



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

July 8, 2011

Kristopher E. Ruggles
Strand Associates, Inc.
4433 Professional Parkway
Groveport, Ohio 43215

Re: Lawrence / Perry / South Point
Point Intermodal Facility
Pre-Application Meeting Follow-Up Letter

Dear Mr. Briggs:

Thank you for meeting with me on June 27, 2011, to discuss the Lawrence Economic Development Corporation (LEDC) Point Intermodal Facility project and potential Section 401 Water Quality Certification (WQC) application. The proposed project is located in South Point, Lawrence County, Ohio.

The pre-application meeting was held at Ohio EPA. During the meeting, we discussed details of the project. Proposed plans include the construction of railway lines and a public roadway. At the intersection of the two linear transportation modes, freight will be transferred from rail to highway. The project will impact approximately 450 linear feet of an intermittent stream. Two separate sections of the stream will be culverted. The length of these sections will not exceed 200 linear feet. Additionally, a free-span structure would be constructed between the existing and proposed culverts. Approximately 3,200 linear feet of the stream has been previously channelized.

Meeting attendees, who also included Tom Harcarik, Ohio EPA Section 401 Supervisor, and Bill Dingus, LEDC, discussed the proposed project including the following:

1. Background Information (please correct me if I misstated any of this information)
 - On March 22, 2010, LEDC received authorization under nationwide permit (NWP) #39 from the U.S. Army Corps of Engineers (USACE) to discharge fill material into less than 200 linear feet of stream and 0.07 acres of wetland to facilitate the construction of an intermodal pad and a new rail spur.
 - Sometime following USACE's permit authorization, the stream to be impacted as a result of the project was determined to be an intermittent stream.
 - Due to the stream's intermittent flow regime, the project was no longer covered under the nationwide permit.
 - USACE has not received a revised permit application for this project.
 - Ohio EPA has not received an application for this project.

2. Items of Concern

- Several engineering alternatives were investigated in an attempt to keep the linear feet of stream impacts to less than 200 linear feet. Free-span and bridge-type structures and three-sided culverts were considered.
 - The bridge-type and culvert alternatives were not considered economical or constructible/feasible because the site soil types have high potential for scour.
 - A free-span structure could potentially work to avoid required USACE permitting. Necessary crossings of the stream would be culverted and the remaining portion would be crossed with a free-span structure. However, the stream would not receive sunlight such as in the case of a typical free-span bridge structure. LEDC is concerned that having the stream entombed between two culvert sections could create a significant maintenance and inspection access concern since either end would be capped by a headwall or junction chamber with only a manway for access.
- Upon receipt of an application, USACE may provide coverage for the project under NWP #14 Linear Transportation Projects. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than ½ acre of waters of the United States. However, Ohio EPA's certification of the NWP calculates impacts differently and looks at linear feet of impacts as opposed to acres of impacts. The length of stream to be impacted (~450 ft) exceeds the 200 linear feet allowance for intermittent streams.

3. Action Items and responses

- Ohio EPA will contact USACE to verify stream flow regime.
 - USACE was contacted on July 5, 2011. The stream in question was determined to be intermittent.
- Ohio EPA will contact USACE to determine permitting requirements.
 - In order for USACE to definitively determine permitting requirements, LEDC must submit a Section 404 application.
 - If the project impacts exceed ½ acre, the project will require an individual Section 404 permit and individual Section 401 WQC.
 - If the project impacts are less than ½ acre, the project may be permitted under NWP#14; but will require an individual Section 401 WQC.

4. Project time lines

In order to start the Ohio EPA Section 401 WQC time line, LEDC must submit a 401 WQC [application](#). Once Ohio EPA receives your application:

- You will be notified within 15 business days of receipt of the application if your application is administratively complete. Incorrect, incomplete and/or inaccurate applications may result in delays in application processing or a denial of the Section 401 WQC.
- When necessary, a resubmittal of the revised application to address incomplete items begins a new 15-business day review period.

- A technical review period of 180 calendar days commences on the date Ohio EPA sends notification to the applicant that the application is considered to be administratively complete. (Ohio EPA has agreed to expedite the permit application.)
- Once an application has been deemed administratively complete, that is, during the technical review, Ohio EPA can request materials to clarify impacts, mitigation or other aspects of the application if it is determined that the application lacks information necessary to determine whether the applicant has demonstrated the criteria set forth in OAC rule [3745-32\(A\)](#) and OAC Chapter [3745-1](#).
- If an application is administratively incomplete for more than one year, Ohio EPA may issue a Denial without Prejudice or request that the applicant withdraw their application.

When you are ready to submit the Section 401 WQC to Ohio EPA, **please provide the following information:**

1. A complete [401 Water Quality Certification application form](#);
2. A copy of the [United States Army Corps of Engineers'](#) jurisdictional determination letter. If no jurisdictional determination is to be issued by the Corps, the public notice or notification that the project is authorized under a general permit will fulfill this requirement;
3. If the project impacts a wetland, a wetland characterization analysis consistent with the [Ohio Rapid Assessment Method](#);
4. If the project impacts a stream for which a specific [aquatic life use designation](#) has not been made, a use attainability analysis;
5. A specific and detailed mitigation proposal, including the location and proposed legal mechanism for protecting the property in perpetuity;
6. Applicable permit fees ([see Fees page](#));
7. Site photographs;
8. Adequate documentation confirming that the applicant has requested comments from the [Ohio Department of Natural Resources](#) and the [United States Fish & Wildlife Service](#) regarding threatened and endangered species, including the presence or absence of critical habitat;
9. Descriptions, schematics, and appropriate economic information of the applicant's preferred alternative, non-degradation alternatives and minimal degradation alternatives for design and operation of the activity;
10. The applicant's investigation report of the waters of the United States in support of the 404 permit application. If no investigation report is required by the Corps, the public notice or notification that the project is to be authorized under a general permit will fulfill this requirement; and
11. A copy of the United States Army Corps of Engineers' public notice regarding the 404 permit application. If no public notice is to be issued by the Corps, notification that the project is authorized under a general permit will fulfill this requirement.

You may find a copy of Ohio EPA's rules and laws online:

<http://www.epa.ohio.gov/dsw/rules/index.aspx>.

Information regarding Ohio's Section 401 Program is also available online:

<http://www.epa.ohio.gov/dsw/401/index.aspx>.

If you have any questions or concerns regarding these comments, please contact me at (614) 644-2148, or via e-mail at Rose.McLean@epa.state.oh.us.

Sincerely,

A handwritten signature in black ink that reads "Rose McLean". The signature is written in a cursive, flowing style.

Rose McLean
401 Coordinator
Division of Surface Water

ec: Bill Dingus, LEDC
Teresa Spagna, Department of the Army, Huntington District, Corps of Engineers
Tom Harcarik, Supervisor, 401 Section, DSW, Ohio EPA