

**APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Wetlands H, J, O, R, S, T, U, V, W, and X; Form 1 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Black Brook
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River
Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are and are not "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 5T linear feet: 5T width (ft) and/or 5T acres.

Wetlands: 0.385 acre.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: Wetlands H, J, and O were determined to have no surface or shallow subsurface water connection with the downstream TNW. They were also determined to have no ecological connection with the downstream TNW as there was no evidence of the presence of amphibians or other aquatic habitats that would share a connection between the wetlands and the downstream TNW.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T 7T

Average annual rainfall: 7T inches

Average annual snowfall: 7T inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.

Project waters are 7T river miles from RPW.

Project waters are 7T aerial (straight) miles from TNW.

Project waters are 7T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: 7T

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain: 7T

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 7T feet
Average depth: 7T feet
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: 7T

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: 7T

Estimate average number of flow events in review area/year: 7T

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

- Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | | |
|---|---|--|
| <input type="checkbox"/> Bed and banks | | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris | |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation | |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line | |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting | |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour | |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events | |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T | |
| <input type="checkbox"/> other (list): 7T | | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: 7T

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: 7T
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.385 acre

Wetland type. Explain: Wetlands R, U, V, and X (portion) are emergent and Wetlands S, T, W, and X (portion) are scrub-shrub

Wetland quality. Explain: Low to moderate

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: Flows from the wetlands to the adjacent RPW occurs following heavy rainfall events and after snow melt.

Surface flow is: Discrete and Confined

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Water from Wetlands R, S, T, U, V, W, and X flows west through existing culvert and non-jurisdictional drainageways to Black Brook. Black Brook flows west and then north into Mentor Marsh which connects to the Grand River, a TNW.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Standing water was not reserved at the time of the site visit.

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): 7T

Vegetation type/percent cover. Explain: The majority of these wetlands were dominated by invasive species (i.e Phragmites)

Habitat for:

Federally Listed species. Explain findings: 7T

Fish/spawn areas. Explain findings: 7T

Other environmentally-sensitive species. Explain findings: 7T

Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 7

Approximately (0.385) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>		<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland R	No	0.232	Wetland V	No	0.007
Wetland S	No	0.030	Wetland W	No	0.017
Wetland T	No	0.030	Wetland X	No	0.061
Wetland U	No	0.008			

Summarize overall biological, chemical and physical functions being performed: The wetlands provide the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; stream channel stability via serving as a natural buffer; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Water from Wetlands R, S, T, U, V, W, and X flows west through existing culvert and non-jurisdictional drainageways to Black Brook. Black Brook flows west and then north into Mentor Marsh, a National Natural Landmark and State Nature Preserve, which connects to the Grand River, a TNW. Portions of the Grand River are designated Exceptional Warmwater Habitat (EWH) or Warmwater Habitat (WWH). According to the Ohio Environmental Protection Agency (OEPA), causes of impairment within the Grand River watershed include urbanization, agricultural runoff, habitat alteration, nutrients, flow alterations, total dissolved solids and bacteria (Total Maximum Daily Loads for the Grand River watershed (lower), Ohio EPA, January 31, 2012). The wetlands are located in close proximity to industrial development, roads, and highways. They receive a majority of their hydrology from precipitation and runoff associated with the adjacent development and roadway. The wetlands provide an important function of reducing the effects of runoff, pollutants, and storm sewer impacts on the downstream TNW. The wetland supplies the downstream TNW with a cleaner source of water that will aid in reducing impairments.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
 - Wetlands adjacent to TNWs: 7T acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: 7T.
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: 7T.
Provide estimates for jurisdictional waters in the review area (check all that apply):
 - Tributary waters: 7T linear feet 7T width (ft).
 - Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: 7T acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.385 acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 0.061 acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

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U.S. Army Corps of Engineers**

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SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Pebble Branch, Wetlands I, K, and L; Form 10 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River

Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 904 linear feet: 10 width (ft) and/or 5T acres.

Wetlands: 4.283 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.

