

**NAVIGABLE WATERWAYS IN THE BUFFALO DISTRICT
APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 19, 2007

B. DISTRICT OFFICE: Buffalo

C. PROJECT LOCATION AND BACKGROUND INFORMATION: The Buffalo District has previously determined the extent of navigable waters within their regulatory jurisdiction in the states of New York and Ohio. Posting of this jurisdictional determination establishes Corps jurisdiction over these navigable waters under Section 10 of the Rivers and Harbors Act of 1899. A list of these waters is posted on the Buffalo District's regulatory website at http://www.lrb.usace.army.mil/regulatory/waterway_ny.pdf and http://www.lrb.usace.army.mil/regulatory/waterway_oh.pdf. The Buffalo District has determined that a site/project specific jurisdictional determination involving these Section 10 navigable waters is not required.

D. REVIEW PERFORMED FOR EVALUATION: Office (Desk) Determination. Date: December 19, 2007

SUMMARY OF FINDINGS

RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: Prior to the determination and listing of Buffalo District's Section 10 navigable waters, detailed navigability studies were performed throughout the Buffalo District to determine which waters met the navigable waters definition found in 33 CFR Part 329. Upon completion, the Buffalo District issued several public notices updating the listing of Section 10 navigable waters determinations within the Buffalo District's regulatory boundaries. Since the most recent Public Notice (PN) 7-81, dated 27 July 1981, the extent of navigability of these listed waters and additional waters determined to be navigable was further refined pursuant to the "Definition of Navigable Waters of the United States" as provided in 33 CFR Part 329. The PN indicated that federal regulatory jurisdiction extends laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark (OHW) and that all adjacent embayments, or backwater areas, ponds or wetlands located below OHW are considered navigable for administrative purposes. In addition, the Pittsburgh District issued PN 00-54, dated 3 October 2000, established Section 10 jurisdiction over a portion of the Allegheny River which now occurs within the Buffalo District's regulatory boundaries. The current list of navigable waters, including extent of jurisdiction, occurring within the geographic limits of the Buffalo District and meeting this definition was established in 1996 and updated in 1999 may also be found on the Buffalo District's regulatory website at http://www.lrb.usace.army.mil/regulatory/waterway_ny.pdf and http://www.lrb.usace.army.mil/regulatory/waterway_oh.pdf. or provided upon request.

DATA SOURCES

SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps:

Corps navigable waters' study: Navigable water studies are available for the majority of navigable waters within the Buffalo District regulatory jurisdiction; Buffalo District issued PN 7-81, dated 27 July 1981; Pittsburgh District issued PN 00-54, dated 3 October 2000

U.S. Geological Survey map(s). Cite scale & quad name: .

USDA Natural Resources Conservation Service Soil Survey. Citation: .

FEMA/FIRM maps: .

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs: Aerial (Name & Date):

or Other (Name & Date):

Previous determination(s). File no. and date of response letter: .

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify): Definition of Navigable Waters of the United States (33 CFR Part 329).