

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-200301006

REGULATORY PROJECT MANAGER: Kevin E. Faust Date: April 27, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: March 31, 2004

PROJECT LOCATION INFORMATION:

State: Delaware

County: Kent

Center coordinates of site by latitude & longitudinal coordinates: 39° 04' 58" N / 75° 32' 57" W

Approximate size of site/property (including uplands & in acres): 175

Name of waterway or watershed: Tidbury Creek

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									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool		2.75							
Natural pond									
Other water (identify type)									

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?					X
Is or would be used as habitat by other migratory birds that cross state lines?					X
Is or would be used as habitat for endangered species?					X
Is used to irrigate crops sold in interstate commerce?					X

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 X .

INFORMATION SHEET - **CONTINUED**
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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):

1. The entire 175 acre site is an active apple orchard. There are seven jurisdictional wetland areas totaling 17.5 acres and one 4.5 acre non-jurisdictional wetland depression located entirely within the property.
2. All seven jurisdictional wetlands are located adjacent to Tidbury Creek which is a tributary to the Saint Jones River, a tidal navigable water of the United States. The one non-jurisdictional wetland depression is isolated with no surface water connection to waters of the United States. The depression is surrounded by well drained upland soils.
3. From 33 CFR 328.3 (a) the following commerce determinations have been made in regard to the one 4.5 acre non-jurisdiction wetland depression: a) It is not tidal; b) It is not an interstate water, but is located entirely within the state of Delaware; c) It is not an interstate water that the use, degradation, or destruction of which could effect interstate or foreign commerce; d) It can not be used by interstate or foreign travelers for recreation or other purposes as the property is private; e) It could not be used for the harvesting or selling of fish or shellfish in interstate or foreign commerce; f) It could not be used for industrial purposes by industries in interstate commerce; g) It is not an impoundment of waters describe above; h) It is not a tributary to waters of the U.S.; and i) It is not a part of the territorial seas.

In regard to navigation, it has been determined that the area is a depression surrounded by upland located hundreds of linear feet from waters of the United States.

4. There are seven jurisdictional wetland areas totaling 17.5 acres (including Tidbury Creek and its unnamed tributaries) located adjacent to Tidbury Creek which is a tributary to the Saint Jones River, a tidal navigable water of the United States. These areas are regulated pursuant to Section 404 of the Clean Water Act @ 33 CFR 328.3 (a)(5) & (a)(7).

Note: Acreages are estimates.