Project waters are 7T river miles from RPW.

Project waters are 7T aerial (straight) miles from TNW.

Project waters are 7T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵:

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: 7T

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: 7T

Estimate average number of flow events in review area/year: 7T

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

- Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | | |
|---|---|--|
| <input type="checkbox"/> Bed and banks | | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris | |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation | |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line | |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting | |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour | |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events | |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T | |
| <input type="checkbox"/> other (list): 7T | | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:.

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 4.283 acres

Wetland type. Explain: Wetland I is PEM/PSS/PFO. Wetlands K and L are PFO

Wetland quality. Explain: Moderate

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent Flow Explain:

Surface flow is: Discrete

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

- Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water was not observed in the wetland during the site visit

Identify specific pollutants, if known: 7T

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain: Emergent, scrub-shrub, and forested
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 3

Approximately (4.283) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland I	Yes	4.138 acres		
Wetland K	Yes	0.030 acre		
Wetland L	Yes	0.115 acre		

Summarize overall biological, chemical and physical functions being performed: The wetland provides the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; stream channel stability via serving as a natural buffer; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
 - Wetlands adjacent to TNWs: 7T acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Pebble Branch is depicted as a blue line perennial stream on all resources that were reviewed. On-site observations confirmed the presence of substantial flow in late June.
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:
Provide estimates for jurisdictional waters in the review area (check all that apply):
 - Tributary waters: 904 linear feet 10 width (ft).
 - Other non-wetland waters: 7T acres.Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands I, K, and L are all located contiguous with Pebble Branch.
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: 4.283 acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

**APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Stream 1, Wetlands A, D, P, and Q; Form 2 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River
Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 1,026 linear feet: 8 width (ft) and/or 5T acres.

Wetlands: 1.017 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
Identify TNW: 7T
Summarize rationale supporting determination: 5T
2. **Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T 7T

Average annual rainfall: 7T inches

Average annual snowfall: 7T inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.

Project waters are 7T river miles from RPW.

Project waters are 7T aerial (straight) miles from TNW.

Project waters are 7T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: 7T

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

- Tributary is:**
- Natural
 - Artificial (man-made). Explain: 7T
 - Manipulated (man-altered). Explain: 7T

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 7T feet
Average depth: 7T feet
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: 7T

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: 7T

Estimate average number of flow events in review area/year: 7T

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | | |
|---|---|--|
| <input type="checkbox"/> Bed and banks | | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris | |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation | |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line | |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting | |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour | |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events | |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T | |
| <input type="checkbox"/> other (list): 7T | | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: 7T

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: 7T
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 1.017 acre

Wetland type. Explain: Wetlands A, P, and Q are forested. Wetland D is emergent.

Wetland quality. Explain: Low to moderate

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: Flow from the wetlands to the adjacent RPW occurs following heavy rainfall events and after snow melt.

Surface flow is: Discrete and Confined

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Water from Wetlands P and Q flows west through existing culverts to Stream 1. Stream 1 flows north than east into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Standing water was not reserved at the time of the site visit.

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain: Wetland A, P and Q were forested. Wetland D was emergent and extended into the field area.
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 4

Approximately (1.017) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland A	Yes	0.199
Wetland D	Yes	0.041
Wetland P	No	0.770
Wetland Q	No	0.007

