

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-200400869-24

REGULATORY PROJECT MANAGER: James N. Boyer Date: August 9, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: \_\_\_\_\_  
 At the project site Y (Y/N) Date: July 1, 2004

PROJECT LOCATION INFORMATION:

State: Pennsylvania

County: Montgomery

Center coordinates of site by latitude & longitudinal coordinates: 40° 08' 12.2" N. / 75° 10' 40.5" W.

Approximate size of site/property (including uplands & in acres): 3.66

Name of waterway or watershed: Pine Run

SITE CONDITIONS:

Type of aquatic resource <sup>1</sup>	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	0.02								
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									
_____									

<sup>1</sup>Check 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 <sup>1</sup> :	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			

<sup>1</sup>Check 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

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RESULTING FROM THE U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK  
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ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraph 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):

The property is located between Virginia Drive and the Pennsylvania Turnpike, between Susquehanna and Camp Hill Roads, in Upper Dublin Township, Montgomery County, Pennsylvania. It is within a highly developed area, where a great deal of disturbance has taken place in the past, including relocation of Pine Run for Virginia Drive and the Fort Washington Commercial Area (including the Expo Center across the street). The property in question is approximately 3.66 acres in size, partly forested, but mostly open or brushy, with evidence of recent vegetation cutting.

The relocated channel of Pine Run flows through the property along Virginia Drive. Pine Run is a tributary to Sandy Run, which flows into Wissahickon Creek in the Schuylkill River basin. As such, it is a tributary to navigable waters of the U.S., and is regulated as waters of the U.S. pursuant to 33 CFR 328.3(a)(5). An enclosed stream flows northwest through the property and into Pine Run. This stream channel begins south of the site and flows under a railroad and under the Turnpike. It flows into Pine Run, and is also regulated as waters of the U.S. pursuant to 33 CFR 328.3(a)(5).

A drainage channel forms at a storm water outfall from the turnpike, and flows to the northwest through a small patch of woods. The channel ends as it enters the cleared area. There is a break of approximately 50 feet of uplands, and then a new scoured channel begins, which is a contiguous tributary to Pine Run. This tributary is regulated as waters of the U.S. pursuant to 33 CFR 328.3(a)(5).

The length of channel between the turnpike outfall and the upland break is not regulated as waters of the U.S. It is not tributary to waters of the U.S., since there is no evidence that normal flows make their way from this channel to the tributary to Pine Run. There was some loose debris (dead vegetation, etc.) on the uplands, that appeared to be from recent heavy storms. However, there was no ordinary high water mark or anything to indicate that normal flows make their way from this channel to Pine Run. The channel itself is not navigable, and there is no obvious nexus to interstate commerce. Therefore, the channel is not regulated as waters of the U.S.