Bldg., Philadelphia, PA, 19107. All comments will be fully considered in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to prohibit, deny or restrict the specification or use of all or portions of Ware Creek and its tributaries as a disposal site for construction of the Ware Creek reservoir. The Regional Administrator will either withdraw the proposed determination or forward a final Regional recommendation and the administrative record to the EPA Assistant Administrator for Water in Washington, DC, for review and a final determination. The procedures to be used in making the final determination are specified at 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection during normal working hours (8:00 a.m. to 5:00 p.m.) at the EPA Region III office.

SUPPLEMENTARY INFORMATION

Background

A. Section 404(c) Procedure and Criteria

Section 301(a) of the CWA, 33 U.S.C. 1311(a), prohibits the discharge of pollutants, including dredged and fill material, into waters of the United States (including wetlands) except as in compliance with, among other things, section 404 of the CWA, 33 U.S.C. 1344. Section 404 of the CWA authorizes the Secretary of the Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary under section 404(b) of the CWA, 33 U.S.C. 1344(b), or where warranted by economics of anchorage and navigation, except as provided by section 404(c) of the CWA, 33 U.S.C. 1344(c). Section 404(c) of the CWA states that the Administrator of the U.S. EPA is authorized to prohibit the specification of any defined area as a disposal site and he is authorized to deny or restrict the use of any defined area for specification as a disposal site, whenever he determines, after notice and opportunity for public hearing, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. The procedures for implementation of section 404(c) are set forth in the Code of Federal Regulations, 40 CFR Part 231. Under those procedures, if the Regional Administrator has reason to believe that use of a site for the discharge of dredged

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or fill material may have an unacceptable adverse effect on applicable resources, he may begin the section 404(c) process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination. Unless within 15 days the applicant or the Corps has demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects will occur, or that corrective action to prevent an unacceptable adverse effect satisfactory to the Regional Administrator will be taken, the Regional Administrator publishes a notice in the Federal Register of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. A decision to withdraw may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters. If the Regional Administrator prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA Headquarters for a final decision affirming, modifying, or rescinding the recommended determination. In accordance with the regulations at 40 CFR 231.6, the U.S. Army Corps of Engineers and the applicant are provided with another opportunity for consultation before the final determination is made.

With this notice, the Regional Administrator is issuing a proposed determination that specification of the site should be prohibited, withdrawn or restricted for use as a disposal site because of unacceptable adverse environmental effects. Specifically, this notice is the Regional Administrator's proposed determination covering the discharge of dredged or fill material into waters of the United States, (including wetlands), to wit, Ware Creek, by James City County, Virginia. This proposed determination does not represent a judgement that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that, after evaluating the information available to him, an unacceptable adverse effect could result from the specification or use for specification of the area for disposal of dredged or fill material.

B. Nature of Proposed Discharge

James City County proposes to discharge dredged and/or fill material into Ware Creek and its adjacent wetlands in order to construct an earthen dam to impound water for a water supply reservoir. The dam will measure 1,450 feet in length with a crest elevation of +48 feet mean sea level (msl). The reservoir is designed for a normal pool elevation of +35 feet msl, with an average depth of 16 feet. It will store 6,355 million gallons of water and provide a safe yield of 9.4 million gallons per day (mgd). For construction of the 1,217 acre lake, 1,325 acres of land will be inundated and/or cleared.

C. Characteristics of the Site

The Ware Creek watershed is approximately 14,600 acres in size and contains a mix of land uses and habitat types. The primary upland habitat types are hardwood forest (5,808 acres), mixed pine-hardwood forest (3,914 acres) and mixed agricultural residential (3,706 acres). Dominant upland hardwood trees include various species of oaks (*Quercus* spp.), hickories (*Carya* spp.), American beech (*Fagus grandifolia*), black gum (*Nyssa sylvatica*), red maple (*Acer rubrum*), sweetgum (*Liquidambar styraciflua*) and tulip poplar (*Liriodendron tulipifera*). The understory and shrub layers are characterized by sassafrass (*Sassafrass albidum*), flowering dogwood (*Cornus florida*) serviceberry (*Amelanchier* sp.), blueberry (*Vaccinium* spp.), huckleberry (*Gaylussacia* spp.) and mountain laurel (*Kalmia latifolia*). Conifer trees distributed throughout the predominantly hardwood and mixed pine-hardwood forests include loblolly pine (*Pinus taeda*), shortleaf pine (*P. echinata*) and Virginia pine (*P. virginiana*).

