

Thank you for contacting U.S. Environmental Protection Agency Region 2 (EPA) regarding the potential environmental impacts of the proposed semiconductor manufacturing plant in the Town of Clay, NY. EPA's primary concern is protecting human health and the environment. We have looked into the concerns you raised and I'd like to share with you the following information.

### *State Environmental Quality Review*

You provided a New York State Environmental Quality Review (SEQR) Environmental Impact Statement prepared for the project. The SEQR process is a tool for gathering information and evaluating potential environmental impacts of a proposed development project. However, it is not a permitting tool and does not authorize an action or alternative. All local, state, and federal permitting requirements still apply. While these various regulatory programs work to limit negative environmental impacts of proposed projects, the federal government does not have a role in making decisions regarding local land use and privately owned property. Project siting and allowable land uses are determined by local and state zoning and planning.

### *Wetlands and Streams*

Wetlands are critically important features in the landscape that provide numerous beneficial services for people and for fish and wildlife. Some of these services, or functions, include protecting and improving water quality, providing fish and wildlife habitats, storing floodwaters, and maintaining surface water flow during dry periods. Identification of a project site and completion of the SEQR process does not relieve the project proponent of complying with Clean Water Act (CWA) Section 404 which regulates the discharge of dredged or fill material into federally regulated wetlands.

Any dredge or fill impacts to wetlands and streams meeting the definition of waters of the U.S. require Department of Army authorization under CWA Section 404. To receive authorization, a permit applicant must demonstrate compliance with the CWA 404(b)(1) Guidelines (Guidelines), including identification of the least environmentally damaging practicable alternative. This means the U.S. Army Corps of Engineers (Corps) conducts a thorough review of permit application materials to ensure that projects are designed in such a way that any resources that do exist on a given site are avoided to the maximum extent practicable. EPA also reviews proposed Corps permits for compliance with the Guidelines and has veto authority for potential permit actions that include unacceptable adverse impact on one or more of various resources, including fisheries, wildlife, municipal water supplies, or recreational areas. Similar rules are in place at the state level and require a separate New York State Department of Environmental Conservation (NYSDEC) permit for impacts to state regulated wetlands under New York's Article 24, Freshwater Wetlands Act.

For more information on federal wetlands regulation, please visit <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404>.

## *Surface Water Quality*

The State's Water Quality Standards (WQS) form the foundation of the water quality-based approach to pollution control. WQS establish the water quality goals and define the level of protection for state and tribal waters. Once WQS are established, they form the basis for implementing other CWA programs, putting into place necessary pollution controls, and measuring progress toward achieving CWA goals. Once states and authorized tribes have established appropriate WQS, they implement source control actions to manage pollutant loadings.

Generally, states, tribes, and the EPA regulate point sources through the National Pollution Discharge Elimination System (NPDES) permitting program for discharges of both industrial wastewater and storm water to surface waters. A NPDES permit requires that treatment and controls prior to discharge to waters of the United States. A NPDES permit provides two types of control, technology-based effluent limits based on the pollutant reductions in effluents that can be achieved through application of specified levels of technology controls or Water Quality Based Effluent Limits (WQBELs) established to meet the WQS that protect the quality of the specific waterbody receiving the discharge. WQBELs establish the level of effluent quality necessary to protect water quality in the receiving waterbody to ensure attainment of WQS. Furthermore, federal regulation at 40 CFR 131.10(b) requires that states and authorized tribes to consider and ensure the attainment and maintenance of downstream WQS during the establishment of designated uses and water quality criteria in upstream waters.

In the case of New York State, the NYSDEC is the applicable authority that establishes State WQS. Consistent with the Federal requirements, the NYSDEC WQS consist of: the classification of waters for their best uses (source of drinking water, shellfishing, swimming, boating, fishing); standards or guidance values, which are established to protect the best uses; and, an antidegradation policy. NYSDEC has also been delegated authority to implement EPA's NPDES permitting program, known as the State Pollution Discharge Elimination System program (SPDES) in New York State. The proposed project would likely require a SPDES permit for any discharges of treated sanitary or industrial process generated wastewater. It would probably also require coverage under a general permit for storm water runoff during construction. This general permit includes a requirement for implementation of a storm water pollution prevention plan (SWPPP) to prevent pollution of storm water runoff by minimizing erosion and contact between rainwater and pollutants.

