



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AJG 17 2018

REPLY TO THE ATTENTION OF:

WW-16J

CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Rauch Excavating Inc.
c/o Brian Rauch
3724 Middlesboro Road
Morrow, Ohio 45152

Re: In the Matter of the Rauch Excavating Inc.
Clean Water Act Administrative Compliance Order on Consent: Docket No. **CWA-05-2018-0011**

Dear Mr. Rauch:

The enclosed copy of the Final Administrative Compliance Order on Consent (ACO) is provided pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The ACO establishes actions you agree to complete to address alleged violations of section 301 of the CWA, 33 U.S.C. § 1311. Please ensure the actions described in paragraphs 22-30 under the Compliance Requirements subsection of the ACO are carried out within the designated timeframes.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Swenson".

Peter Swenson, Chief
Watersheds and Wetland Branch

Enclosures

cc: Teresa Spagna, Army Corps of Engineers, St. Paul District (via email)
Andrew Wendt, Army Corps of Engineers, St. Paul District (via email)
Harry Kallipolitis, Ohio Environmental Protection Agency (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF

Rauch Excavating, Inc.

Morrow, Ohio 45152

Respondent.



DOCKET NO. CWA-05-2018-0011

PROCEEDING UNDER
SECTION 309(a) OF THE
CLEAN WATER ACT,
33 U.S.C. § 1319(a).

**FINDINGS OF VIOLATION AND
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of the EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, EPA, Region 5, who hereby makes these Findings and issues this Order.

REGULATORY BASIS

1. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that: "Whenever, on the basis of any information available . . . the Administrator finds that any person is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Administrator shall issue an order requiring such person to comply with such Section"
2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states: "Except as in compliance with Section 404 of the CWA the discharge of any pollutant by any person shall be unlawful."
3. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), states: "The Secretary [of the Army] may issue permits . . . for the discharge of dredged or fill material into the navigable waters at

specified disposal sites."

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source. . . ."

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines a "pollutant" as "dredged spoil, solid waste . . . biological materials . . . rock, sand, cellar dirt . . . and agricultural waste discharged into water."

7. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, [or] discrete fissure . . . from which pollutants are or may be discharged."

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" in pertinent part as "the waters of the United States, including the territorial seas."

9. 40 C.F.R. 230.3(t) define "wetlands" as ". . . those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

GENERAL FINDINGS

10. The Respondent in this Order is:

Rauch Excavating Inc.
c/o Mr. Brian Rauch

3724 Middlesboro Road
Morrow, Ohio 45152

11. Respondent is a “person” as defined at section 502(5) of the Act, 33 U.S.C. § 1362(5).
12. From the time period beginning on or about August 2009 through the present, Respondent, either directly or through its officers or agents, owned real property located at 5669 Route 22 & 3, City of Morrow, Salem Township, Warren County Parcel Identification Number 13014520010 (Latitude 39.354636, Longitude -84.106307), Warren County, Ohio, located in Morrow, Ohio (“the Site”).
13. The property includes an impoundment of the waters of Whittaker’s Run, a perennial tributary and adjacent, contiguous and indistinguishable wetland that flows into Todd’s Fork, a perennial tributary, which flows into the Little Miami River. The Little Miami River is a navigable water.
14. These waters above are waters of the United States.
15. Beginning on or about August of 2009 until January 2015, Respondent, acting directly or through its agents, discharged solid waste, municipal waste, rock, sand, cellar dirt, or fill material from a 953 loader, i.e., bulldozer, into approximately 2.23 acres of water of the United States on the site.
16. The addition of solid waste, municipal waste, rock, sand, cellar dirt, fill material into the waters referenced in paragraph 15 constitutes a “discharge of pollutants” within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).
17. The solid waste, municipal waste, rock, sand, cellar dirt, or fill material referenced in paragraph 15 constitutes “pollutants” within the meaning of the definition set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The bulldozer referenced in paragraph 15 constitutes a “point source” within the meaning of the definition set forth in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. Each of the Respondent’s discharges of pollutants from a point source into navigable waters constitutes a discrete violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

20. At no time from the dates of the activities described in paragraph 15 above until the date of this Order did the Respondent have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 17.

21. Each day the discharged material remains in the waters of the United States without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301 of the CWA, 33 U.S.C. § 1311

COMPLIANCE REQUIREMENTS

BASED ON THE FOREGOING FINDINGS, and pursuant to the authority under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), duly delegated to the undersigned, **THE PARTIES CONSENT TO THE FOLLOWING:**

22. The Respondent shall refrain from further discharges of pollutants into waters on the Sites, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. §§ 1251-1387.

23. The Respondent agrees to provide mitigation for the impacts to waters through the purchase of 1.0 In-Lieu Fee (ILF) wetland credit from The Nature Conservancy’s Ohio Stream and Wetland ILF Mitigation Program.

24. Respondent shall contact the ILF provider to obtain the ILF credit and submit the appropriate paperwork (Exhibit 1 – Initial Credit Request Form & Final Request Form).