There are approximately 986 acres of vegetated wetlands and 184 acres of open water habitat within the Ware Creek watershed. The mixture of habitat types results in a complex mosaic of interspersed wetland communities and adjacent uplands. A total of 44 wetland community types have been identified. At the juncture of Ware Creek and the York River the wetlands are estuarine, intertidal and comprise a mixture of smooth cordgrass (*Spartina alterniflora*), big cordgrass (*S. cynosuroides*) and black needlerush (*Juncus roemerianus*). As one proceeds upstream, the influence of the tides diminishes and the salinities decrease. In this vicinity the marshes are dominated by mixtures of wild rice (*Zizania aquatica*), cattails (*Typha* spp.), arrowarum (*Peltandra virginica*), pickerel weed (*Pontederia cordata*), bulrushes (*Scirpus* spp.) and rushes (*Juncus* spp.).

Beaver (*Castor canadensis*) have had a profound impact within the non-tidal freshwater portions of Ware Creek and its tributaries. The result has been a complex mixture of forested, scrub/shrub and herbaceous wetlands dominated by sycamore (*Platanus americana*), green ash (*Fraxinus pennsylvania*), sweet gum, red maple, black gum, holly, river birch (*Betula nigra*), willow (*Salix* spp.), blueberry, alder, buttonbush (*Cephalanthus occidentalis*), viburnums (*Viburnum* spp.), spicebush (*Lindera benzoin*), ferns (*Osmunda* spp.; *Woodwardia* spp.; *Onoclea sensibilis*), rice cutgrass (*Leersia oryzoides*), wild rice, bulrushes, rushes, sedges (*Carex* spp.), cattails, burreeds (*Sparganium* spp.) and smartweeds (*Polygonum* spp.)

In addition to beaver, the wetlands are utilized by a variety of migrating and resident songbirds, migratory waterfowl, game birds (e.g. woodcock—*Philohela* minor), wading birds and (probably) river otter (*Lutra canadensis*). Of particular note is the location of an 81-nest great blue heron rookery (*Ardea herodias*—a species of special concern) within the Ware Creek wetlands, and the sighting of bald eagles (*Haliaeetus leucocephalus*—an endangerd species) in and around the Ware Creek basin.

The adjacent uplands provide adequate food and shelter to support game species such as white-tailed deer (*Odocoileus virginiana*), grey squirrel (*Sciurus carolinensis*) and turkey (*Meleagris gallopavo*) as well as a variety of non-game vertebrates.

Game fish found in the aquatic portions of the watershed include largemouth bass (*Micropteris salmoides*) and sunfish (*Lepomis* spp.) in freshwater areas and white perch (*Roccus americana*) in estuarine reaches. Although Ware Creek is not used by anadromous fish species to any great extent, the organic material which is produced, processed and exported from Ware Creek wetlands creates a direct ecosystem linkage to the downstream wetlands, the York River system and the Chesapeake Bay.

D. Proceedings to Date

During the first half of 1981 a series of meetings were held between representatives of James City County, their consultants and relevant Federal and State agencies to evaluate proposals to impound Ware Creek for a water supply reservoir. Since the proposed plan would have significant environmental impacts and because a

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CWA Section 404 permit issued for the project would institute a major Federal action, all of the Federal agencies involved concluded that an Environmental Impact Statement (EIS) would be required in accordance with the National Environmental Policy Act (NEPA; 40 CFR Part 1500).

After considerable consultation, field evaluation and study, a Draft Environmental Impact Statement (DEIS) was written and released by the Norfolk District, Corps of Engineers in July 1985. The EPA reviewed the document and rated it EU-3 (Environmentally Unsatisfactory, Inadequate Information). The primary basis for the rating of the DEIS was that EPA believes the adverse environmental impacts associated with the proposed project are severe and had not been adequately minimized, and that the full range of feasible water supply alternatives had not been adequately investigated or fully discussed in the document. In view of the inadequacies of the document, EPA concluded by recommending that a supplement to the DEIS be prepared to address the outstanding issue.

The Corps of Engineers determined that preparation of a supplemental DEIS was not necessary. In proceeding with final EIS (FEIS) preparation, the Corps enlisted three Federal Agencies (EPA, Fish and Wildlife Service, National Marine Fisheries Service) to serve as cooperating agencies to address questions which were raised during the DEIS review.

Considerable effort was subsequently expended to inventory and classify the biological communities of the basin, to evaluate the current habitat value and potential impacts through the Habitat Evaluation Procedures (HEP), and to investigate mitigative measures and alternatives to the proposed plan.

