



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

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

November 20, 2015

Environmental Analysis Team

SUBJECT: Cleveland Harbor, Cuyahoga County, Ohio—Request for Section 401 Water Quality Certification for Discharges of Dredged Sediments Associated with the Scheduled 2016 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:

The U.S. Army Corps of Engineers (USACE), Buffalo District is requesting Clean Water Act (CWA) Section 401 water quality certification (WQC) from the Ohio Environmental Protection Agency (OEPA) for the discharge of sediments dredged from the Cleveland Harbor Upper Cuyahoga River Channel (between Station 799+00 [upstream federal navigation channel limit] and Station 736+00 [Upper Turning Basin]) at the designated open-lake placement area CLA-1, and for the discharge of effluent from confined disposal facility (CDF) 10B. Sediment dredged from the remainder of the channel will be placed in CDF 10B. The USACE is requesting WQC for the discharge of sediments removed from individual dredged material management units (DMMUs) 1, 2a and 2b at CLA-1. The discharge of channel sediments from each of these DMMUs at CLA-1 meets CWA Section 404(b)(1) Guidelines and applicable state water quality standards (WQSs) as demonstrated in the enclosed WQC application materials (Enclosures 1 and 2). Please note that National Environmental Policy Act (NEPA) documents (Environmental Impact Statements [EISs] and Environmental Assessments [EAs]) for dredging and management of Cleveland Harbor dredged sediments have been previously furnished to your office, including the 2014 EA for selection of the open-lake placement location.

The 2015 dredged sediment evaluation (Enclosure 2) is based on data generated from three sampling events in 2014 and 2015, and with reference to the 2013 dredged sediment evaluation. The 2015 evaluation supports reaffirmation that Upper Cuyahoga River channel sediments meet CWA Section 404(b)(1) Guidelines for placement in the open-lake at CLA-1 and complies with applicable state WQSs. Please note that the laboratory bioaccumulation results from 2015 have not been included in this evaluation since verification/validation of the analytical

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data is not yet complete. Additionally, the USACE will review the supplemental information provided by OEPA via letter dated September 30, 2015 and integrate relevant data into a revision to the 2015 dredged sediment evaluation. The USACE will provide that revision to OEPA as a supplement, if applicable, to our WQC application in early 2016.

This WQC application is being submitted at this stage to allow OEPA sufficient time to review it and render a decision in advance of the scheduled 2016 dredging season. The USACE requires WQC in order to accept contract bids on this project. The bid opening date has been scheduled for March 24, 2016. Receiving WQC by this date will avoid delays in maintaining the Cleveland Harbor federal navigation channels.

The USACE continues to use the scientific standard “weight-of-the-evidence” approach to determine whether the Upper Cuyahoga River Channel sediments meet CWA Section 404(b)(1) Guidelines for open-lake placement. This means USACE considers multiple lines of evidence in its evaluation and draws conclusions based on all relevant information. The USACE continues to welcome any additional relevant and defensible lines of scientific evidence which indicate that these channel sediments do not meet CWA Section 404(b)(1) Guidelines for open-lake placement. In order to document weight-of-the-evidence in a mutually agreeable way, we recommend that our agencies cooperate to identify the uncertainties and relevant lines of evidence pertaining to open-lake placement of dredged sediments from the Upper Cuyahoga River Channel. This would lend additional transparency to this issue.

