

ADMINISTRATIVE APPEAL DECISION

EDWARD SCHWARTZ; FILE NO. 200100391

CHICAGO DISTRICT

MARCH 29, 2002

Review Officer: Suzanne L. Chubb, U.S. Army Corps of Engineers, Great Lakes and Ohio River Division, Cincinnati, Ohio.

Appellant Representative: Ms. Julie Gangloff, Christopher B. Burke Engineering, Ltd., Rosemont, Illinois.

Jurisdiction: Section 404 of the Clean Water Act (33 U.S.C. 1344).

Receipt of Request For Appeal (RFA): September 17, 2001.

Site Visit: None.

Background Information: The 16.5-acre site is located south of Lake-Cook County Road and west of I-94/294 in Northfield Township, Cook County, Illinois. In a letter dated February 16, 2001, the appellant requested a jurisdictional determination (JD) of the site. The appellant's consultant at that time, Environmental Planning Team ...Chicago, submitted a 1998 wetland delineation report based on a May 24, 1998 site inspection. The report identified two small wetland areas totaling 1.212 acres and 0.093-acre of wetland in an off-site drainage swale east of the property.

The on-site wetland is located in the north-central portion of the property. Elevated roadbeds lie to the north, east and south. Residential housing lies to the west. The Cook County soil survey indicates two hydric soil types, Bryce silty clay and Frankfort silty clay loam, are present on the site.

The District reviewed the report and determined that the drainage swale receives water from the on-site wetlands and conveys it to the south. In a letter dated August 3, 2001 to the appellant's consultant, the District informed them that the subject property contains jurisdictional "waters of the United States". Mr. Schwartz has appealed this determination to the Division office. In an October 6, 2001 letter to the appellant, I was delegated the authority to serve as both the Review Officer and decision authority regarding this RFA. This delegated authority is allowed by regulations at 33 CFR 331.3(a)(1).

Appeal Decision and Instructions to the Chicago District Commander (DE):

Appeal Reason 1: The off-site ditch is not jurisdictional and does not qualify as a clear, direct surface water connection to a navigable waterway, and that the onsite wetland is not hydrologically connected to the ditch.

Finding: This appeal reason has merit.

Action: The District shall prepare and include in the administrative record a decision document that supports a final District JD. The District shall complete these tasks by April 29, 2002 and, upon completion, provide the Division office and appellant with a copy of this documentation.

Discussion:

In support of their reason for appeal, the appellant asserts that the ditch lacks the three wetland criteria - hydrophytic vegetation, sufficient hydrology and hydric soils. The appellant also asserts that the onsite wetland does not have any inlets or outlets and a 20-25 foot wide upland area separates the wetland from the ditch.

As in the PAL Group appeal review, the District's administrative record for this JD is inadequately documented and I am unable to conduct an independent review of the administrative record in accordance with Corps regulations. Therefore, the appeal has merit in that the administrative record does not support the District's decision.

The District shall document its jurisdictional decision to include addressing the issues raised in the RFA. Specifically, the basis of jurisdiction must address how the ditch is jurisdictional and how it connects the onsite wetland to other waters of the U.S. The frequency and quantity of flow in the ditch shall be considered and the District shall specify the path of flow from the ditch to downstream waters.

Conclusion: For the reasons stated above, I conclude that this Request For Appeal has merit.

FOR THE COMMANDER:



SUZANNE L. CHUBB
Appeal Review Officer
Great Lakes & Ohio River Division