



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 6/22/2020

ORM Number: CENAP-OP-R-2020-0427-24 LogistiCenter at I-95 Wilmington Dermody Properties Outfall Bank Stabilization NC

Associated JDs: N/A

Review Area Location¹: State/Territory: DE City: Wilmington County/Parish/Borough: New Castle

Center Coordinates of Review Area: Latitude 39.731621 Longitude -75.603876

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Stormwater Drainage Channel	30	linear feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	See Part III-C below.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [Submittal from applicant's agent dated 6/11/2020, along with project plans \(see full plan citation in Part III-C below\).](#)

This information is sufficient for purposes of this AJD.

Rationale: [Together with review of topographic maps, aerial photography and other information cited in Part III-C below, the information cited above was sufficient to make the determination.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Google Earth \(1991 & 2010\); historicaerials.com \(multiple years\); applicant photos \(2/04/2020\).](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [NRCS web site](#)
- USFWS NWI maps: [U.S. FWS web site](#)
- USGS topographic maps: [Wilmington South quadrangle](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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B. Typical year assessment(s): N/A

C. Additional comments to support AJD: This Approved Department of the Army jurisdiction is associated with a proposal to stabilize approximately 30 linear feet of an eroding stormwater drainage channel and bank. The channel empties into Little Mill Creek in the City of Wilmington, New Castle County, Delaware. The proposed project site is located on the west side of Little Mill Creek, immediately downstream of a culvert that carries that stream under a set of railroad tracks, approximately mid-way between Routes 141 and 100, and approximately 2,500 feet north of Boxwood Road.

We received a submittal from the applicant's agent dated June 11, 2020, including plans prepared by Langan, dated 4 MAY 2020 ("Submission Date"), with one revision dated 6/15/20, entitled "LOGISTICENTER AT I-95 WILMINGTON ...". They described the feature to be stabilized as a "stormwater drainage channel."

Based on the information provided by the applicant, as well as aerial photos, topographic maps and other information outlined below, the channel in question is not a federally regulated water of the U.S. As such, the proposed work would not involve a discharge in waters or wetlands regulated under Section 404 of the Clean Water Act. Additionally, the channel in question is not a navigable waterway regulated under Section 10 of the Rivers and Harbors Act of 1899. Therefore, the proposed project described in the applicant's submission, and as shown on the plans provided therein, will not require the approval of this office since the work would not involve federally regulated activities in federally-regulated waters or wetlands.

This determination of "no permit required" is based, in part, upon our understanding (from the project plans) that no work would take place beyond (i.e. waterward of) the ordinary high water mark (OHWM) of Little Mill Creek. That OHWM is shown on the project plans as being approximately 15 feet below the limit of proposed work on this channel.

Our determination is further based on the fact that the channel or feature proposed to be stabilized is a "stormwater control feature." Pursuant to federal regulations at 33 CFR 328.3(b)(10), such features, constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff, are not "waters of the United States."

This site was formerly a GM manufacturing site. It is being developed into a warehouse. In support of this determination, the following information was reviewed:

a. The project plans noted above show stabilization of the channel upstream of its mouth at Little Mill Creek. The OHWM of Little Mill Creek is indicated approximately 15 feet below the limit of the proposed stabilization.

b. The applicant's agent provided a stormwater plan for the new development proposed for this site. They stated: "The existing site (old GM plant) entire drainage system was collected via storm piping and discharged to a concrete structure ... This structure opened into the concrete swale ... and directed eastward to an outfall structure with concrete matt ... which discharged into the creek."



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c. A "birds-eye" view aerial photo from Bing Maps, looking up the channel (west) from the creek, shows a trapezoidal concrete channel.

d. From Google Earth (1991 and 2010), it appears that only about 200 feet of this trapezoidal channel remains open. The remainder has been covered or piped over the years as the GM plant expanded.

e. U.S.G.S topographic maps from 1997, 1967 and 1948 were reviewed. No channel is indicated in 1948. A blue-line channel is present in 1967, but not in 1997.

f. A series of historic aerials (historicaerials.com), from 2010 going back to 1937, was reviewed. There is no evidence of any channel present in 1937. This was prior to construction of the factory, which was present by the 1950s, when you can see what appears to be a constructed channel wrapping around the site and heading east to Little Mill Creek. You can see rail spurs crossing this channel. With expansion of the plant, by 1970, you begin to see more of the channel covered. By 1991/2010, only the last 200 feet or so of the channel remain open.

g. On the NRCS web site, the on-line soil survey shows the whole plant site as made land. The remnant woods on the west side of the creek, outside the made land, is moderately well drained Mattapex soil.

Determination: The undersigned has determined that the work shown on the above-referenced plans will not require a Department of the Army permit, provided that such work does not extend into Little Mill Creek. The proposed work is located within a stormwater control feature. Pursuant to federal regulations at 33 CFR 328.3(b)(10), such features are not "waters of the United States."