

INFORMATION SHEET
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING
 FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY
 V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Philadelphia

FILE NUMBER: CENAP-OP-R-200201403

REGULATORY PROJECT MANAGER: Kevin Dougherty Date: July 23, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: 12/03/2002

PROJECT LOCATION INFORMATION:

State: Delaware

County: New Castle

Center coordinates of site by latitude & longitudinal coordinates: 39-24-09.6 N, 75-41-51.2 W

Approximate size of site/property (including uplands & in acres): 218

Name of waterway or watershed: Wiggins Mill Pond

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake	<input type="checkbox"/>								
River	<input type="checkbox"/>								
Stream	<input type="checkbox"/>								
Dry Wash	<input type="checkbox"/>								
Mudflat	<input type="checkbox"/>								
Sandflat	<input type="checkbox"/>								
Wetlands	<input type="checkbox"/>	<input type="checkbox"/>	3.64	<input type="checkbox"/>					
Slough	<input type="checkbox"/>								
Prairie pothole	<input type="checkbox"/>								
Wet meadow	<input type="checkbox"/>								
Playa lake	<input type="checkbox"/>								
Vernal pool	<input type="checkbox"/>								
Natural pond	<input type="checkbox"/>								
Other water (identify type)	<input type="checkbox"/>								

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat by other migratory birds that cross state lines?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat for endangered species?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is used to irrigate crops sold in interstate commerce?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

SITE CONDITIONS

The project area is a rough trapezium located on the northeastern side of the Town of Townsend, Delaware including those lands identified as Tax Map Parcels 14-011.00-014; 14-011.00-020; and 14-15.00-019, New Castle County, Delaware. The major axis extends approximately 4200 feet to the northwest. The site has a maximum width of roughly 2500 feet at the northern site boundary and tapers to approximately 1000 feet at the southern boundary and encompasses 218 acres.

The property includes approximately 135 acres of active agricultural fields (soybeans, corn, hay), roadways and other maintained areas and 83 acres of woodlots. There are 23.8 acres of waters of the United States, including wetlands present and 3.64 acres of isolated wetlands not subject to Section 404 jurisdiction on the property. All waterbodies and wetlands were contained within the wooded areas on the site.

RATIONALE FOR DETERMINATION OF NO JURISDICTION

Five separate areas (Areas K, L, P, Q, and R) located in a woodlot along the Penn Central Delaware Branch right-of-way were identified as wetlands. This woodlot is 900 feet north of Gray Street in the south-central portion of the site.

None of the areas contains sufficient standing water to float any type of watercraft therefore none of the areas are navigable-in-fact. Although the five areas lie within a circle with a 400 foot radius, surface connections were not observed either between any of the areas or leading from any of the areas out into the adjacent uplands.

Adjacent wetlands are defined as bordering, contiguous, or neighboring (33 CFR 328.3 (c)). None of the five areas noted above either border or are contiguous with a water of the United States. The closest approach to any water of the United States is 220 feet (Area L to the outer edge of wetland Area 3) and the closest approach to a surface tributary is 380 feet (Area L to UNT 1). Given the small size of UNT 1, a minimum separation of 380 feet is too great to consider Area L as adjacent to UNT 1. As this is the minimum distance observed, then the remaining four areas are also too far from UNT 1 to be considered neighboring. Supporting this conclusion are the observations that no surface features with an OHW mark were observed leading from any of the areas to UNT 1. Based upon the commonly used stormwater models: 1) for connection through sheet flow the distance would need to be not more than 100 feet; 2) for connection through shallow concentrated flow, a feature with an OHW mark would need to be present at not more than 250 feet; and, 3) for concentrated flow a well defined channel with an OHW mark would be present. None of these conditions exist at the site.

All five areas are small and physically isolated, as such, it is not likely that the areas have been or reasonably could be, used by interstate or foreign travelers for recreational purposes. There is no evidence that the landowner has permitted or been contacted to use the areas for educational or scientific studies by interstate or foreign travelers (33 CFR 328.3 a.(3)(i)). None of the areas has permanent standing water and therefore do not support fish or shellfish populations that could be taken and sold in interstate or foreign commerce (33 CFR 328.3 a.(3)(ii)). Due to the size and species composition of the stand, there is little potential for the production of saleable timber products from any of the areas (33 CFR 328.3 a.(3)(iii)). There is insufficient water in the areas to be used for commercial or industrial purposes or for use in irrigating crops sold in interstate or foreign commerce. There are no known materials present in the areas that could be extracted and used for industrial or commercial products sold in interstate or foreign commerce and there are no known sand, gravel, or other mineral resources present in the areas that could be extracted and sold in interstate or foreign commerce (33 CFR 328.3 a.(3)(iii)).

WATERS OF THE UNITED STATES

The waters of the United States include: 1) Wiggins Mill Pond, unnamed tributaries, and the connecting stream to Noxontown Lake; 2) unnamed tributaries to Noxontown Lake; and, 3) wetlands adjacent to 1-2 above. Wiggins Mill Pond is an impoundment of an unnamed perennial stream that originates to the west of the lake, it is connected to Noxontown Lake, which is a tributary of Appoquinimink River, a tidal, navigable-in-fact, intrastate water of the United States that is tributary to the Delaware Bay. Delaware Bay is a tidal, navigable interstate water of the United States that is directly connected to the territorial sea (Atlantic Ocean). Noxontown Lake, Wiggins Pond, the unnamed connecting stream, and all tributaries to these streams are part of the surface tributary system of the Delaware Bay and are waters of the United States pursuant to 33 CFR 328.3 a.(5). All wetlands adjacent to any of these waters are waters of the United States pursuant to 33 CFR 328.3 a.(7).