Summarize overall biological, chemical and physical functions being performed: The wetlands provide the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; stream channel stability via serving as a natural buffer; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Water from Wetlands P and Q flows west through existing culverts to Stream 1. Stream 1 flows north than east into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW. Portions of the Grand River are designated Exceptional Warmwater Habitat (EWH) or Warmwater Habitat (WWH). According to the Ohio Environmental Protection Agency (OEPA), causes of impairment within the Grand River watershed include urbanization, agricultural runoff, habitat alteration, nutrients, flow alterations, total dissolved solids and bacteria (Total Maximum Daily Loads for the Grand River watershed (lower), Ohio EPA, January 31, 2012). The wetlands are located in close proximity to industrial development, roads, and highways. They receive a majority of their hydrology from precipitation and runoff associated with the adjacent development and roadway. The wetlands provide an important function of reducing the effects of runoff, pollutants, and storm sewer impacts on the downstream TNW. The wetland supplies the downstream TNW with a cleaner source of water that will aid in reducing impairments.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
 - Wetlands adjacent to TNWs: 7T acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: On-site observations by the Corps and consultant (multiple times), along with aerial photographs supported the stream being perennial.
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: 7T.
Provide estimates for jurisdictional waters in the review area (check all that apply):
 - Tributary waters: 1,026 linear feet 8 width (ft).
 - Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands A and D are located contiguous with Stream 1 as shown on the delineation map.
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: 0.24 acre.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.777 acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

**APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Wetlands B and C; Form 3 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River
Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 5T acres.

Wetlands: 1.224 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
Identify TNW: 7T
Summarize rationale supporting determination: 5T
2. **Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T 7T

Average annual rainfall: 7T inches

Average annual snowfall: 7T inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.

Project waters are 7T river miles from RPW.

Project waters are 7T aerial (straight) miles from TNW.

Project waters are 7T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: 7T

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

- Tributary is:**
- Natural
 - Artificial (man-made). Explain: 7T
 - Manipulated (man-altered). Explain: 7T

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 7T feet
Average depth: 7T feet
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: 7T

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: 7T

Estimate average number of flow events in review area/year: 7T

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

- Dye (or other) test performed: 7T

Tributary has (check all that apply):

- Bed and banks
- OHWM⁶ (check all indicators that apply):
- | | |
|--|---|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T |
| <input type="checkbox"/> other (list): 7T | |
- Discontinuous OHWM.⁷ Explain: 7T

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: 7T

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: 7T
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 1.224 acre

Wetland type. Explain: Wetland B is PEM/PSS, Wetland C is PSS

Wetland quality. Explain: Moderate

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: Flow from the wetlands to the adjacent RPW occurs following heavy rainfall events and after snow melt.

Surface flow is: Discrete and Confined

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Water from Wetlands B and C flows west into a unnamed tributary that flows north and connects to Stream 1. Stream 1 flows east into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Standing water was not reserved at the time of the site visit.

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): 7T

Vegetation type/percent cover. Explain: Wetland B is a combination of emergent and scrub-shrub habitat. Wetland C is scrub-shrub

Habitat for:

Federally Listed species. Explain findings: 7T

Fish/spawn areas. Explain findings: 7T

Other environmentally-sensitive species. Explain findings: 7T

Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 2

Approximately (1.224) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland B	No	1.080
Wetland C	No	0.144

Summarize overall biological, chemical and physical functions being performed: The wetlands provide the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; stream channel stability via serving as a natural buffer; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Water from Wetlands B and C flows west into a unnamed tributary that flows north and connects to Stream 1. Stream 1 flows east into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW. Portions of the Grand River are designated Exceptional Warmwater Habitat (EWH) or Warmwater Habitat (WWH). According to the Ohio Environmental Protection Agency (OEPA), causes of impairment within the Grand River watershed include urbanization, agricultural runoff, habitat alteration, nutrients, flow alterations, total dissolved solids and bacteria (Total Maximum Daily Loads for the Grand River watershed (lower), Ohio EPA, January 31, 2012). The wetlands are located in close proximity to industrial development, roads, and highways. They receive a majority of their hydrology from precipitation and runoff associated with the adjacent development and roadway. The wetlands provide an important function of reducing the effects of runoff, pollutants, and storm sewer impacts on the downstream TNW. The wetland supplies the downstream TNW with a cleaner source of water that will aid in reducing impairments.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
 - Wetlands adjacent to TNWs: 7T acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: 7T.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 1.224 acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

**APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Wetlands E-F and G; Form 4 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River
Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 5T acres.
Wetlands: 1.132 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
Identify TNW: 7T
Summarize rationale supporting determination: 5T
2. **Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T 7T

Average annual rainfall: 7T inches

Average annual snowfall: 7T inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.

