



DEPARTMENT OF THE ARMY

BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

November 17, 2014

REPLY TO
ATTENTION OF

Environmental Analysis Team

SUBJECT: Cleveland Harbor, Cuyahoga County, Ohio - Request of Section 401 Water Quality Certification for Discharges of Dredged Material Associated with the Scheduled 2015 Maintenance Dredging Project

Mr. Craig W. Butler
Director
ATTN: Mr. Ric Queen
Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Mr. Butler:

This letter transmits the Section 404(a) Public Notice (Enclosure 1) and Section 401 State water quality certification (WQC) application for the proposed discharges of dredged material associated with our scheduled 2015 maintenance dredging project at Cleveland Harbor, Ohio (Enclosures 1 and 2, respectfully). This project entails the maintenance dredging of authorized Federal navigation channels and management of the associated dredged material. Material dredged from the Upper Cuyahoga River Channel between Station 799+00 (upstream Federal navigation channel limit) and Station 736+00 (Upper Turning Basin) will be discharged at open-lake area CLA-1 in Lake Erie, located approximately nine miles north of the harbor entrance. Material dredged from the remaining portions of the harbor's Federal navigation channels will be placed in existing dredged material confined disposal facilities (CDFs) in Cleveland Harbor. The Public Notice has been prepared in conformance with U.S. Army Corps of Engineers (USACE) regulation, "Practice and Procedure: Final Rule for Operation and Maintenance of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Materials into Waters of the United States or Ocean Waters," 33 Code of Federal Regulations (CFR) 337.1.

The USACE is requesting Ohio Environmental Protection Agency (OEPA) WQC to certify that the discharges of dredged material associated with the scheduled 2015 Cleveland Harbor maintenance dredging project will comply with applicable state water quality standards, or waive such certification, under Section 401 of the Clean Water Act. These dredged material discharges include the placement of Upper Cuyahoga River Channel dredged material at CLA-1, as well as the discharge of effluent (i.e., return water) associated with the placement of all other

SUBJECT: Cleveland Harbor, Cuyahoga County, Ohio - Request for Section 401 Water Quality Certification for Discharges of Dredged Material Associated with the Scheduled 2015 Maintenance Dredging Project

Cleveland Harbor Federal navigation channel dredged material in CDF No. 10B.

In a letter dated October 10, 2014, OEPA provided Antidegradation Rule guidance concerning our submittal of this application for WQC. The USACE has complied with the guidance in the letter. Specifically, USACE has provided the required information in the format required by OEPA's Section 401 WQC Application Completion and Submittal Instructions (Rev. 7/2014). Item 5, the Proposed Project Antidegradation Analysis, addresses the alternatives analysis required by the application instructions and Ohio's Antidegradation law at ORC 6111.12(A) and OAC 3745-1-05. The USACE followed Clean Water Act Section 404(b)(1) Guidelines and its regulations at 33 CFR Parts 335-337 in selecting the proposed disposal sites, and is requesting WQC for the proposed discharges of dredged material at those sites. The USACE application is not requesting WQC for the discharge of dredged material at any other sites. Therefore, no analysis of other discharge locations or methods is included in this application.

Please note that material dredged from the Upper Cuyahoga River Channel was previously discharged into Lake Erie between 1985 and 1993, a practice which was previously supported by OEPA through the issuance of past WQCs. Coarse-grain material dredged from this reach was placed at the authorized placement area offshore of Bratenahl just east of CDF No. 14. The WQC granted by OEPA relative to the last discharge of this dredged material (dated December 31, 1992) is included as Enclosure 3.

National Environmental Policy Act (NEPA) documents (Environmental Impact Statements and Environmental Assessments [EAs]) for dredging and management of Cleveland Harbor dredged material have been previously furnished to your office. Much of the information requested in Item 5 (Proposed Project Antidegradation Analysis) of the WQC application is contained in these documents in further detail. In addition, the final EA and Clean Water Act Section 404(b)(1) Evaluation for the open-lake placement of material dredged from the Upper Cuyahoga River Channel are available from the USACE Buffalo District Office.

