

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: _____
FILE NUMBER: 200400434

REGULATORY PROJECT MANAGER: Spence **Date:** 30 June 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office Y (Y/N) **Date:** 30 Jun 2004
 At the project site Y (Y/N) **Date:** 18 May 2004

PROJECT LOCATION INFORMATION:
 State: Ohio
 County: Tuscarawas
 Center coordinates of site by latitude & longitudinal coordinates: 40° 21' 20.0180" N, 81° 24' 00.3509"

W
 Approximate size of site/property (including uplands & in acres): ~400
 Name of waterway or watershed: Crooked 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									
Natural pond									
Other water (identify type)	6								
<u>Mining Ponds</u>									

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):

see attached Memorandum for Record and Summary Table

Summary of Non-jurisdictional Waters on proposed Cole Mine

(All figures given in acres)

WI-1	0.32
WI-2	0.09
WI-4	0.94
WI-12	0.42
WI-13	0.21
WI-20	0.01
Total	1.99

25 May 2004

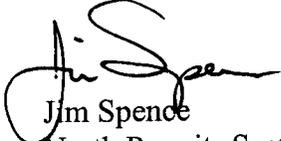
CELRH-OR-FN

MEMORANDUM FOR RECORD

SUBJECT: Jurisdictional determination and site visit to mining site for Oxford Mining, Inc. near Gnadenhutzen, Tuscarawas County, Ohio (ODNR-DMRM Application #10282, RAMS File #200400434).

1. On April 5, 2004, this office received a jurisdictional determination and wetland delineation from Mr. Nate Leggett of Oxford Mining Company Inc. requesting verification of the jurisdictional limits on the mining site and to announce the submittal under the "integrated application process." A site visit was originally scheduled for Wednesday, May 12, 2004. Mark Agricola did make the field visit and team walk on that date, but they were unable to complete the site on that date. I was unable to attend due to sickness. A new field visit was scheduled for May 18, 2004 to finish verifying the Cole site.
2. On May 18, 2004, Mark and I met with Mr. Kevin Ricks and Dr. Jeff Reichwein of the ODNR-MRM and Mr. Leggett at the proposed Cole mining site. We found approximately 165 linear feet of Stream "G", an unnamed tributary to Stillwater Creek, had been relocated by a gas company, Haddad and Brooks, in association with a gas well installation. We verified the upper jurisdictional limits of Stream "G", which corresponded with the approximate limit called by Mr. Leggett. We also found **water impoundment 12 (WI-12) was non-jurisdictional due to the lack of surface water connection to Stream "G". The impoundment was also located at the top of a ridge and with steep slopes leading to Stream "G", no wetland connection to the stream was present either.** This impoundment was apparently created during pre-law mining, and will be mined out pending authorization of the Cole permit. The impoundment also had a small amount of fringe wetland (**non-jurisdictional**) consisting of cattails and black willows.
3. Another unnamed tributary to Stillwater Creek, which served as the receiving stream for Stream "G", also was verified during the May 18, 2004 site visit. However, the intermittent/ephemeral interface was moved upstream by approximately 150 linear feet. The upper jurisdictional limit of the stream was verified as called by Mr. Leggett. In addition, another unnamed tributary to this main stem was found to contain approximately 50 linear feet of jurisdictional intermittent stream fed by a developed spring (located at proposed sediment pond P-009).
4. We also verified the non-jurisdictional call on WI-2. **This previously installed impoundment was considered isolated due to the lack of surface water connection to any downstream tributary. The high walls of the impoundment and high elevation of the pond precluded any wetland connection to a water of the U.S. as well.**
5. On the eastern side of the proposed site, we verified the upper jurisdictional limit to another unnamed tributary to Stillwater Creek. This stream is the first left-hand tributary off of Haul Road "A" in the same hollow as undeveloped spring S-14. Finally, we verified the upper jurisdictional limit of another unnamed tributary to Stillwater Creek behind an existing residence at the location of proposed sediment pond P-006. We found an *undelineated*

wetland near the permit boundary approximately 0.25 to 0.50 acre in size. Mr. Leggett said he would have the wetland delineated before the next submittal. This wetland was dominated by *Juncus* spp. and sensitive fern, with other species including *Lycopus virginicus*. Finally, we added approximately 30 linear feet to the upper jurisdictional limit to this stream. Mr. Leggett will be meeting with Mark in the near future to correct the jurisdictional waters on the Cole and Putnam mining sites to continue the IAP process.



Jim Spence
North Permits Section