

KIRSTEN E. GILLIBRAND
NEW YORK
SENATOR

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COMMITTEES:
ENVIRONMENT AND PUBLIC WORKS
FOREIGN RELATIONS
AGRICULTURE
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-3205

RECEIVED

2009 JUL 13 P 2: 32

BIA-ERO
REGIONAL DIRECTOR

June 25, 2009

Mr. Franklin Keel, Regional Director
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, TN 37214

RE: Draft Environmental Impact Statement, Cayuga Indian Nation of New York

Dear Mr. Keel:

I am writing to submit an official statement regarding the Draft Environmental Impact Statement (DEIS) with respect to the Land into Trust Application of the Cayuga Indian Nation of New York. I would like to reiterate a number of concerns that were heard from constituents in Cayuga and Seneca Counties during the public hearing on June 17, 2009 in Seneca Falls, N.Y. After listening to the public comments during the hearing, many of those who spoke felt that the DEIS completed by the BIA did not address significant issues of concern to local communities. Those issues include, but are not limited to:

- 1) Business leaders felt the sales tax exemptions given to the Cayuga Indian Nation, which operates two convenience stores on the property, will result in an unfair competitive disadvantage for non-Indian businesses in the region.
- 2) Local landowners, particularly farmers, were concerned that future large land purchases could also be turned into trust, thereby further curtailing property tax revenues.
- 3) Residents were also concerned that purchasing land at prices that far exceed the assessed value increases the assessed value of adjacent properties, thereby raising the property tax levy of nearby landowners.
- 4) Local elected officials from Seneca and Cayuga Counties felt that they are not sufficiently able to protect County residents due to their inability to regulate zoning, environmental, and safety-related issues on land in trust, including Cayuga Lake.
- 5) Local school district officials were concerned about the impact of the property tax exemption on the local school district's budget. The Superintendent of Seneca Falls Central School District estimated that turning the land into trust could cost the school district \$6 million of its \$24 million budget, due to lost property tax revenue alone. The school district estimates that fifty-one percent of land in the trust application falls within the Seneca Falls Central School District. In addition, New York State does not

remit the standard \$7500 per student for students who live on trust lands, and this would result in an additional, and significant, loss of revenue to the schools. Despite this loss of revenue, the schools would still be required to provide education and other services (transportation, etc.) to children living on trust lands.

- 6) Local farmers were concerned about the lack of environmental regulation on trust lands. While the Cayuga must adhere to federal environmental regulations, New York State often sets stricter standards from which the Cayuga would be exempt. Particular concerns included environmental drainage and chemical runoff.
- 7) Local elected officials and residents were concerned about the impact of lost sales and property tax revenues on the provision of local services. The counties would be required to provide services to individuals who reside on trust lands, but would not receive compensatory sales or property tax receipts to cover the costs of those services.

It is my hope that you will consider all of these concerns while reaching a decision that best serves the interests of all concerned parties.

Sincerely,



Kirsten E. Gillibrand
United States Senator

KIRSTEN E. GILLIBRAND
NEW YORK
SENATOR

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United States Senate

WASHINGTON, DC 20510-3205

COMMITTEES:
ENVIRONMENT AND PUBLIC WORKS
FOREIGN RELATIONS
AGRICULTURE
SPECIAL COMMITTEE ON AGING

RECEIVED

2009 JUL -9 P 1:58

July 2, 2009

BIA-ERO
REGIONAL DIRECTOR

Mr. Franklin Keel, Regional Director
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, TN 37214

RE: DEIS Comments, Cayuga Indian Nation of New York Trust Acquisition Project

Dear Mr. Keel:

I write this letter as a follow up to my first letter dated June 25, 2009 outlining the community concerns and issues with respect to the Land into Trust Application of the Cayuga Indian Nation of New York. After reviewing the case and speaking with local leaders, it has become clear to me that there are vital flaws in the Draft Environmental Impact Statement (DEIS) with respect to the Land into Trust application of the Cayuga Indian Nation of New York.

Specifically, the economic impact this transfer would have on communities and local businesses in Cayuga and Seneca Counties have not been accurately addressed in the DEIS. Allowing the Cayuga Indian Nation a sales tax exemption will result in an unfair competitive advantage over the existing businesses in the region and could result in significant job loss. In addition, by removing thousands of acres of land from the local property tax roll, it is estimated that the Seneca Falls Central School District would lose a quarter of its \$24 million local operating budget. Furthermore, citizens living on trust land would still require the services of local government, such as upkeep of roads, water, sewer and energy, but would no longer be contributing to their maintenance.