In September, 1987 the Corps of Engineers issued the FEIS. The recommended alternative remained essentially the same although measures to mitigate the environmental impacts were expanded. The environmental conditions and impacts were described in more detail and several alternatives were discussed more fully. On November 23, 1987, in formal comments on the FEIS, EPA found that the FEIS preferred alternative, construction of the Ware Creek impoundment, was environmentally unsatisfactory, mitigative matters were inadequate and alternatives had not been adequately addressed. Those comments also stated that EPA was considerating the CWA section 404(c) option. EPA recommended to the Corps that the Ware Creek permit be denied and that all concerned Federal, State and local parties work together toward a viable, environmentally satisfactory comprehensive water-supply solution.

On July 11, 1988 the Corps of Engineers issued a notice of intent to issue the permit for the proposed Ware Creek reservoir. In response to that notice, EPA informed the District Engineer on August 5, 1988 that it was initiating a section 404(c) action. During the following 15 day period, no information was received which demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects would occur and the District Engineer did not notify the Regional Administrator of his intent to take corrective action to prevent an unacceptable adverse effect. EPA proceeded to prepare the public notice which is published herewith.

Before and after EPA's initiation of this section 404(c) action, efforts have been made by the project proponent to minimize the environmental impacts of the Ware Creek impoundment. Informal proposals included acquisition and/or enhancement of off-site wetlands. Formal proposals include construction of wetlands in tributary branches of Ware Creek by the use of check dams. The primary mitigation effort is a proposal to breach a dam on Yarmouth Creek to reestablish connections between upstream wetlands and the Chickahominy River. This will result in the conversion of lacustrine to palustrine habitat and create the potential for the reestablishment of an anadromous fishery in Yarmouth Creek.

Mitigation measures have fallen short in EPA's view for two reasons. First, the environmental resource values of the Ware Creek site are very high and practicably irreplaceable. Second, the use of mitigation to obtain approval for avoidable destruction of viable habitat is inappropriate.

E. Other Proceedings to Date: Regional Water Supply

In addition to the investigation of solutions to the water supply needs of James City County, other studies were conducted concerning water supply issues throughout southeastern Virginia. In December 1984 the Norfolk District, Corps of Engineers issued a feasibility report and FEIS for a Water Supply Study for Hampton Roads, Virginia. With regard to the long-term needs for the northside of Hampton Roads (including James City County) the Corps determined that a withdrawal of water from the James River above Richmond was the preferred alternative. Other alternatives involving Ware Creek were considered secondary alternatives, but rejected based upon severe adverse environmental consequences.

In addition, water supply impoundments were proposed during the 1980's for Beaverdam Swamp (Gloucester Co.), Crump Creek (Hanover Co.) and Crump's Millpond (City of Suffolk) and there were indications that other, local alternatives would likely be proposed in the future. In an effort to forestall a profusion of locally-oriented water supply solutions that would lead to unacceptable environmental impact to local watersheds and ultimately the Chesapeake Bay, EPA proceeded to investigate alternative sources of supply (e.g. reverse osmosis of brackish groundwater) and attempted to encourage regional plans which would maximize efficiency. In the case of Beaverdam Swamp, an EPA-funded study demonstrated that reverse-osmosis of groundwater was feasible. With regard to the City of Suffolk, the study provided sufficient incentive for the City to conduct their own successful pilot study for a desalination process. The City of Suffolk is proceeding with a full-scale non-conventional water treatment plant.

Other ongoing studies concerned investigations into the availability of groundwater for either conventional or nonconventional treatment. The net result of these studies is that alternatives were identified which are available to James City County and which would meet projected water supply demands without a Ware Creek reservoir. Several options (e.g. groundwater treated in several ways, a smaller but environmentally damaging 3-dam configuration) were available for unilateral County action. In addition, the need for a regional approach to solve long-term, large-scale water supply issues was demonstrated at a water supply symposium which was held on June 20, 1988, in Gloucester Point, Virginia. The symposium was jointly sponsored by the EPA, the Commonwealth of Virginia and the Corps of Engineers. EPA is of the opinion that sufficient alternatives are available to obviate the need for the environmentally unacceptable Ware Creek reservoir.

F. Basis for Proposed Determination

1. Section 404(c) Criteria. The CWA requires that exercise of the final section 404(c) authority be based on a determination of unacceptable adverse effect on municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. The regulations define "unacceptable adverse effect" in 40 CFR 231.2(e) as:

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Impact on an aquatic or wetland ecosystem which is likely to result in significant degradaion of municipal water supplies or significant loss or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR Part 230).

The preamble to 40 CFR Part 231 (44 FR 58078, 10/9/79) explains that one of the basic functions of section 404(c) is to oversee the application of the section 404(b)(1) Guidelines. Those portions of the Guidelines relating to the availability of less environmentally damaging practicable alternatives [40 CFR 230.10(a)], significant degradation of waters of the United States [40 CFR 230.10(c)] minimizing adverse impacts to aquatic resources [40 CFR 230.10(d)] and to the determination of cumulative effects on the aquatic ecosystem [40 CFR 230.11(g)], are of particular importance in the evaluation of the unacceptability of environmental impacts in this case.

