



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

OFFICE OF THE
SECRETARY

Secretary's Order No. 2012-W-0034

Re: APPLICATIONS OF THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL FOR PERMITS FOR CONSTRUCTION PROJECTS ALONG PORTIONS OF LITTLE MILL CREEK NEAR ELSEMERE, NEW CASTLE COUNTY

Date of Issuance: August 30, 2012

Effective Date: August 30, 2012

Background

This Order of the Secretary of the Department of Natural Resources and Environmental Control (Department) reviews the record following a consolidated August 15, 2012 public hearing on two permit applications submitted to the Department's Division of Water, Wetlands and Subaqueous Lands Section (WSLS).

The United States Army Corps of Engineers¹ (COE) submitted an application for Wetlands Act and Subaqueous Lands Act (SLA) permits in order to construct a flood control project along the Little Mill Creek in an unincorporated portion of New Castle County near Elsemere. The Department's Division of Waste and Hazardous Substances, Site Investigation and Remediation Section² (SIRS) submitted an application for a SLA permit for environmental remediation along Little Mill Creek near the location of the COE project.

The Department received two written public comments on the COE application, including a request for public hearing. The Department held a consolidated public hearing since

¹ Received February 16, 2012 by the Department's Division of Water, Wetlands and Subaqueous Lands Section (WSLS).

² This application was received on May 17, 2012.

Delaware's Good Nature depends on you!

both projects have common factual and legal issues, and the work would be coordinated to mitigate any negative environmental impact during the construction.

COE's project, entitled 'Little Mill Creek Section 205 Flood Risk Management Project,' would realign, deepen and widen portions of Little Mill Creek in order to reduce the risk of flooding. This project is based upon a 1995 COE study on improving flood control on the lower reach of Little Mill Creek, and represents the second and final step to implement the 1995 study. This project is proposed to improve flood control on the Little Mill Creek from the Maryland Avenue (DE Route 4) Bridge to the Amtrak Bridge, which is an area prone to flooding.

COE's proposed construction would re-align approximately 2,000 linear feet of Little Mill Creek at two locations by dredging approximately 30,000 cubic feet of material, installing hardened stream bed protection, installing erosion control matting along the stream banks, and wetlands restoration. The construction would impact state regulated wetlands, as shown on DNR Map #403, and federally regulated wetlands, and restore some of the wetlands harmed.³ The proposed construction would employ best management practices for soil and sediment controls.

The SIRS Project proposes the environmental remediation⁴ of the Meco Drive Ditch (Ditch), which drains into the Little Mill Creek at the lower portion where the COE Project is proposed. The Department previously approved SIRS' 'Plan of Remedial Action for the Meco

³ As proposed, approximately 0.095 acres of state regulated wetlands would be converted to open water, 0.2 acres of uplands would be converted to low march tidal wetlands, and 0.72 acres would be disturbed temporarily by the construction.

⁴ Prior remediation began in December 1986, when SIRS investigated a complaint of an oily substance flowing into the Ditch and found that it was free-phase petroleum. Accordingly, SIRS began a HSCA remediation that resulted in the 1990s' with installation of booms to capture surface discharges, and extraction wells to recover subsurface discharges. In 2008, SIRS installed a passive petroleum extraction trench lateral to the ditch in order to cut off the flow of free phase petroleum to the ditch.

Drive Site (OU-2) Ditch Remediation (Project DE-1103)' under the Hazardous Substances Cleanup Act (HSCA).⁵ This construction would occur on less than an acre and includes portions of seven adjacent parcels of the 6 acre Meco Drive HSCA site, which SIRS' research indicates may have been used as a landfill in the 1960s. SIRS' proposed remediation would install along the Ditch carbon mats to remediate the free-phase petroleum contamination, and an estimated 300 cubic yards of soil would be excavated, and possibly 100 cubic feet of soil removed, if contaminated, for suitable disposal or treatment.

The Department's presiding hearing officer prepared the attached hearing officer's report (Report), which recommends issuance of the authority consistent with the permits drafted by the Department's experts in WSLs. The Report is hereby adopted to the extent it is consistent with this Order as further support for this decision.

Findings and Reasons

The Department finds that the record supports the issuance of the WSLs drafted permits, subject to reasonable conditions, to undertake the COE and SIRS projects. The permits to be issued by this Order will authorize construction of flood control improvements that will benefit the environment and water quality, and provide for increased public safety. The COE's flood control measures are designed to improve the movement of flood waters along the Little Mill Creek in an area that often has experienced flooding. The improvements will allow flood waters to move through with the area and thereby reduce the risk of flooding from obstacles and debris that currently impair the water movement. Despite this project, flooding may still occur because of the bridges and prior land development in upper portions of Little Mill Creek's watershed. Nevertheless, the experts expect that the COE project should improve the movement of water to the Christiana River and thereby reduced flooding along this area.

⁵ The entire Meco Drive HSCA site is 6 acres.

The public comments questioned the effectiveness of the proposed environmental remediation and the flood control measures. At the public hearing, there were experts who developed the projects and who explained how they would improve the environment and reduce the risk of flooding. This explanation satisfied the concerns raised in the public comments. Moreover, New Castle County Conservation District's Executive Director, Kevin Donnelly, committed the District to further efforts to reduce the risk of flooding. The Department's approval of the permits is based upon its experts' conclusions that the flood control and environmental remediation should improve the environment and public safety.