Removing land from county jurisdiction will also harm the local and State government's ability to regulate zoning, environmental, and safety-related issues. This could be particularly problematic in regards to drainage and chemical runoff onto adjacent farmland as well as Cayuga Lake, which is a source of municipal drinking water for a number of communities.

For these reasons, I request that the Bureau of Indian Affairs reject the current DEIS and request a more balanced assessment which includes the communities economic and environmental concerns. I also suggest, along with Senator Schumer, that the Counties and Tribe negotiate a settlement instead of a federally imposed decision.

Sincerely,



Kirsten Gillibrand
United States Senator

United States Senate

WASHINGTON, DC 20510

July 1, 2009

RECEIVED

2009 JUL -6 P 3:37

BIA-ERO
REGIONAL DIRECTOR

The Honorable Larry EchoHawk
Assistant Secretary, U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Assistant Secretary EchoHawk:

As I mentioned to you when we spoke on the phone last week, I remain concerned about the pending decision by the Department of the Interior's (DOI) Bureau of Indian Affairs (BIA) regarding the Cayuga Indian Nation of New York's ("Nation") application to have land taken into trust in Cayuga and Seneca Counties of New York (Counties). I ask that you carefully consider several points before making any final determination. There are a number of outstanding issues that were not adequately addressed by the Draft Environmental Impact Statement (DEIS), including those related to economic and environmental consequences, as well as the regulatory framework guiding future development on trust land. These issues require clarification before any final decision is made.

For years, my position on the land-into-trust process has been clear: I am deeply skeptical of its suitability for large parcels of land in the more populated eastern areas of the country, as opposed to often-times less populated western parts of the nation, where this policy was originally targeted and is more appropriate. I believe the decision to take land into trust is an important one that will have both positive and negative impacts on all parties involved. Because the decision is so important to the Nation, the State of New York, and the local community, I generally feel that a mutually negotiated agreement is preferable to a federally-imposed decision. Therefore, I ask that you defer a final decision until you answer the concerns outlined below, and give all parties involved an opportunity to reach a mutually-beneficial global settlement – one that resolves issues of sovereignty, taxation, and that avoids the long litigation battle that is likely to accompany a final decision made in lieu of a global settlement.

This situation differs sharply from many other applications in which land is taken into trust. For instance, in areas in the Western United States, there are wide parcels of land which are taken into trust. Borders are clear, and given the vast spaces involved, there is at times little interaction between residents of the tribe and other inhabitants. However, in the case of the 129 acres that comprise the Cayuga's application, we are faced with two parcels of land in Seneca County totaling about fifteen acres, with the remaining parcels in Cayuga County. This kind of checkerboarding of densely populated areas cannot be what was envisioned by the trust process.

Other aspects of the application are similarly problematic, and were not adequately addressed by the BIA in the Draft Environmental Impact Statement.

- First and most importantly, I am concerned about the effect that placing this land into trust will have on the region's tax base. For instance, last year, County authorities shut down two service stations operated by the Cayuga Nation, on the argument that they were evading tax laws. According to County estimates, local stores may have been losing millions in tax revenues before the stores were closed. Because taking the land into trust will mean exemption from property taxes and other special district charges, the loss to the Counties' revenues could be massive. The loss of revenues would likely create a substantial budget shortfall, requiring an increase in property taxes to make up the difference. These impacts should be considered in this process.
- Second, the DEIS does not address the collateral economic or traffic consequences for local businesses that would have to compete with tax-free businesses on neighboring land taken into trust, nor does it take into consideration the unequal playing field that can result from the fact that trust land would be exempt from most local zoning strictures.
- Third, the DEIS does not investigate or identify other potential negative environmental effects on the affected areas. The DEIS does not articulate how the environment, namely Cayuga Lake, will be protected in the absence of local, county, or state regulation of the lands involved.
- Fourth, the DEIS does not take into account several pending lawsuits now working their way through the courts.

