

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
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SEP 25 2015

Ian Shavitz, Esq.
Akin Gump LLP
Robert S. Strauss Bldg.
1333 New Hampshire Avenue, NW
Washington DC 20036-1564

Re: Notice of Intent to File Citizen Suit: Lago Resort & Casino, LLC, et al.

Dear Mr. Shavitz:

I write in response to the July 31, 2015 Notice of Intent to File Suit (the Notice) sent to Acting Commissioner Gerstman. In the Notice you allege that illegal discharges into the waters of the U.S., including dredged or fill material, are occurring at the site of the development of the Lago Resort, in violation of provisions of the Clean Water Act.

On August 27, staff of the Department's Region 8, including the Regional Attorney, met with you and other representatives you brought to the meeting to discuss issues raised in the Notice, as well as additional matters that you raised in an August 17, 2015 letter to the Regional Attorney. Also, at the August 27 meeting you provided the Department with documents supporting your arguments regarding the alleged violations. We have reviewed your submissions and have considered your arguments. In addition, Department Staff has inspected the Lago site on several occasions to monitor developer's compliance with the general SPDES permit during site disturbance and following suspension of the permit. At this time, the Department will not commence formal enforcement proceedings, but will continue to monitor the project's impacts on the surrounding area and will undertake diligent enforcement for any violations of New York's Environmental Conservation Law that may occur.

Please inform the Department of any developments in this matter. If your clients feel compelled to proceed to file a complaint, please provide copies of all pleadings and correspondence to this Department. Also, you should expect that the Department will object to any settlement that might have a preclusive effect on its ability either to proceed with an enforcement action or to recover any incurred costs.

If you have any questions regarding this matter, please contact Dennis Harkawik,
Regional Attorney, at (585) 226-5363.

Sincerely,

A handwritten signature in black ink, appearing to be 'E. McTiernan', with a long horizontal flourish extending to the right.

**Edward F. McTiernan
Deputy Commissioner
and General Counsel**