

EPA REGION 2

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

Micron New York Semiconductor Manufacturing, LLC (Micron) is in the preliminary stages of receiving a funding award (of ~\$6 Billion) from the US Department of Commerce under the Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act for production facilities in New York and Idaho. The proposed Micron Semiconductor Fabrication Facility project in Clay, NY is located at White Pine Commerce Park (a ~1,400 acre site) and consists of construction of: (1) the Micron main campus, which will include four individual memory fabrication units, ancillary support facilities, driveways, and parking; (2) a childcare and health care center; (3) a connection to the National Grid substation, adjacent to the Micron main campus; and (4) a rail spur adjacent to the proposed facility, all over a 20-year period. The basic project purpose is to meet state and national market demand and ensure competitiveness in the worldwide semiconductor market.

EPA Region 2 has been coordinating with the Department of Commerce - National Institute of Standards and Technology (NIST) - CHIPS Program Office regarding the National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) for the project and the U.S. Army Corps of Engineers Buffalo District (USACE) regarding the proposed Clean Water Act (CWA) Section 404 permit. Other involved federal agencies include the Federal Highway Administration (FHWA) and Fish and Wildlife Service (FWS). The New York State (NYS) Department of Environmental Conservation (NYSDEC) is also the primary permitting authority for several permits.

KEY POINTS:

- The project will require a CWA Section 404 permit, Endangered Species Act and National Historic Preservation Act Consultation, NEPA review, and NYS permits (including CWA 401, CWA 402, freshwater wetlands and streams, and Clean Air Act (CAA) New Source Review (NSR) and Title V permits).
- The current CWA 404 draft permit application proposes 204.17 acres of impact to federally jurisdictional freshwater wetlands and 6,716 linear feet of impact to federally jurisdictional streams. Project impacts of this size are unprecedented in both NYS and Region 2. In addition, these numbers may increase as delineations at the child-care facility site and subsequent USACE jurisdictional determinations identify federally jurisdictional wetlands not currently included in the permit application. A revised permit application incorporating these impacts is expected to be submitted to USACE at the end of calendar year 2025.
- NYSDEC is the primary permitting authority for the CAA NSR Preconstruction and Title V Operating Permit; EPA Region 2 has an oversight role in that permitting action. The current project is considered a major stationary source under the CAA; therefore, a comprehensive air quality analysis is required as part of the application for the NSR/Title V permit. The application was received by NYSDEC in April 2024. Region 2 has received copies of that application and the modeling protocol from Micron, which EPA is reviewing in its oversight capacity. EPA's comments on the modeling protocol were shared with NYSDEC in October 2024.
- EPA is a cooperating agency for the project and has been taking part in NEPA interagency meetings since January 2024. The project is on an expedited timeline for completion of the NEPA process, with a NEPA Record of Decision anticipated to be published in late October 2025. USACE (lead agency at the time) published a Notice of Intent to prepare an EIS on March 5, 2024. EPA provided scoping comments on April 4, 2024. The Department of Commerce has since assumed the lead agency role.
- On October 2, 2024, the President signed into law the "Building Chips in America Act of 2023," which exempts certain projects relating to the production of semiconductors from environmental reviews under NEPA. As of 10/18/24, it appears that the Act could exempt the Department of Commerce from conducting an environmental review under NEPA for the Micron project. However, notwithstanding the Building Chips in America Act, USACE must conduct an environmental review under NEPA for the issuance of a §404 permit for the project. Also, the New York State Environmental Quality Review Act requires completion of an EIS as well.

- If the Department of Commerce decides that a Building Chips in America Act exemption applies to the Micron project, USACE will either re-assume lead agency status or work alongside the Department of Commerce as joint lead agencies to complete the EIS.
- In addition to the construction of the main campus there are several off-site improvements proposed to support the site, including water infrastructure, natural gas lines and electrical transmission lines. Transportation upgrades are also planned for the nearby I-81 highway and will be evaluated by the FHWA.

ONGOING/UPCOMING REVIEWS FOR FY2024:

- The USACE public notice for the CWA 404 permit was posted by the Corps on May 30, 2024, and the comment deadline was extended to July 31, 2024. EPA issued detailed comments on July 30, 2024, and issued a follow up letter on August 22, 2024, stating that the project will result in substantial and unacceptable impacts to aquatic resources of national importance as it is not in compliance with the CWA 404(b)(1) Guidelines. In our letters, EPA made several recommendations regarding lack of information on avoidance, minimization, and compensation for impacts to waters of the United States and is currently participating in interagency meetings with Micron and USACE to ensure CWA 404 compliance. EPA will continue to provide feedback as information regarding the project becomes available.
- As of October 18, 2024, EPA has reviewed three administrative draft chapters of the EIS and will continue to provide feedback on early chapters of the EIS as they are provided by the lead agency.

KEY EXTERNAL STAKEHOLDERS:

☐ Congress
 ☒ Industry
 ☒ States
 ☒ Tribes
 ☐ Media
 ☒ Other Federal Agency
☐ NGO
 ☒ Local Governments
 ☒ Public

MOVING FORWARD:

- EPA will continue to coordinate with other federal agencies and NYS as the project progresses.