

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-200400324-57

REGULATORY PROJECT MANAGER: Kevin Dougherty Date: July 27, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: March 23, 2004

PROJECT LOCATION INFORMATION:

State: Pennsylvania

County: Lehigh

Center coordinates of site by latitude & longitudinal coordinates: 40-33-37.4 N; 75-25-26.96 W

Approximate size of site/property (including uplands & in acres): 42.91

Name of waterway or watershed: Saucon 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	X								
Dry Wash									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
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 .

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):

INFORMATION SHEET – CONTINUED

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

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Site Conditions:

The property is a 42.91 acre (gross) tract identified as PIN 641545732000-1, south side of SR 2038 (Oakhurst Road), Upper Saucon Township, Lehigh County, PA. It contains fallow agricultural fields (27.9 ac), woodlots, scrub, and hedgerows (13.2 ac), and one residential/agricultural complex (1.4 ac). Adjacent property owners use portions of the site on the far western edge of the tract as maintained lawn (0.4 ac). The tract is an elongated spindle shaped parcel with the major axis parallel to I-78 and extending approximately 3700 feet east-west. The parcel is approximately 900 feet north-south at its widest point. The property contains three perennial streams and one intermittent stream, all with adjacent wetlands. These areas a part of the tributary system of an interstate navigable water of the United States and were identified as waters of the United States. There are 2.01 acres of waters of the United States on the property. An isolated ephemeral watercourse and an isolated wetland were also identified on the site. Neither of these features was part of or adjacent to a part of a surface tributary to a water of the United States. Additionally, neither feature has a nexus to interstate or foreign commerce, and therefore neither was identified as a water of the United States. There are 0.06 acre of non-jurisdictional watercourse and 0.24 acre of non-jurisdictional wetland on the property.

Rationale for Determination:

1. An ephemeral channel enters the property from a pipe under SR 2038 approximately 125 feet east of the intersection with Bittersweet Road. Flow forms a shallow (0.25 to 0.75 foot deep), narrow (4-5 feet wide) channel with a poorly defined OHW lined. Water in this channel flows south along the property line for approximately 300 feet whence the flow dissipates into the adjacent agricultural field to the west. The end of the defined channel is approximately 650 feet north (upslope) of the channelized stream, which is the closest water of the United States; as this ephemeral channel has no surface connection to the tributary system, it is an isolated intrastate water. This ephemeral stream is too small to support any type of watercraft and is therefore non-navigable.

a. This channel was evaluated for a nexus to interstate or foreign commerce as follows: The small size and ephemeral nature of flow in the channel make it unlikely that the channel could, be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i) and it does not support fish or shellfish populations that could be taken for use or sale by interstate or foreign travelers (33 CFR 328.3 (a)(3)(ii)). The stream cannot be used to irrigate crops or be used in industrial or commercial enterprises producing products for interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)). The channel does not contain merchantable timber, there are no known mineral deposits, and the area does not contain sand or gravel deposits that could be extracted (33 CFR 328.3 (a)(3)(iii)).

b. Based upon the factors considered above the ephemeral channel described and evaluated above is an isolated, intrastate water with no nexus to interstate or foreign commerce. As such, pursuant to 33 CFR 328.3, it is not a water of the United States, and is not subject to Section 404 of the CWA.

2. An approximately 0.24 acre shrub-scrub and herbaceous emergent wetland was identified south of the ephemeral channel discussed above. The closest water of the United States is the channelized stream that lies 270 feet to the southwest. This distance is a straight-line measurement, based upon site topography, the most direct flow line to the stream is approximately 350 feet. Given the distance to the nearest stream and the small size of the waterway, this wetland is too far from a watercourse to be a neighboring wetland. In accordance with 33 CFR 328.3 (c), this wetland is not adjacent to the tributary system of the Delaware River but rather it is isolated.

a. This wetland was evaluated for a nexus to interstate or foreign commerce as follows: The small size of the wetland and the lack of any unusual properties make it unlikely that the wetland could, be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i)). The wetland does not support fish or shellfish; it could not be used to irrigate crops or used in industrial or commercial (33 CFR 328.3 (a)(3)(iii)). The wetland does not contain merchantable timber, there are no known mineral deposits, and the area does not contain sand or gravel deposits that could be (33 CFR 328.3 (a)(3)(iii)).

b. Based upon the factors considered above, this wetland is an isolated, intrastate wetland with no nexus to interstate or foreign commerce. As such, pursuant to 33 CFR 328.3, it is not a water of the United States, and is not subject to Section 404 of the CWA.

Waters of the United States:

The three perennial streams on the site enter the property from the north and exit to the south where they are carried under the I-78 right-of-way by a series of culverts. The single intermittent stream originates in a PF01 woodlot on the western side of the site and flows south into a collector ditch along the I-78 ROW. This collector carries flow to the east to the culvert under I-78 that also carries the channelized stream. After exiting the culverts on the southern side of I-78, the streams flow in a common channel to the east-southeast where this unnamed stream enters the Saucon Creek. Saucon Creek is a tributary to the Lehigh River, an intrastate, navigable tributary of the Delaware River. The Delaware River is a navigable, interstate water of the United States. Based on this connection, the three perennial and one intermittent streams are part of the surface tributary system of the Delaware River, and thus are waters of the United States in accordance with 33 CFR 328.3 (a)(5). All wetlands identified in the vicinity of the three perennial streams are either contiguous with or neighboring each of the streams. Neighboring and contiguous wetlands to these streams are therefore adjacent to part of the surface tributary system of the Delaware River. In accordance with 33 CFR 328.3 (a)(7), these wetlands are waters of the United States.