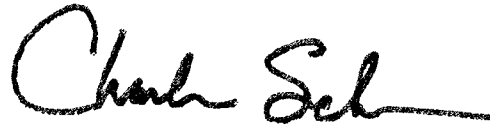
I believe a careful review of these concerns is necessary before any final determination is made to take land into trust. In addition, I urge you to insist that the Nation and Counties negotiate and sign a Memorandum of Understanding (MOU) regarding the parties' respective responsibilities and authorities over issues of public safety, including law enforcement, fire protection and emergency medical services, and observing standards of environmental safety and building codes commonly accepted as standard in municipal activities.

Again, a negotiated settlement, which I believe is certainly attainable, is preferable to all other options. Because of that, I believe that the best course of action in this situation is to delay taking land into trust until a global settlement has been negotiated between the Tribe and the Counties. At a minimum, DOI should review and address the above concerns and adopt fair protections for the local governments' financial health. As you know, DOI has a responsibility to all parties involved in this issue. Therefore it is imperative that you fully answer the above questions before you announce a final decision. This will go a long way towards easing tensions and helping all parties reach a mutually agreeable solution.

I appreciate all of your efforts to find a resolution in this case, and I thank you for considering my requests. I know that a decision is imminent, but I would appreciate a

response to these questions and requests outlined above before any final decision is announced.

Sincerely,

A handwritten signature in black ink that reads "Chuck Schumer". The signature is written in a cursive, flowing style.

Charles E. Schumer
United States Senator

Cc: David Hayes, Deputy Secretary, Department of the Interior
Franklin Keel, Regional Director, Eastern Regional Office for the DOI – BIA
Robert Impson, Deputy Regional Director of Trust Services

United States Senate

WASHINGTON, DC 20510

July 1, 2009

RECEIVED

2009 JUL -6 P 3: 54

The Honorable Larry EchoHawk
Assistant Secretary, U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

BIA-ERO
REGIONAL DIRECTOR

Dear Assistant Secretary EchoHawk:

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Other aspects of the application are similarly problematic, and were not adequately addressed by the BIA in the Draft Environmental Impact Statement.

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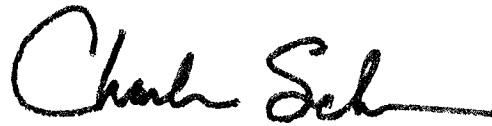
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Again, a negotiated settlement, which I believe is certainly attainable, is preferable to all other options. Because of that, I believe that the best course of action in this situation is to delay taking land into trust until a global settlement has been negotiated between the Tribe and the Counties. At a minimum, DOI should review and address the above concerns and adopt fair protections for the local governments' financial health. As you know, DOI has a responsibility to all parties involved in this issue. Therefore it is imperative that you fully answer the above questions before you announce a final decision. This will go a long way towards easing tensions and helping all parties reach a mutually agreeable solution.

I appreciate all of your efforts to find a resolution in this case, and I thank you for considering my requests. I know that a decision is imminent, but I would appreciate a

response to these questions and requests outlined above before any final decision is announced.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Sch", with a horizontal line underneath.

Charles E. Schumer
United States Senator

Cc: David Hayes, Deputy Secretary, Department of the Interior
Franklin Keel, Regional Director, Eastern Regional Office for the DOI – BIA
Robert Impson, Deputy Regional Director of Trust Services



Office of United States Senator
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SENATOR FOR NEW YORK STATE

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(914) 734-1673/fax

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FAX TRANSMISSION

TO: Franklin Keel, Regional Director

OF: Eastern Regional Office, Bureau of Indian Affairs

FAX: (615) 564-6701

FROM: Rebecca Kelly

PAGES: 4 (incl. cover)

DATE: July 6, 2009

RECEIVED
2009 JUL -6 P 3:26
BIA-ERO
REGIONAL DIRECTOR

COMMENTS:

Please see the attached comments from Senator Schumer in response to the Draft Environmental Impact Statement for the Proposed Fee-to-Trust Conveyance of Property for the Cayuga Indian Nation of New York, Cayuga and Seneca Counties, NY, Federal Register, Volume 74, No. 98, page 24032, May 22, 2009.