The COE project will provide benefits from reducing the risk of flooding and restore the wetlands with vegetation to make this portion of the Little Mill Creek more attractive for wildlife. The SIRS project also will continue the clean-up efforts of the Meco Drive HSCA Site and improve the environment.

Conclusions

The Department, based upon the record and the findings and reasons set forth above, concludes as follows:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding based on the record;
2. The record supports granting COE SLA and Wetlands Act authority to construct the COE Project and granting SIRS SLA authority to construct its environmental remediation, subject to the reasonable conditions in the permits prepared by WSLS;
3. The Department provided adequate public notice of the applications and the public hearing, as required by the law and the Department's regulations;

4. The Department held a public hearing and has considered all timely and relevant public comments in making its determination;

5. The Department shall publish this Order on its internet web site and provide such other notice as required by law and the Department determines appropriate.



Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **APPLICATIONS OF THE UNITED STATES ARMY CORPS OF ENGINEERS
AND THE DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL FOR PERMITS FOR CONSTRUCTION
PROJECTS ALONG PORTIONS OF LITTLE MILL CREEK NEAR
ELSEMERE, NEW CASTLE COUNTY**

DATE: August 20, 2012

I. PROCEDURAL HISTORY

This Report provides the Secretary of the Department of Natural Resources and Environmental Control (Department) with recommendations on two separate but related applications. The United States Army Corps of Engineers (COE) seeks to construct a flood control project on portions of the Little Mill Creek near Elsemere, New Castle County. The Department's Division of Waste and Hazardous Substances, Site Investigation and Remediation Section (SIRS) seeks approval under the Subaqueous Lands Act of an environmental remediation project for a drainage ditch that flows into Little Mill Creek where COE's construction is proposed.

The applications were submitted to the Department's Division of Water, Wetlands and Subaqueous Lands Section (WSLS), which published public notice of the applications. In response to the COE's public notice, the Department received a request for a public hearing and a written comment about drainage problems. The Department decided to hold a consolidated public hearing on the COE and SIRS applications, and published public notice of an August 15, 2012 public hearing. I presided over the public hearing at the Elsemere Town Hall.

I requested WSLs to prepare draft permits, which are attached hereto and include reasonable conditions. I consider the record, as reviewed below, complete and that the record supports a final decision that issues the permits that WSLs have drafted.

II. SUMMARY OF THE RECORD¹

The Department's record contains the following: 1) the verbatim transcript of the public hearing; 2) the documents identified and introduced at the hearing; 3) this Report, and WSLs' draft permits attached hereto. At the public hearing, WSLs' representative, Jim Chaconas, Environmental Scientist, provided the following documents² from the Department files: COE's permit application received February 16, 2012 (DNREC Ex. 1); SIRS's permit application received May 17, 2012 (DNREC Ex. 2) the joint public notice of the hearing on the applications (DNREC Ex. 3); and the public comments on the COE application and Mr. Chaconas' letter dated June 12, 2012 in reply to the request for the public hearing. (DNREC Ex. 4).

Todd Keyser from SIRS and SIRS' consultant and COE's representatives attended the public hearing. Mrs. Edith Santa Barbara's family spoke about flooding at Mrs Santa Barbara's residence at 312 Corval Place, which is near Meco Drive to the east and the beginning of the Meco Drive Ditch. Mrs. Santa Barbara's family members indicated that they were satisfied with the information they received at the hearing, including Kevin Donnelly's, New Castle County Conservation District's Executive Director, commitment of the District's further assistance to improve drainage in around the Santa Barbara residence. WSLs' experts recommend approval of the requested authority and WSLs prepared the attached draft permits.

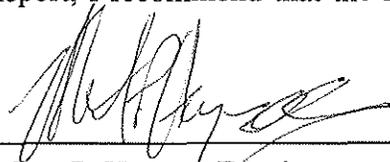
¹ The public hearing record is one part of the Department's record, which includes the post-hearing investigation to determine the accuracy of information provided at the public hearing, including the application.

III. RECOMMENDED FINDINGS AND DISCUSSION

This Report recommends approval and issuance of the permits at drafted by WSLs. The record supports the two projects as consistent with improving the environment and public safety with the COE's flood control measures and SIRS' environment remediation. The public comments' concerns with the environment and flooding should be addressed, although even with the measures approved the risk of flooding will remain, albeit at a reduced level of risk. The realignment of Little Mill Creek will benefit the environment and reduce the risk of flooding. The Meco Drive Ditch remediation will continue the Department's efforts to clean of this area from past pollution, which was likely from its prior use as a landfill in the 1960s. .

IV. CONCLUSION

Based on the record set forth in this Report, I recommend that the Department approve the attached draft order.

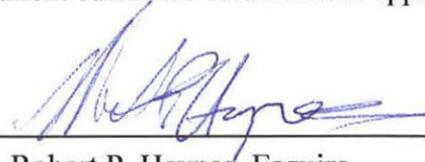


Robert P. Haynes, Esquire
Senior Hearing Officer

4. The Department's action is based upon the expertise of SWDS experts in its preparation of the draft permit, and the recommendations in the Report;

5. The Department shall issue Applicant a permit based upon SWDS' draft permit prepared; and

6. The Department shall publish the Order on its web site and shall provide notice as required by the law and its Regulations and the Department otherwise determines is appropriate.



Robert P. Haynes, Esquire
Senior Hearing Officer