Project waters are 7T river miles from RPW.

Project waters are 7T aerial (straight) miles from TNW.

Project waters are 7T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: 7T

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

- Tributary is:**
- Natural
 - Artificial (man-made). Explain: 7T
 - Manipulated (man-altered). Explain: 7T

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 7T feet
Average depth: 7T feet
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: 7T

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: 7T

Estimate average number of flow events in review area/year: 7T

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

- Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | | |
|---|---|--|
| <input type="checkbox"/> Bed and banks | | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris | |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation | |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line | |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting | |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour | |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events | |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T | |
| <input type="checkbox"/> other (list): 7T | | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: 7T

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: 7T
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 1.132 acres

Wetland type. Explain: Wetland E-F is PEM, Wetland G is PSS

Wetland quality. Explain: Low to Moderate

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: Flow from the wetlands to the adjacent RPW occurs following heavy rainfall events and after snow melt.

Surface flow is: Discrete and Confined

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Water from Wetlands E-F and G flows north into a Stream 1. Stream 1 flows east into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Standing water was not reserved at the time of the site visit.

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain: Wetland E-F is emergent habitat. Wetland G is scrub-shrub
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 2

Approximately (1.132) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland E-F	No	1.104
Wetland G	No	0.028

Summarize overall biological, chemical and physical functions being performed: The wetlands provide the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; stream channel stability via serving as a natural buffer; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Water from Wetlands E-F and G flows north into a Stream 1. Stream 1 flows east into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW. Portions of the Grand River are designated Exceptional Warmwater Habitat (EWH) or Warmwater Habitat (WWH). According to the Ohio Environmental Protection Agency (OEPA), causes of impairment within the Grand River watershed include urbanization, agricultural runoff, habitat alteration, nutrients, flow alterations, total dissolved solids and bacteria (Total Maximum Daily Loads for the Grand River watershed (lower), Ohio EPA, January 31, 2012). The wetlands are located in close proximity to industrial development, roads, and highways. They receive a majority of their hydrology from precipitation and runoff associated with the adjacent development and roadway. The wetlands provide an important function of reducing the effects of runoff, pollutants, and storm sewer impacts on the downstream TNW. The wetland supplies the downstream TNW with a cleaner source of water that will aid in reducing impairments.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
 - Wetlands adjacent to TNWs: 7T acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: 7T.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 1.132 acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

**APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Stream 2; Form 5 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River

Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
- Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 80 linear feet: 3 width (ft) and/or 5T acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
Identify TNW: 7T
Summarize rationale supporting determination: 5T
2. **Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T

Average annual rainfall: 37.78 inches

Average annual snowfall: 36.2 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 3 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1-2 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: Stream 2 flows north into Stream 1 and then east before connecting to Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

- Tributary is:**
- Natural
 - Artificial (man-made). Explain: 7T
 - Manipulated (man-altered). Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 3 feet
Average depth: <1 feet
Average side slopes: 4:1 (or greater)

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input checked="" type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relatively stable

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: Seasonal Flow

Estimate average number of flow events in review area/year: 6-10

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

- Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T |
| <input type="checkbox"/> other (list): 7T | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water was not observed during the site visit.

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: Stream 2 is located within Wetland A
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size:

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain:

Surface flow is: 7T

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 7T river miles from TNW.

Project waters are 7T aerial (straight) miles from TNW.

Flow is from: 7T

Estimate approximate location of wetland as within the 7T floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 7T

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

TNWs: 7T linear feet 7T width (ft), Or, 7T acres.

Wetlands adjacent to TNWs: 7T acres.

2. **RPWs that flow directly or indirectly into TNWs.**

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: 7T.

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Stream 2 is not depicted on any in-house office resources. On-site observations by the Corps and consultant indicated that intermittent flow occurs as evidence by flowing water during the consultant's previous site visit.

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: 80 linear feet 3 width (ft).

Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: 7T acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Stream 3; Form 6 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River

Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 352 linear feet: 8 width (ft) and/or 5T acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T

Average annual rainfall: 37.78 inches

Average annual snowfall: 36.2 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1-2 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: Stream 3 flows east into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain: Stream 3 appears to be man-made channel through existing wetlands.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 8 feet
Average depth: <1 feet
Average side slopes: 4:1 (or greater)

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input checked="" type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relatively stable

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: Seasonal Flow

Estimate average number of flow events in review area/year: 6-10

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

- Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Bed and banks | | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris | |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation | |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line | |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting | |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour | |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events | |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T | |
| <input type="checkbox"/> other (list): 7T | | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water was not observed during the site visit.

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: Stream 3 is located within Wetland I
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size:

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain:

Surface flow is: 7T

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 7T river miles from TNW.

Project waters are 7T aerial (straight) miles from TNW.

Flow is from: 7T

Estimate approximate location of wetland as within the 7T floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 7T

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
- Wetlands adjacent to TNWs: 7T acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: 7T.
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Stream 3 is not depicted on any in-house office resources. On-site observations by the Corps and consultant indicated that intermittent flow occurs as evidence by flowing water during the consultant’s previous site visit.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 352 linear feet 8 width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: 7T acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

**APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Stream 4, Wetland M; Form 7 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River
Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 146 linear feet: 2 width (ft) and/or 5T acres.

Wetlands: 0.118 acre.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T

Average annual rainfall: 37.78 inches

Average annual snowfall: 36.2 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1-2 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: Stream 4 flows west into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 2 feet
Average depth: <1 feet
Average side slopes: 4:1 (or greater)

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input checked="" type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relatively stable

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: Seasonal Flow

Estimate average number of flow events in review area/year: 6-10

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T |
| <input type="checkbox"/> other (list): 7T | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water was not observed during the site visit.

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: Stream 4 is abutted by Wetland M
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.118

Wetland type. Explain: Forested

Wetland quality. Explain: Moderate

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain:

Surface flow is: Discrete

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water was not observed in the wetland during the site visit

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain: Forested
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 1

Approximately (0.118) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland M	Yes	0.118 acre		

Summarize overall biological, chemical and physical functions being performed: The wetlands provide the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; stream channel stability via serving as a natural buffer; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
- Wetlands adjacent to TNWs: 7T acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: 7T.
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Stream 4 is not depicted on any in-house office resources. On-site observations by the Corps and consultant indicated that intermittent flow occurs as evidence by flowing water during the consultant’s previous site visit.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 146 linear feet 2 width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T
- Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetland M is located contiguous with Stream 4 as observed during the site visit

Provide acreage estimates for jurisdictional wetlands in the review area: 0.118 acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Stream 5, Wetland N; Form 8 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River
Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
 Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 58 linear feet: 3 width (ft) and/or 5T acres.

Wetlands: 0.012 acre.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T

Average annual rainfall: 37.78 inches

Average annual snowfall: 36.2 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1-2 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: Stream 5 flows west into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 3 feet
Average depth: <1 feet
Average side slopes: 4:1 (or greater)

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input checked="" type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relatively stable

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: Seasonal Flow

Estimate average number of flow events in review area/year: 6-10

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Bed and banks | | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris | |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation | |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line | |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting | |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour | |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events | |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T | |
| <input type="checkbox"/> other (list): 7T | | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water was not observed during the site visit.