CHARLES E. SCHUMER
NEW YORK

COMMITTEES:
BANKING
JUDICIARY
RULES
FINANCE

United States Senate

WASHINGTON, DC 20510

July 6, 2009

Franklin Keel
Regional Director
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, Tennessee 37214

BY FAX: (615) 564-6701

Dear Director Keel:

I am submitting these comments in response to the Draft Environmental Impact Statement for the Proposed Fee-to-Trust Conveyance of Property for the Cayuga Indian Nation of New York, Cayuga and Seneca Counties, NY, Federal Register, Volume 74, No. 98, page 24032, May 22, 2009.

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Sincerely,

A handwritten signature in black ink that reads "Chuck Schumer". The signature is written in a cursive, slightly slanted style.

Charles E. Schumer
United States Senator



U.S. Environmental Protection Agency
 Region 2
 Strategic Planning and Multi-Media Programs Branch
 Division of Environmental Planning and Protection
 290 Broadway - 25th Floor
 New York, NY 10007-1866
 212-637-3504 (MAIN)
 212-637-3771 (FAX)

facsimile transmittal

To: *Kurt Chandler*
 Office: *BNA*
 From: *Lynne Knutson*
 Office: *SPMMPB*
 Re: *Cayuga Link T*

Date: *7/6/09*
 Fax: *212-637-3771*
 Phone:
 Pages: *5* (including cover)

- Urgent
- For review
- Please comment
- Please reply
- Please recycle



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
280 BROADWAY
NEW YORK, NY 10007-1866

JUL 6 2009

Kurt G. Chandler
Regional Environmental Scientist
Environment and Cultural Resources
Bureau of Indian Affairs
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

Rating: EC-2

Dear Mr. Chandler:

The Environmental Protection Agency (EPA) has reviewed the draft environmental impact statement (DEIS) issued by the Bureau of Indian Affairs (BIA) for the Cayuga Nation of New York Conveyance of Lands into Trust (CEQ # 20090155). This review was conducted in accordance with Section 309 of the Clean Air Act, as amended (42 U.S.C 7609, PL 91-604 12 (a), 84 Stat. 1709), the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR Parts 1500-1508).

The DEIS analyzed the environmental impacts of placing up to 125 acres of land in Cayuga and Seneca Counties, New York into trust for the Cayuga Nation of New York. The analysis assessed three alternatives, including the no action alternative. In the proposed alternative, seven parcels of land, located in the Village of Union Springs and the Towns of Springport and Montezuma, in Cayuga County, and in the Town of Seneca Falls, in Seneca County, New York, would be placed into trust. The Cayuga Nation would then reopen two Class II gaming facilities located in Union Springs and Seneca Falls, known as LakeSide Entertainment 1 and LakeSide Entertainment 2, which together comprise 120 Class II gaming machines.

EPA's comments are below:

Air Quality/Traffic

- The DEIS establishes the existing traffic conditions near the Seneca Falls and Union Springs properties based on two traffic counts conducted on June 16 and 17, 2006. EPA does not concur with the assumption that two days of trip data provide enough data to establish a baseline. EPA is also concerned that data collected in June may not represent conservative traffic counts. The Cayuga Lake region is utilized heavily during the summer vacation months, and has several universities that are in full session from September to May. The traffic counts were made during a month when neither of those activities is at its peak, and therefore may not be representative.

- While EPA understands that work on the DEIS started several years ago, the future no build and build years for the traffic conditions must at least be 2009 and preferably further out. The DEIS is using 2007 as the future no build and build year for the Seneca Falls property and the Union Springs property, and must be updated.
- The Institute of Transportation Engineers published the 8th Edition of the Trip Generation Report in 2008. The DEIS should ensure that the latest "casino" trip generation rates are being used to assess future traffic volumes for this project.
- Should the Enterprise lands be taken into trust, is it the intention of the Cayuga Nation to decrease the amount charged for gasoline and cigarettes? If so, this would likely increase the trip generation at the Enterprise properties. The amount of this increase and the impacts on traffic should be determined.
- The Saturday traffic counts around the Union Springs property were made from 3 p.m. to 8 p.m. as compared to the traffic counts around the Seneca Falls property that were made from 10 a.m. to 3 p.m. EPA is concerned that data is not comparable, and that the data collected later in the day near the Union Springs property did not assess the traffic to that property during a peak time.
- The above comments concerning traffic data and counts may change the impacts to air quality as described in Section 4.3.1 of the DEIS.
- Section 4.3 does not take into account the air impacts from the Underground Storage Tank Operations and gas station operations. Federal requirements for underground storage facilities and gas station operation can be found on the web at <http://www.epa.gov/otaq/ld-hwy.htm>.

