

**ATTACHMENT**

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):** 26 April 2012

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**  
Sean Pepper, Atwell LLC, 30575 Bainbridge Road, Solon, Ohio 44139 on behalf of Roberto Reniero, c/o John Eureka, Nestle R&D, Inc., 5750 Harper Road, Solon, Ohio 44139

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Buffalo District, Nestle R&D, Inc. – Product Technology Center, LRB-2007-00264

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**

Nestle R&D Center, Inc. has submitted a Department of the Army permit application for proposed activities associated with the construction of a product technology facility on an approximately 16-acre site located south of Cannon Road, west of U.S. Route 422 and east of Hawthorn Parkway in the City of Solon, Cuyahoga County, Ohio (Sheet 1 of 2). The applicant has proposed to construct a new 92,865 square foot building, a 178-space parking lot and parking aprons for shipping and receiving. The proposed location is adjacent to an existing Nestle facility used for research, production and administrative tasks.

A wetland delineation report identifying five wetlands on the subject property, totaling 3.76 acres, was submitted to the Corps on behalf of the applicant (Sheet 2 of 2). Wetland A (2.90 acres) has forested and emergent components. Wetlands B (0.69 acres), C (0.08 acres), D (0.06 acres) and E (0.03 acres) are dominated by emergent vegetation. The boundaries of the delineated wetlands were field-verified by the Corps in October 2011.

**(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State: Ohio County/parish/borough: Cuyahoga Co. City: Solon  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.40396° N, Long. -81.4676° W.

Universal Transverse Mercator:

Name of nearest waterbody: unnamed tributary of Tinkers Creek

Identify (estimate) amount of waters in the review area:

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

Cowardin Class:  
Stream Flow:  
Wetlands: 3.76 acres.  
Cowardin Class: Forested, emergent

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

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

- Office (Desk) Determination. Date: 26 April 2012
- Field Determination. Date(s): October 2011

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all

wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply**

- checked items should 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: wetland delineation report submitted by the consultant on 31 January 2012 and revised delineation maps submitted by the consultant on 24 April 2012.

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

Office concurs with data sheets/delineation report. \*(in part)

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps: .

Corps navigable waters’ study: .

U.S. Geological Survey Hydrologic Atlas: .

USGS NHD data.

USGS 8 and 12 digit HUC maps.

U.S. Geological Survey map(s). Cite scale & quad name: OH-CHAGRIN FALLS, 1:24000.

USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS SSURGO shapefile.

National wetlands inventory map(s). Cite name: USFWS, NWI shapefile.

State/Local wetland inventory map(s): .

FEMA/FIRM maps: .

100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

Photographs:  Aerial (Name & Date): Google Earth Pro, multiple images 1994-2011.

or  Other (Name & Date): site photos provided by the consultant as part of the original delineation report.

Previous determination(s). File no. and date of response letter: \_\_\_\_\_.

Other information (please specify): \_\_\_\_\_.

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

\_\_\_\_\_  
Signature and date of  
Regulatory Project Manager  
(REQUIRED)

\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining  
the signature is impracticable)

Aquatic Resources

<b>Resource ID</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Cowardin Class</b>	<b>Estimated amount of aquatic resource in review area</b>	<b>Class of aquatic resource</b>
Wetland A - 2007-00264	41.407651	-81.47096	PFO	2.90 acres	non-section 10 – wetland
Wetland B - 2007-00264	41.408174	-81.47236	PEM	0.69 acre	non-section 10 – wetland
Wetland C - 2007-00264	41.407591	-81.47201	PEM	0.08 acre	non-section 10 – wetland
Wetland D - 2007-00264	41.408146	-81.47206	PEM	0.06 acre	non-section 10 – wetland
Wetland E - 2007-00264	41.409276	-81.47215	PEM	0.03 acre	non-section 10 – wetland