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: Stream 5 is abutted by Wetland N
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.012

Wetland type. Explain: Forested

Wetland quality. Explain: Low to Moderate

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain:

Surface flow is: Discrete

Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water was not observed in the wetland during the site visit

Identify specific pollutants, if known: 7T

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain: Forested
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 1

Approximately (0.012) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland N	Yes	0.012 acre		

Summarize overall biological, chemical and physical functions being performed: The wetland provides the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; stream channel stability via serving as a natural buffer; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: 7T
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
- Wetlands adjacent to TNWs: 7T acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: 7T.
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Stream 4 is not depicted on any in-house office resources. On-site observations by the Corps and consultant indicated that intermittent flow occurs as evidence by flowing water during the consultant’s previous site visit.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 58 linear feet 3 width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetland N is located contiguous with Stream 5 as observed during the site visit

Provide acreage estimates for jurisdictional wetlands in the review area: 0.012 acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 22, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB, Lubrizol Corporation, DA No. 2005-01233, Stream 6; Form 9 of 10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake City: Painesville
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7222 °, Long. -81.27176 °
Universal Transverse Mercator: 5T

Name of nearest waterbody: Pebble Branch

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River

Name of watershed or Hydrologic Unit Code (HUC): 04110004

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 5T
- Field Determination. Date(s): June 24, 2014, 5T

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 39 linear feet: 3 width (ft) and/or 5T acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM

Elevation of established OHWM (if known): 5T

2. Non-regulated waters/wetlands (check if applicable):³

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: 5T

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 5T 7T

Drainage area: 7T

Average annual rainfall: 37.78 inches

Average annual snowfall: 36.2 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1-2 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW⁵: Stream 6 flows west into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW.

Tributary stream order, if known: 7T

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 3 feet
Average depth: <1 feet
Average side slopes: 4:1 (or greater)

Primary tributary substrate composition (check all that apply):

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input checked="" type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: 7T | |
| <input type="checkbox"/> Other. Explain: 7T | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relatively stable

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: Ephemeral Flow

Estimate average number of flow events in review area/year: 2-5

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: 7T

Subsurface flow: Unknown Explain findings: 7T

Dye (or other) test performed: 7T

Tributary has (check all that apply):

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Bed and banks | | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris | |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation | |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line | |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting | |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour | |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events | |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community 7T | |
| <input type="checkbox"/> other (list): 7T | | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: 7T | | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): 7T | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water was not observed during the site visit.

Identify specific pollutants, if known: 7T

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size:

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: 7T Explain:

Surface flow is: 7T

Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:.

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 7T river miles from TNW.

Project waters are 7T aerial (straight) miles from TNW.

Flow is from: 7T

Estimate approximate location of wetland as within the 7T floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known: 7T

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings: 7T
 - Fish/spawn areas. Explain findings: 7T
 - Other environmentally-sensitive species. Explain findings: 7T
 - Aquatic/wildlife diversity. Explain findings: 7T

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 1

Approximately (0.012) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: Stream 6 flows west into Pebble Branch. Pebble Branch flows north and connects to the Grand River, a TNW. Portions of the Grand River are designated Exceptional Warmwater Habitat (EWH) or Warmwater Habitat (WWH). According to the Ohio Environmental Protection Agency (OEPA), causes of impairment within the Grand River watershed include urbanization, agricultural runoff, habitat alteration, nutrients, flow alterations, total dissolved solids and bacteria (Total Maximum Daily Loads for the Grand River watershed (lower), Ohio EPA, January 31, 2012). The stream is located in close proximity to an existing road receiving a majority of its hydrology from precipitation and runoff. The stream has the capacity to carry pollutants or flood waters and transfer nutrients and organic carbon to the downstream TNW which will affect impairments.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: 7T

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: 7T linear feet 7T width (ft), Or, 7T acres.
- Wetlands adjacent to TNWs: 7T acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: 7T.
- Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: 39 linear feet 3 width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 7T
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acre.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 7T acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: 7T
 Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
 Other non-wetland waters: 7T acres.
Identify type(s) of waters: 7T
 Wetlands: 7T acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: 7T
- Other: (explain, if not covered above): 7T

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: acre.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T acres.

SECTION IV: DATA SOURCES.

A. 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: 7T
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Mentor
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County
- National wetlands inventory map(s). Cite name: 7.5 Minute Mentor
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: 7T
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Googlemaps (ORM2), and Bing.com
 - or Other (Name & Date): 7T
- Previous determination(s). File no. and date of response letter: 7T
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T