As OEPA is aware, USACE conducted large scale sediment sampling and analyses of sediments within the Cleveland Harbor Federal navigation channels in 2012. The OEPA, Port of Cleveland, and Ohio Department of Natural Resources reviewed in advance the associated sediment sampling and analysis plan (SAP) and provided comments in March and April 2012. This effort applied standard biological and other advanced testing procedures to sediments within the Upper Cuyahoga River Channel because this is the reach of the harbor where the majority of dredging takes place each year (about 80 percent of the material or approximately 180,000 cubic yards). The USACE provided the data from this investigation to OEPA on January 9, 2013 and completed a comprehensive evaluation of these data in 2013 in accordance with the protocols and guidelines contained in the U.S. Environmental Protection Agency (USEPA)/USACE Great

SUBJECT: Cleveland Harbor, Cuyahoga County, Ohio - Request for Section 401 Water Quality Certification for Discharges of Dredged Material Associated with the Scheduled 2015 Maintenance Dredging Project

Lakes Dredged Material Testing and Evaluation Manual (1998) (Great Lakes Manual [GLM]) and Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (1998) (Inland Testing Manual [ITM]) (Enclosure 4). The USACE provided this evaluation to OEPA on August 1, 2013, prior to our last request for WQC for the 2014 dredging season in Cleveland. The evaluation concludes that discharge of the dredged material into the open-lake would not result in contaminant-related, unacceptable adverse impacts to the aquatic ecosystem. Therefore, it has been determined that this dredged material meets Federal “contaminant determination” guidelines for open-lake placement (40 CFR 210.11[d]).

For the scheduled 2015 dredging operation, USACE proposes to place the Upper Cuyahoga River Channel dredged material at open lake area CLA-1 only. As OEPA is aware, the one-by-two mile rectangle delineating CLA-1 is the approximate area used for the placement of Cleveland Harbor dredged material over 45 years ago. Enclosure 5 presents a summary of how the sediments sampled from CLA-1 in 2012 are consistent with background contamination and exhibit low toxicity, and how the material dredged from dredged material management unit (DMMU)-1, DMMU-2a and DMMU-2b meets formal Federal guidelines for open-lake placement at CLA-1. The 2013 dredged material evaluation addresses the use of both CLA-1 and CLA-4 for dredged material placement, and shows that conclusions regarding contaminant impacts among both areas were similar. The USACE has concluded that the use of both CLA-1 and CLA-4 for dredged material placement would be environmentally acceptable. However, CLA-4 is not currently being proposed for use. Since the evaluation of polychlorinated biphenyls (PCBs) for the placement of dredged material at CLA-1 and CLA-4 is somewhat different, Enclosure 6 is provided as a summary to address the bioaccumulation of PCBs with respect to placement at CLA-1 only.

With respect to the evaluation of bioaccumulation of PCBs from the dredged material, OEPA is of the position that the dredged material does not meet formal Federal guidelines because, depending on DMMU, it may statistically exceed the bioaccumulation measured from open-lake reference/placement area sediments at Tier 3 of the GLM. The USACE disagrees because such a position overlooks ITM guidance at Tier 3 (and discussed in other areas of the ITM) which prescribes the consideration of factors beyond statistical significance, as well as the Clean Water Act Section 404(b)(1) Guidelines and Tier 4 of regional guidance. The USACE emphasizes the fundamental concept that statistically significant differences are not a quantitative prediction that an ecologically important impact may occur in the field. The consideration of additional factors is necessary to evaluate potential ecological impacts and provide a more environmentally sound evaluation under Section 404 of the Clean Water Act. The OEPA is also concerned that the sediment sampling accomplished in 2012 was not representative of the dredged material. Please note that the sampling frequency applied in this case was high (five discrete samples per DMMU, with three DMMUs across an approximately one mile reach). This sampling density exceeded typical dredged material sampling frequencies

