



**DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
REGULATORY OFFICE
477 MICHIGAN AVENUE, 6TH FLOOR
DETROIT, MICHIGAN 48226-2550**

November 9, 2010

REPLY TO
ATTENTION OF:

Engineering & Technical Services
Regulatory Office
File No. LRE-2008-00443-1

Randy Westmoreland
Detroit Edison Company
2000 Second Avenue, 337 WCB
Detroit, Michigan 48226

Dear Mr. Westmoreland:

This is in response to our ongoing discussions regarding U.S. Army Corps of Engineers (USACE) jurisdiction at the Detroit Edison (DTE) Fermi nuclear power plant property located at 6400 North Dixie Highway, Frenchtown Township, Monroe County, Michigan (Encl. 1). The whole of DTE's property at this site abuts Lake Erie which is a navigable water of the United States (US). Lake Erie and adjacent wetlands at this property are under USACE regulatory jurisdiction. Any temporary or permanent construction in Lake Erie or the discharge of dredged and/or fill material in Lake Erie or its adjacent wetlands at the property must be authorized by the USACE. Our authority to regulate certain activities on and adjacent to waters of the US, including those at the property in question is found in Section 10 of the Rivers and Harbors Act (Section 10), and Section 404 of the Clean Water Act (Section 404).

Ducks Unlimited (DU) submitted a Wetland Investigation Report for the property, dated July 14, 2008, and requested verification of the DU-identified wetland delineation lines as defined in the report and a USACE jurisdictional determination (JD) on behalf of DTE. This response contains a report of our findings and a final JD. The overall map of the DU wetland delineation is contained in Enclosure 2. The Enclosure 2 drawing, derived from the DU Report (Appendix A drawing 2 of 28, dated July 7, 2008) also contains approximate locations of four other wetland areas (WW, XX, YY, ZZ) not contained in the DU report but discussed at the initial inspection. Enclosure 3 contains DU Report Appendix A drawings 4-18 and 20-28 which include more detailed delineation maps and USACE changes to the delineation.

Under Section 10, a USACE permit is required for any temporary or permanent structure or work in navigable waters of the US to what is called the Ordinary High Water Mark (OHWM). In Lake Erie, the OHWM extends approximately to the elevation contour of 573.4 feet referenced to the 1985 International Great Lakes Datum (IGLD 85). In addition, a Section 10 permit is required for structures or work outside this limit if they may affect the course, location, or condition of the waterbody as to its navigable capacity. Some typical examples of structures or work requiring Section 10 permits within this jurisdictional area include beach nourishment, boat ramps, mooring buoys, navigational aids, piers, culverts, water intakes, discharge pipes, silt curtains, coffer dams, boat hoists, pilings and construction of marina

facilities, breakwaters, bulkheads, dredging, filling or discharging material such as sand, gravel or stones, groins and jetties, placement of riprap for wave protection or stream bank stabilization.

Section 404 requires a USACE permit for the temporary or permanent discharge of dredged or fill material into navigable waters of the United States and in wetlands adjacent to those waters. The area of USACE jurisdiction under Section 404 extends to the OHWM and to the upland boundary of any adjacent wetlands. Projects involving discharges typically include placement of fill material for homes, landscaping, structures, impoundments, causeways, road fills, dams and dikes, riprap, groins, breakwaters, revetments, and beach nourishment. Section 404 also regulates discharges of dredged material incidental to certain activities such as grading, mechanized land clearing, ditching or other excavation activity, and the installation of certain pile-supported structures.

During our site inspections we determined that the ordinary high waters of Lake Erie extend into and encompassed the areas listed below and shown on the referenced drawings. We consider these areas to be part of Lake Erie and subject to our Section 10 and 404 jurisdiction:

| Area | Enclosure | Enclosure 3 Drawing no. |
|---|-----------|-------------------------|
| C (unnamed stream) | 2 & 3 | 5 & 6 |
| M including 1.97-acre open water (south overflow canal) | 2 & 3 | 6, 14 & 15 |
| N (dredged material disposal authorized per LRE-1977-10060) | 2 & 3 | 16 |
| U | 2 & 3 | 10 |
| CC & DD including 3.55-acre open water area | 2 & 3 | 24 & 25 |
| Lake Erie proper | 2 | |

During our site inspections we determined that the following non-wetland open water features identified by DU on DTE property are physically separated from the ordinary high waters of Lake Erie by patches of upland ground: H (Encl. 2 and Encl. 3, drawing 10), and the quarry lakes (Encl. 2). We do not have Section 10 or Section 404 jurisdiction over such water features. The State of Michigan has assumed Federal permit authority for such non-navigable/non-wetland waters per Section 404(g) of the Clean Water Act (CWA) and 40 Code of Federal Regulations (CFR), Part 233.