In summary, the Regional Administrator believes that there are less environmentally damaging alternatives to the Ware Creek Reservoir, that the Ware Creek reservoir will result in significant degradation of waters of the United States, that the proposed mitigation plan is appropriate and nevertheless does not compensate for the adverse environmental impacts associated with the project and that insufficient consideration was given to potential cumulative impacts during the regulatory permit process.

2. Adverse Impacts of Permit Issuance. The proposed project will result in the destruction of 425 acres of wetlands. The balance of the habitat destruction will be in forested uplands. The proposed Ware Creek impoundment will destroy a diverse wetland-upland complex which has high fish and wildlife value and replace that with primarily an open water lacustrine habitat. In addition to the destruction caused by inundation, the processes which link much of the entire existing Ware Creek wetland system (currently 1,170 acres of wetlands and open water) will be disconnected, further reducing the existing productivity and habitat value.

As a result of project implementation, a viable heron rookery would be destroyed with the probability for an adequate replacement site currently uncertain. Information available concerning proposed project impacts indicates that the impoundment would significantly alter present fish and wildlife habitat and would result in unacceptable adverse effects to fishery areas and wildlife.

Given the state of the Chesapeake Bay and future conditions, the cumulative adverse impacts associated with this project will contribute negatively to the Bay ecology. Long term water withdrawal trends have already been identified by the Baltimore District, Corps of Engineers as a significant threat to the ecology of the Chesapeake Bay. Moreover, permit issuance would continue a process which has resulted in a loss of 63,300 acres of wetlands in Virginia from 1956–1977 (18% due to lake construction). Furthermore, during that time period, the southeastern section of Virginia (including Ware Creek) has experienced a 14% loss of inland vegetated wetlands, fully 80% of the total loss of Virginia's inland wetlands.

G. Unresolved EPA Concerns

To date, EPA has been involved in the NEPA and CWA section 404 processes for the Ware Creek project as a reviewer and cooperating agency. Agency representatives have attended numerous meetings, reviewed many relevant reports, sponsored studies to investigative alternatives, and jointly chaired a symposium to evaluate the long-term water needs of the region. A thorough review of these data has shown that viable water supply alternatives exist which would avoid the proposed impounding of Ware Creek and the destruction of the ecosystem as it is currently functioning. The project as currently proposed will cause significant degradation to wetlands.

1. Groundwater alternatives—the FEIS acknowledges that approximately 9.8 mgd of groundwater is available to the County which does not require extraordinary treatment. In addition, reverse-osmosis treatment and comparable technologies have been shown to be feasible in the EPA-sponsored study and Suffolk pilot demonstration. The U.S. Geological Survey indicates that sufficient groundwater availability is probable if well spacing and other variables are factored into the project design.

2. Regional Alternatives—the Corps' 1984 study of regional water needs identified one primary and two secondary alternatives to meet project water supply shortfalls for Northside Hampton Roads. Some of the data to verify these recommendations are lacking. In addition, pursuit of these alternatives will require substantially more participation on the part of the State of Virginia and cooperation among local jurisdictions. The current state of events is leading to conventional solutions to meet the needs of single governmental units, or at the most, small groups, of governmental bodies.

3. Significant Degradation—the project will inundate 425 acres of wetlands and adjacent aquatic habitat and will disrupt ecosystem processes which connect the existing basin communities. A heron rookery will be destroyed and a major segment of wetlands within the Ware Creek watershed itself will be disrupted or isolated. Under the best of mitigation scenerios much of the Ware Creek system will be destroyed and mitigation, much of it off-site, will still result in over a 30% loss of the average wetland-based habitat values. Given the continued loss of wetland habitat in Virginia (a significant proportion of which has been lost to lake inundation) and the value of the existing Ware Creek system, such losses are significant and unacceptable.

4. Mitigation—Substantive commitments and proposals have been made to address creation or alteration of existing wetlands to compensate for the lost functions of Ware Creek wetlands. In addition, the applicant has offered proposals to purchase easements as a means of "protecting" existing wetlands. EPA believes that such actions are inappropriate because they do not address the least environmentally damaging alternative and inadequate because they do not replace the wetland functions that will be lost with construction of the project as proposed.

For Further Information Contact: Ms. Barbara D'Angelo, Environmental Assessment Branch (3ES40), U.S. Environmental Protection Agency, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9301.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 88–26727 Filed 11–17–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing collection in use without an OMB control number.

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