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several-fold. In addition, OEPA is concerned that core samples of the channel material were not obtained and that the samples were not obtained of the “channel shoulders.” Formal Federal guidance provides for the collection of surface grab samples in this case because material in the channel is actively removed twice a year, and subsequently filled with material from the upstream watershed. The USACE dredging occurs only in the Federal navigation channel prism and does not encroach into other areas of the river. The Upper Cuyahoga River Channel is subject to a similar shoaling rate and the material within the channel is expected to be vertically homogenous. In this way, surface grab samples of the channel material as collected in 2012 are representative of a load of dredged material aboard a scow.

The OEPA has noted an obligation to consider public opinion in WQC decision-making with respect to the placement of the Upper Cuyahoga River Channel dredged material in Lake Erie. The USACE is cognizant of the current public perception of the Upper Cuyahoga River Channel dredged material, which may be associated with the river’s history and its location in a highly industrialized area within the Cuyahoga Area of Concern (AOC). Nevertheless, state-of-the-science data and information supports the conclusion that the dredged material from the Upper Cuyahoga River is suitable for open-lake placement. Open-lake placement of dredged material requires rigorous environmental standards that have been developed jointly by the U.S. Environmental Protection Agency (USEPA) and USACE, and the concepts and characterizations required to attain such standards can be quite complex. Such levels of complexity highlight the importance for the USACE to effectively communicate this type of information to the public. When this is considered in tandem with public interest review requirements, USACE has an obligation to inform the public on technical matters, and balance public input with the science as well as other factors, including economics. To this end, USACE has directly informed the public regarding the technical aspects of the open-lake placement of this dredged material through various media such as a presentation at the September 19, 2013 State of the River Symposium, draft EA dated February 24, 2014, webinar on March 4, 2014, a public information open house meeting on April 2, 2014, and most recently through the current Section 404 Public Notice enclosed with this letter.

As OEPA is aware, USACE re-sampled the Upper Cuyahoga River Channel material and lake sediments at various locations offshore of Cleveland for additional physical, chemical and biological analyses in June 2014. Once validation/verification of those data is complete, they will be coordinated with OEPA.

The USACE requires WQC in order to accept contract bids on this project. The bid opening date has been scheduled for March 23, 2015 and our goal is to secure the WQC by this date. Therefore, we are requesting for an administratively complete determination on the application as soon as possible, and that the Public Hearing be scheduled at your earliest possible convenience. Please advise us regarding the status of the enclosed application within 15

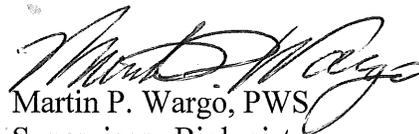
SUBJECT: Cleveland Harbor, Cuyahoga County, Ohio - Request for Section 401 Water Quality Certification for Discharges of Dredged Material Associated with the Scheduled 2015 Maintenance Dredging Project

business days of submittal. We appreciate your cooperation in this matter.

A copy of the Public Notice will be sent to U.S. Fish and Wildlife Service (Ecological Services, Columbus, Ohio) and ODNR (Division of Wildlife, Ohio Biodiversity Database, Columbus, Ohio) on November 17, 2014 to coordinate comments with respect to Threatened and Endangered species, including the presence or absence of Critical Habitat. Further, we will e-mail these two entities on November 17, 2014 to request their comments in this regard with copy furnished to OEPA.

If you have any questions pertaining to this matter please contact Mr. Scott W. Pickard of the Buffalo District at (716) 879-4404, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York, 14207-3199, or by e-mail at: Scott.W.Pickard@usace.army.mil.

Sincerely,


Martin P. Wargo, PWS
Supervisory Biologist
Environmental Analysis Team

Enclosures