Regarding USACE Section 404 jurisdiction at the property, we determined, during our site inspections, that the following DU-identified wetland areas, identified on Enclosure 2, are not adjacent to Lake Erie: A, H, W, X, Y, II, JJ, WW, XX, YY, ZZ. The State of Michigan has assumed Federal permit authority for such non-adjacent wetlands per Section 404(g) of the CWA and 40 CFR, Part 233. In the event that the Environmental Protection Agency, per 40 CFR, Part 233.50, directs us to conduct a permit evaluation for discharges in any of the non-navigable/non-wetland waters or non-adjacent wetlands at the property, the Detroit District USACE will make

the final determination on Section 404 jurisdiction.

We confirmed the DU wetland delineation boundaries observed during the site inspections for the areas listed below and on the referenced drawings, except as noted:

| DU Wetland Delineation Area | Enclosure | Enclosure 3 Drawing no. |
|---|-----------|-------------------------|
| B | 2 & 3 | 4 |
| D | 2 & 3 | 4 |
| E | 2 & 3 | 4 |
| F | 2 & 3 | 7 & 8 |
| G | 2 & 3 | 9 |
| I | 2 & 3 | 11 |
| J | 2 & 3 | 9 |
| K | 2 & 3 | 9 |
| L with addition of area resulting from connection of WL 69 to WL 74 | 2 & 3 | 12 & 13 |
| O | 2 & 3 | 16 |
| P | 2 & 3 | 17 |
| Q | 2 & 3 | 15 & 17 |
| R | 2 & 3 | 15 & 18 |
| S | 2 & 3 | 18 |
| T | 2 & 3 | 17 |
| V | 2 & 3 | 9 |
| Z | 2 & 3 | 12 & 20 |
| AA | 2 & 3 | 13 & 21 |
| BB | 2 & 3 | 22 & 23 |
| EE | 2 & 3 | 23 |
| FF | 2 & 3 | 22 |
| GG | 2 & 3 | 26 |
| HH | 2 & 3 | 11 & 27 |
| KK | 2 & 3 | 6 & 28 |

Our assertion of jurisdiction is based on the following criteria: (1) our determination that portions of the property are navigable waters of the US and recognition that the use, degradation, or destruction of this waterbody could affect interstate commerce; (2) our findings that the areas identified as wetlands meet our technical definition of a wetlands per the criteria in the 1987 *Corps of Engineers Wetlands Delineation Manual* and (3) our determination that the wetlands considered under USACE jurisdiction in this letter are adjacent (bordering, contiguous, or neighboring) to Lake Erie which is a navigable water of the US.

This letter contains an approved JD for the referenced property (Encl. 4). If you object to this determination, you may request an administrative appeal under USACE regulations at 33 CFR, Part 331. We have enclosed a flowchart of our Administrative Appeal Process for Approved JD (Encl. 5) and a Notification of Appeal Process (NAP) fact sheet and Request For Appeal (RFA) form (Encl. 6). If you request to appeal this determination you must submit a completed RFA form to the USACE Great Lakes and Ohio River Division office at following address:

Appeals Review Officer
U.S. Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Rm 10-524
Cincinnati, Ohio 45202-3222

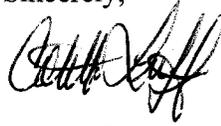
In order for an RFA to be accepted by the USACE, the USACE must determine that the RFA is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division office within 60 days of the date of the NAP sheet. If you decide to submit a RFA form, it must be received at the above address by January 9, 2011. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter. You may contact the Appeals Review Officer at (513) 684-6212 and send a facsimile at (513) 684-2460.

This JD is valid for a period of five years from the date of this letter unless new information warrants revision of the delineation before the expiration date.

If you have questions, please contact Colette Luff of this office at the above address, by telephone at 313-226-7485, or by E-Mail at Colette.M.Luff@usace.army.mil. Please refer to File No. LRE-2008-00443-1 in all future communications with this office.

We are interested in your thoughts and opinions concerning your experience with the Detroit District, Corps of Engineers Regulatory Program. If you are interested in letting us know how we are doing, you can complete an electronic Customer Service Survey from our web site at: <http://per2.nwp.usace.army.mil/survey.html>. Alternatively, you may contact us and request a paper copy of the survey that you may complete and return to us by mail or fax. Thank you for taking the time to complete the survey, we appreciate your feedback.

Sincerely,



Colette Luff
Project Manager
Permit Evaluation Eastern Branch

Enclosures

- Enclosure 1: Location Map
- Enclosure 2: Site Map
- Enclosure 3: Detailed Wetland Delineation Boundary maps
- Enclosure 4: Approved JD
- Enclosure 5: Flowchart
- Enclosure 6: NAP/RFA

Copy Furnished:

- MDNRE, K. David, Jackson District Office (08-58-3) w/Encls.
- NOAA, w/Print
- Ducks Unlimited, Peter Wyckoff (MI-188-1) w/Encls.