Hazardous Materials

Section 3.4 of the DEIS appears to indicate that the Cayuga Nation is out of compliance with federal regulations regarding release detection records and Underground Storage Tank records. EPA has inspected this facility twice, most recently in 2007, and worked with the Nation to ensure compliance. If necessary, this section of the DEIS should be updated to reflect the existing conditions.

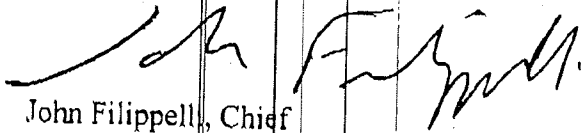
Specific Comments:

- Page 3.12-2., Jackson Road, 4th sentence - "Station Road" should be "Jackson Road"
- Page 3.12-5., NYS Route 90, 2nd sentence - "NYS Route 89" should be "NYS Route 90"

Based on our review, and because of the need for updated traffic, air quality and hazardous material information, we have rated this DEIS as EC-2 indicating Environmental Concerns - Insufficient Information.

Thank you for the opportunity to comment on the DEIS. If you have any questions, please call Lingard Knutson of my staff at (212) 637-3747.

Sincerely yours,



John Filippelli, Chief
Strategic Planning and Multi-Media Programs Branch

Enclosure

SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION

Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of environmental quality, public health or welfare. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1-Adequate

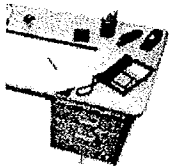
EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analysis, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.



Brenda J
Johnson/WRD/USGS/DOI@U
SGS

05/15/2009 01:47 PM

To Kurt Chandler/DC/BIA/DOI@BIA
cc Lloyd H Woosley/WRD/USGS/DOI@USGS
bcc
Subject Cayuga Indian Nation of New York

Kurt,

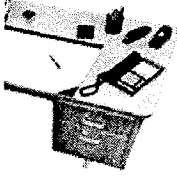
Subject: Draft EIS for the Cayuga Indian Nation of New York

The U. S. Geological Survey has reviewed the Draft Environmental Impact Statement for the Proposed Fee-to-Trust Land Conveyance for the Cayuga Indian Nation of New York, Cayuga and Seneca Counties, New York. We have no comments at this time.

Thanks

Brenda

Brenda Johnson
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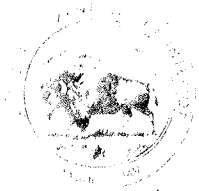
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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

Tribal Relations

Vernon W. Busch, Hearing Examiner
Office of Hearings and Appeals
Federal Building - Room 216
Saint Paul, Minnesota 55111

4/10/72

Dear Mr. Busch:

We are enclosing a copy of an inter-office memorandum listing the various Indian groups, tribes or bands to which the Federal trust relationship has been terminated. There were some 30 separate tribes, bands or groups terminated under the Western Oregon legislation. They are listed in 58 Stat. 725, 75 U.S.C. 192.

With the exception of the Alabama-Chauhattas who retained educational and health benefits, in each instance all Federal trust relationships were terminated. Members of the tribes, bands or groups to which the Federal trust relationship is terminated automatically assume the position of non-Indians for purposes of inheritance of property or interests in property held by Indians or Indian tribes, bands or groups that are recognized by the Federal Government.

There has been some confusion with regard to the members of the New York Iroquois Tribes inheriting land in trust. Those Indians have not inherited and most of the restricted land that comprises the New York Iroquois Reservations is owned in fee by the several tribes. Nevertheless, the Federal relation with the Oneida, Onondaga, Cayuga, Seneca and Tuscarora Nations, the Tonawanda Band and the St. Regis Tribe of Mohawks has never been terminated. The tribal member would, therefore, not be precluded from inheriting property in trust or restricted status.

By copy of this letter we are making a copy of the enclosed listing available to Director James M. Day, Office of Hearings and Appeals, Arlington, Virginia, for appropriate handling should he consider of merit your suggestion that it be sent to all hearing examiners.

Sincerely yours,

William M. Day

William M. Day
Director

Enclosure

cc: New York Field Office
William Seneca, New York
Director James M. Day, Office of Hearings and Appeals