For more information on how the SPDES program can maintain water quality associated with stormwater and other point source discharges, please contact NYSDEC staff:

Kenneth Kosinski, Bureau Chief  
Bureau of Water, Division of Water  
NYSDEC  
[\(518\) 402-8110](tel:5184028110)

[kenneth.kosinski@dec.ny.gov](mailto:kenneth.kosinski@dec.ny.gov)

### *Groundwater and Aquifers*

The New York State Department of Health is the primary agency responsible for carrying out both Safe Drinking Water Act requirements and state-specific drinking water protection requirements. EPA's role in protecting aquifers comes into play when a Sole Source Aquifer (SSA) has been designated by EPA. SSAs are designated when an aquifer supplies at least 50 percent of the drinking water for its service and there are no reasonably available alternative drinking water sources should the aquifer become contaminated. A map of designated SSAs is available [here](https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=9ebb047ba3ec41ada1877155fe31356b) [<https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=9ebb047ba3ec41ada1877155fe31356b>]. EPA reviews projects that overlay SSAs when federal funding is involved. The Clay, NY area does not overlay an SSA, so the EPA does not have a role in reviewing projects that might impact nearby aquifers.

As mentioned above, EPA's NPDES permitting program governs discharges of pollutants to surface water, including from construction projects. However, the federal NPDES program does not regulate discharges to groundwater. In New York, the SPDES program is broader in scope than that required by the federal CWA because it controls point source discharges to groundwater as well as surface water. If constructed, the project you describe in your message will very likely need at least one SPDES permit, which will be written to protect the quality of impacted groundwater and/or surface water.

### *Threatened and Endangered Species*

Under section 7 of the Endangered Species Act, federal agencies are required to consult with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) to ensure they are not undertaking, funding, permitting or authorizing actions that are likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. USFWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of the NMFS are mainly marine wildlife such as whales and anadromous fish such as salmon. This coordination process ensures that proposed projects do not adversely affect listed species or designated critical habitat of the species, including the following species in the Clay area: Indiana Bat (*Myotis sodalis*); Northern Long-eared Bat (*Myotis septentrionalis*); Eastern Massasauga Rattlesnake (*Sistrurus catenatus*); Chittenango Ovate Amber Snail (*Succinea chittenangoensis*); and the American Hart's-tongue Fern (*Asplenium scolopendrium* var. *americanum*).

Specific to your other species concerns, Bald Eagles and Golden Eagles are also protected under the Bald and Golden Eagle Protection Act which prohibits the take (including killing, capturing, selling, trading, and transport) of bird parts, nests, and/or eggs without prior authorization by USFWS. Other raptors like Red-tailed Hawks and Barn Owls are protected under the Migratory Birds Treaty Act which prohibits the take of

protected migratory bird species without prior authorization by USFWS.

### *Air Quality*

Given the proposed facility's size and potential to emit air pollutants, it would likely need to obtain an air permit from NYSDEC. For more information on the specific permit requirements or other questions on air permitting, you may contact DEC's Regional Permit Administrator, Elizabeth Tracy, at [315-426-7438](tel:315-426-7438) or [dep.r7@dec.ny.gov](mailto:dep.r7@dec.ny.gov).

### *Conclusion*

In summary, the federal government does not have a role in making decisions regarding local land use and privately owned property. However, the federal and state governments do have various environmental laws that must be adhered to to protect valuable environmental resources. The SEQR process does not relieve the project proponent from environmental regulatory requirements. If EPA can be further assistance to you, please contact me by email or phone (in signature below).

Best,  
Marco

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