A number of concerns have been expressed to the USACE over the past two years regarding its determination that sediments in the Upper Cuyahoga River Channel meet Section 404(b)(1) Guidelines for open-lake placement. Many of these concerns focus on whether the determination was conducted in accordance with formal federal guidance on testing and evaluation, and if all testing and evaluation has been conducted in accordance with both the Evaluation of Dredged Material Proposed for Discharge in Waters of the U. S.—Testing Manual (Inland Testing Manual [ITM]) (U. S. Environmental Protection Agency [USEPA]/USACE, 1998) and the Great Lakes Dredged Material Testing and Evaluation Manual (Great Lakes Testing Manual [GLTM]) (USEPA/USACE, 1998). Enclosure 3 discusses these items further, and also addresses several other concerns raised by OEPA in letters dated December 20, 2014, January 10, 2015, February 20, 2015 and July 22, 2015, and the Ohio Attorney General letter dated December 17, 2014. The following elements are addressed in this enclosure: (1) determination that these channel sediments meet CWA Section 404(b)(1) Guidelines for open-lake placement with respect to bioaccumulation of PCBs, (2) application of GLTM and ITM, (3) use of CLA-1 sediments to make a dredged sediment open-lake placement determination, (4) OEPA's assessment of PCB bioaccumulation from these channel sediments in Lake Erie fish, (5) potential effect of open-lake placement of these channel sediments on the existing fish

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consumption advisory (FCA) to consume no more than one meal/month of Lake Erie walleye, (6) vertical homogeneity of these channel sediments, and (7) recent results of standard 10-day *Hyalella azteca* solid phase bioassays applied to these channel sediments in 2015.

In 2014, USACE encountered some significant sediment contamination in existing lake sediments within and outside of CLA-1 (e.g., CLA-14). A summary assessment of this contamination is presented in Enclosure 4. In 2016 therefore, USACE proposes to beneficially use Upper Cuyahoga River Channel sediments by placing them over these existing contaminated sediments within the southeast quadrant of CLA-1 to improve lake bottom (benthic) habitat at impacted locations. Consideration should also be given to future beneficial use of Cleveland Harbor dredged sediments to cap contaminated sites identified outside of CLA-1. As discussed in Enclosure 4, placement of the Upper Cuyahoga River Channel sediments over impacted sites would improve the existing aquatic ecosystem by restoring lake bottom habitat to a condition that is more suitable for the reestablishment of a viable benthic community at those sites.

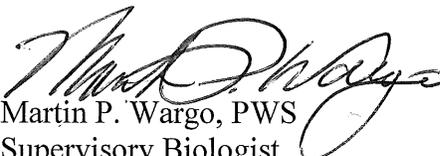
This transmittal letter also includes the Section 404(a) Public Notice for the proposed discharges of dredged sediment (Enclosure 1, Item 4b). The Public Notice has been prepared in conformance with USACE regulation, "Practice and Procedure: Final Rule for Operation and Maintenance of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Materials into Waters of the United States or Ocean Waters," 33 CFR 337.1. A copy of the Public Notice has been sent to U.S. Fish and Wildlife Service (Ecological Services, Columbus, Ohio) and ODNR (Division of Wildlife, Ohio Biodiversity Database, Columbus, Ohio) to coordinate comments with respect to Threatened and Endangered species, including the presence or absence of Critical Habitat. In addition, an e-mail has been sent to these two entities to request their comments with copy furnished to OEPA (Enclosure 1, Item 4c and 4d).

Finally, please be aware that a denial of the WQC or the inclusion of conditions prohibiting open-lake placement would put USACE in the position of having to consider the deferral of dredging of the Upper Cuyahoga River Channel in 2016. In this event, non-USACE entities may be able to dredge this reach of federal navigation channel and manage the sediments in a manner of the State's (or other's) preference, pending their receipt of applicable federal and state approvals. Additionally, the USACE re-emphasizes its willingness to work with the State and other stakeholders, should they identify and propose a dredge material placement option other than the federal standard. Implementation of such an option would require a non-USACE entity to contribute the additional costs above the federal standard, and would need to be coordinated as soon as possible in advance of the anticipated 2016 dredging contract award to avoid possible delays in dredging.

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If you have any questions pertaining to this matter or you would like to discuss any of it in greater detail, please feel free to contact Mr. Scott W. Pickard (716-879-4404; scott.w.pickard@usace.army.mil), or by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199.

Sincerely,


Martin P. Wargo, PWS
Supervisory Biologist
Environmental Analysis Section

Enclosures