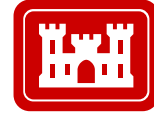




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## Regulatory Program



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

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

#### **SECTION I: BACKGROUND INFORMATION**

**A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):** December 19, 2019

**B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ):** LRB-2019-01187

#### **C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Ohio County/parish/borough: Ashtabula County City:

Center coordinates of site (lat/long in degree decimal format): Lat. 41.9059, Long. -80.7911.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are:  attached  in report/map titled Surface Water Delineation, Kinder Morgan Site, Ashtabula, Ohio (The Mannik and Smith Group, Inc., July 21, 2019 (received by email on November 5, 2019)).

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

#### **D. REVIEW PERFORMED FOR SITE EVALUATION:**

Office (Desk) Determination Only. Date: December 19, 2019.

Office (Desk) and Field Determination. Office/Desk Dates: Field Date(s): .

#### **SECTION II: DATA SOURCES**

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Surface Water Delineation, Kinder Morgan Site, Ashtabula, Ohio (The Mannik and Smith Group, Inc., July 21, 2019 (received by email on November 5, 2019)).

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

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: .

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .

Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: .

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: .

USGS Hydrologic Atlas. Title/Date: .

USGS, NHD, or WBD data/maps. Title/Date: .

USGS 8, 10 and/or 12 digit HUC maps. HUC number: .

USGS maps. Scale & quad name and date: Ashtabula North (1:24K).

USDA NRCS Soil Survey. Citation: Web Soil Survey.

USFWS National Wetlands Inventory maps. Citation: .

State/Local wetland inventory maps. Citation: .

FEMA/FIRM maps. Citation: .

Photographs:  Aerial. Citation: historicaerials.com (1952), Google Earth (9/2015, 6/2014, 4/2012, 8/2009). or  Other. Citation: Ground level photos: Surface Water Delineation, Kinder Morgan Site, Ashtabula, Ohio (The Mannik and Smith Group, Inc., July 21, 2019 (received by email on November 5, 2019)).

- LiDAR data/maps. Citation:
- Previous JDs. File no. and date of JD letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): historicaerials.com (Historical USGS topos-1946, 1961).

**SECTION III: SUMMARY OF FINDINGS**

**Complete ORM “Aquatic Resource Upload Sheet” or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required**

**A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:**

- “navigable waters of the U.S.” within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

**B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION:** “waters of the U.S.” within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

- This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- (a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

- (a)(3): The territorial seas.

- **Complete Table 3 - Required**

- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

- Bordering/Contiguous.

Neighboring:

- (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

**C. NON-WATERS OF THE U.S. FINDINGS:**

**Check all that apply.**

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

(b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

(b)(2): Prior converted cropland.

(b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

(b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

(b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

(b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.<sup>1</sup>

(b)(4)(iv): Small ornamental waters created in dry land.<sup>1</sup>

(b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

(b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.<sup>1</sup>

(b)(4)(vii): Puddles.<sup>1</sup>

(b)(5): Groundwater, including groundwater drained through subsurface drainage systems.<sup>1</sup>

(b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.<sup>1</sup>

(b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

**D. ADDITIONAL COMMENTS TO SUPPORT AJD:**

<sup>1</sup> In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.



