

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-200501070

REGULATORY PROJECT MANAGER: Kevin W. Dougherty Date: March 26, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: August 4, 2005

PROJECT LOCATION INFORMATION:

State: Pennsylvania

County: Lehigh

Center coordinates of site by latitude & longitudinal coordinates: 40-36-4.26 N 75-34-10.29 W

Approximate size of site/property (including uplands & in acres): 39.97

Name of waterway or watershed: Little Cedar Creek (Lehigh River)

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	0.093 ac	<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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat by other migratory birds that cross state lines?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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):

1. SITE CONDITIONS

a. Most of the property is wooded. There is a cleared power line right of way running through the northern section of the tract. In the northwestern section of the property and extending along nearly a third of the western boundary, the property has been cleared and vegetation consists of a mixture of herbaceous old field and shrubby thickets. These cleared areas appear to be due to the construction and maintenance of the adjacent PA Turnpike right-of-way. Five unnamed intermittent to ephemeral streams (UNT 1-5) were identified on the property. The main channels of all these tributaries have numerous small branches. These tributaries arise in the northern portions of the property or just off-site and flow generally south and southwest. An on-line pond is present along a portion of UNT 5. These tributaries join at various points within the property until they form a single, larger unnamed tributary (UNT 6) near the southern site boundary. UNT 6 flows south to a culvert that carries the stream under Crackersport Road. Based on examination of aerial photography, UNT 6 discharges into the main stem of Little Cedar Creek approximately 500 feet south of the property. Most of the site is underlain by poorly drained soils of the Melvin Series or by somewhat poorly to moderately well drained Bedford Series soils. There are no serviceable structures on the site but there are remains of a structure near Crackersport Road on the southeastern corner of the property. Surrounding land use is industrial/commercial to the northeast and east with some rural residential use to the south and southeast. The remaining areas are either undeveloped or are part of a PP&L powerline or the PA Turnpike rights-of-ways. Review of the aerial photography in the Soil Survey for Lehigh County Pennsylvania (1963) shows that nearly the entire tract was wooded at the time of the base photography (1958). The unnamed tributaries were identified on the annotated 1958 Soil Survey photography but not the on-line pond. UNT 3 and UNT 6 were identified as perennial streams, UNT 1-2, and 4-5 were identified as intermittent or unclassified streams.

b. Topographically the property lies on a broad shallow slope that falls gently from northeast to southwest forming a large flat with little discernable slope (less than 3%). This flat is dissected by the small unnamed tributaries. Portions of the eastern side of the tract have been disturbed as indicated by the presence of shallow excavations, berms and soil piles found within the woodlots. On the western side of the property, there is also evidence of disturbance from construction of the Northeast Extension of the PA Turnpike.

c. Ten wetlands are identified on the site according to the criteria of the 1987 Corps of Engineers Wetland Delineation Manual. Nine of these wetlands were determined to be subject to Section 404 jurisdiction as they were either contiguous with one of the streams or they were sufficiently close to one of the streams that they were determined to be neighboring. The largest single wetland is identified on the plan as Wetland 2 (8.261 acres) and this encompassed wetlands contiguous with all the unnamed tributaries (see JDIS form). One 0.093 acre area of palustrine shrub-scrub wetland (Wetland 1) located adjacent to Crackersport Road in the southeastern corner of the property is isolated and without a nexus to interstate or foreign commerce and therefore is not a water of the United States.

2. RATIONALE FOR DETERMINATION

a. The excluded area (Wetland 1) is a small (0.093 acre) depression located at the edge of Crackersport Road on the southeast corner of the property. Hydrology to this area is primarily from runoff from an adjoining industrial property. Grading for both the adjacent property and the roadway allow water to pool in the area and no outlet was found that would allow water to be transported away from the depression. As such, the wetland has no surface connection with any water of the United States. At its closest point, the wetland is approximately 200 feet from UNT 6 but this would require uphill flow; the nearest flow path downslope places the wetland at not less than 320 feet from UNT 6 but flow is still blocked by the roadway. Based upon the lack of physical connection with any stream and the distance from UNT 6, the wetland is not contiguous with, or neighboring to, a water of the United States and therefore it is not an adjacent wetland but it is an isolated intrastate wetland.

b. To determine if jurisdiction could be asserted the following factors were considered:

1. The area has no permanent standing water and could not support any type of vessel. The area is therefore not navigable in fact.

2. 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)) and there is no record of such use. The wetland supports neither fish nor shellfish and water from it could be used neither to irrigate crops nor for industrial or commercial processes that could produce goods sold or transported in interstate or foreign commerce (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 extracted and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)).

c. Based upon the factors considered above, the 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.

3. WATERS OF THE UNITED STATES

a. Waters on the site include six unnamed tributaries (UNT 1-6) to Little Cedar Creek. Two of these tributaries (UNT 3 and 6) may be perennial while the remaining tributaries (UNT 1-2 and 4-5) are intermittent to ephemeral. At the time of the field inspection, most of the channels were dry but the area was experiencing drought conditions (rainfall less than 50% of average). One of the tributaries has a small (0.3 acre) on-line pond. Nine jurisdictional wetland areas were identified on the site. Three of these wetlands (Wetlands 2 (8.261 acres), 9 (0.184 acre) and 10 (0.045 acre) were contiguous with one of the UNT's. Wetlands 3 (0.815 acre), 4/7 (0.063 acre), 5 (0.05 acre), 6 (0.009 acre) and 8 (0.082 acre) were sufficiently close to one of the UNT's to be neighboring these waters. Little Cedar Creek is tributary to Cedar Creek which is tributary to the Little Lehigh Creek. Little Lehigh Creek is tributary to the Lehigh River, an intrastate navigable water of the United States pursuant to 33 CFR 328.3(a)(1) and 33 CFR 329.4. The Lehigh River is tributary to the Delaware River, an interstate navigable water of the United States pursuant to both 33 CFR 328.3(a)(1) and 33 CFR 329.4. Therefore, all the unnamed tributaries to Little Cedar Creek on the site (including the on-line pond) are part of the surface tributary system of a water of the United States and are themselves waters of the United States pursuant to 33 CFR 328.3(a)(5). Wetlands contiguous with, or neighboring, waters of the United States are adjacent wetlands (33 CFR 328.4); wetlands adjacent to waters of the United States are waters of the United States pursuant to 33 CFR 328.3(a)(7).

4. OTHER COMMENTS

A drainage ditch was identified on the northwestern side of the property. This ditch originates on the PA Turnpike right-of-way and extends southeast before terminating into sheet flow in the upper portions of Wetland 2. However this feature does not discharge into one of the

UNT's on the site and therefore is not part of the surface tributary system of a water of the United States. It was determined to be an upland drainage ditch and was placed on the plans for the benefit of the Commonwealth of Pennsylvania which may exert state jurisdiction over this feature. No other upland ditches were observed on the property.

Enclosure 2