**Jurisdictional Waters of the U.S.**

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

**Table 1. (a)(1) Traditional Navigable Waters**

<b>(a)(1) Waters Name</b>	<b>(a)(1) Criteria (Choose an item below)</b>	<b>Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.</b>								
N/A	<table border="1"> <tr> <td colspan="2" data-bbox="443 384 1018 418">(Choose an item below):</td> </tr> <tr> <td data-bbox="443 418 506 488"></td> <td data-bbox="506 418 1018 488">The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act</td> </tr> <tr> <td data-bbox="443 488 506 589"></td> <td data-bbox="506 488 1018 589">A federal court has determined that the waterbody is navigable-in-fact under federal law.</td> </tr> <tr> <td data-bbox="443 589 506 722"></td> <td data-bbox="506 589 1018 722">Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.</td> </tr> </table>	(Choose an item below):			The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act		A federal court has determined that the waterbody is navigable-in-fact under federal law.		Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.	N/A
(Choose an item below):										
	The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act									
	A federal court has determined that the waterbody is navigable-in-fact under federal law.									
	Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.									
N/A	<table border="1"> <tr> <td colspan="2" data-bbox="443 732 1018 766">(Choose an item below):</td> </tr> <tr> <td data-bbox="443 766 506 836"></td> <td data-bbox="506 766 1018 836">The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act</td> </tr> <tr> <td data-bbox="443 836 506 937"></td> <td data-bbox="506 836 1018 937">A federal court has determined that the waterbody is navigable-in-fact under federal law.</td> </tr> <tr> <td data-bbox="443 937 506 1063"></td> <td data-bbox="506 937 1018 1063">Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.</td> </tr> </table>	(Choose an item below):			The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act		A federal court has determined that the waterbody is navigable-in-fact under federal law.		Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.	
(Choose an item below):										
	The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act									
	A federal court has determined that the waterbody is navigable-in-fact under federal law.									
	Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.									

**Table 2. (a)(2) Interstate Waters**

<b>(a)(2) Waters Name</b>	<b>Rationale to Support (a)(2) Designation</b>
N/A	N/A

**Table 3. (a)(3) Territorial Seas**

<b>(a)(3) Waters Name</b>	<b>Rationale to Support (a)(3) Designation</b>
N/A	N/A

**Table 4. (a)(4) Impoundments**

<b>(a)(4) Waters Name</b>	<b>Rationale to Support (a)(4) Designation</b>
N/A	N/A
N/A	N/A

**Table 5. (a)(5) Tributaries**

<b>(a)(5) Waters Name</b>	<b>Flow Regime (Perennial; Intermittent; or Ephemeral)</b>	<b>(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows</b>	<b>Tributary Breaks</b>		<b>Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.</b>
			<b>Yes</b>	<b>No</b>	
N/A		N/A			N/A
N/A		N/A			N/A
N/A		N/A			N/A
N/A		N/A			N/A

**Table 6. (a)(6) Adjacent Waters**

<b>(a)(6) Waters Name</b>	<b>(a)(1)-(a)(5) Water Name to which this Water is Adjacent</b>	<b>Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.</b>
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

**Table 7. (a)(7) Waters**

<b>SPOE Name</b>	<b>(a)(7) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 8. (a)(8) Waters**

<b>SPOE Name</b>	<b>(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Non-Jurisdictional Waters**

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

**Table 9. Non-Waters/No Significant Nexus**

<b>SPOE Name</b>	<b>Non-(a)(7)/(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus</b>	<b>Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 10. Non-Waters/Excluded Waters and Features**

<b>Paragraph (b) Excluded Feature/Water Name</b>	<b>Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.</b>
Ditch	Petmin's consultant described the ditch as man-made and used to drain an active storage and staging area for the dock operations area on Lake Erie and that the ditch does not outlet to the lake and appears to only convey internally within the dock operations area. The ditch does not flow, either directly or through another water, into a water identified in paragraphs (a)(1) through (3) of 33 CFR 328.3.
N/A	N/A

**Table 11. Non-Waters/Other**

<b>Other Non-Waters of U.S. Feature/Water Name</b>	<b>Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.</b>
Water features	The two water features are located in the vicinity of Sample Point 1 and Sample Point 2. Petmin's consultant took one sample point in each area on the site where it was suspected wetlands may be present. The results for both points were that hydrology and plants met wetland criteria but soils did not meet the criteria. The project site is almost all Udorthents which are soils that have been altered by construction activities. The site is a result of filling activities that occurred between 1946 and 1952 when the docks at this location were greatly expanded into the lake (see attachments). As only 2 of 3 of the wetland criteria were met, the water features investigated are not jurisdictional.