25. Within eighteen (18) months of the effective date of this Order, Respondent shall purchase 1.0 wetland credit from The Nature Conservancy ILF program.
26. Within seven (7) days of purchasing the credit from the ILF, Respondent shall submit to EPA written certification that it has purchased the credit. Such certification shall include a copy of the completed transaction or confirmation thereof.
27. Upon meeting the mitigation obligations in paragraph 25, the Respondent shall contact the United States Army Corps of Engineers (USACE) and apply for a CWA 404 authorization (“the Section 404 permit”) (Exhibit 2 – Nationwide Permit 32 (NWP 32)). A Section 404 permit provides authorization for any structure, work or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration or environmental benefit in compliance with this order, unless otherwise specified in the Section 404 permit. The NWP 32 shall indicate the purpose of this permit is to provide authorization under §404 of the Clean Water Act (33 U.S.C. 1344) for the fill left in place and the mitigation activities under paragraph 23.
28. Within seven (7) days of receiving the permit from the USACE, Respondent shall submit to EPA written certification that it has received the permit. Such certification shall include a copy of the complete permit.
29. Submittals provided under paragraphs 26 and 28 of this Order shall be certified as true and complete by including the following statement signed by one of its officers:
- I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.
30. This Order, once signed by the Respondent under authorized signature, and all other

submittals under this Order, should be sent to the following address:

Kerryann Weaver, Enforcement Officer
U.S. Environmental Protection Agency (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

GENERAL PROVISIONS

31. EPA does not waive any rights to use the information requested herein in an administrative, civil, or criminal action.
32. Neither this Consent Order nor compliance with its terms, affects Respondent's ongoing obligation to comply with the CWA or any other federal, state, or local law or regulation, nor does it preclude further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations alleged herein. The parties will subsequently sign and file a Clean Water Act Section 309(g) Consent Agreement and Final Order.
33. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order.
34. Violation of the terms of this Consent Order may subject Respondent to administrative penalties of up to \$16,000 per day of violation, up to a maximum of \$187,500 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or to civil judicial penalties of \$37,500 per day of violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and civil injunctive relief for violations of the CWA under Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under Section 309(c) of the CWA, 33 U.S.C. § 1319(c).
35. Respondent admits the jurisdictional allegations of this Consent Order.
36. Respondent neither admits nor denies the remaining factual allegations of this Consent

Order.

37. Respondent waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. § 701-706.

38. Respondent agrees to the terms of this Consent Order.

39. The terms of this Consent Order bind Respondent, its successor and assigns.

40. Each person signing this Consent Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

41. Each party agrees to bear its own costs and attorney's fees in this Consent Order.

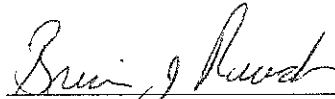
42. This Consent Order constitutes the entire agreement between the parties for this Order.

43. The parties anticipate a subsequent Clean Water Act Section 309(g) Civil Penalty Consent Agreement.

44. This Consent Order is effective on the date of signature by the Director of the Water Division.

**Rauch Excavating, Inc., Morrow, Ohio
Respondent**

7-29-18
Date


Brian Rauch
Rauch Excavating, Inc.

**Region 5, U.S. Environmental Protection Agency
Complainant**

8/13/18
Date

Linda C. Baetz for
Linda Holst
Acting Director
Water Division

EXHIBIT 1

CWA-05-2018-0011

The Nature Conservancy
Ohio Stream and Wetland In-Lieu Fee Mitigation Program



Initial Credit Request Form

Contact information	Client's Name		Rauch Excavating Inc.			
	Consultant's Name		NA			
	Consultant Project Lead		NA			
	Address		3724 Middlesboro Road			
	Phone Number		513-899-4502			
	Email		rauchestimatingst@gmail.com			
Project Information	Project Name		5669 Route 22 & 3			
	Corps ID / Permit No. (if applicable)		LRH-2014-469-LMR			
	Water Quality Certification No. (if applicable)		NA			
	Latitude/Longitude		39.354636, -84.106307			
	8-digit HUC		Little Miami - 05090202			
Short Description of Project	2.23 impacts of wetland fill subject to an US EPA enforcement action.					
Impacts	Stream (linear feet)		Ephemeral	Intermittent	Perennial	Total
	404 Wetlands (acres)		Category 1	Category 2	Category 3	Total
	Forested					
	Nonforested			2.23		2.23
	Isolated Wetlands (acres)		Forested			
	Nonforested					
T & E Species Impacts (add rows as necessary)	Species	Rank	USFWS Biological Assessment Finding			
Estimate of Mitigation Credits Required	Stream Credits					
	Wetland Credits/Type		1.0 nonforested wetland			

Please send form (email or hard copy) to:

The Nature Conservancy
Attn: Devin Schenk
Mitigation Program Manager
6375 Riverside Drive, Suite 100
Dublin, Ohio 43017
dschenk@tnc.org

This form serves merely to request credits and does not itself reserve or commit any credits to the project. A letter of credit availability and reservation will be sent, if available, by notice from The Nature Conservancy.

The Nature Conservancy
Ohio Stream and Wetland In-Lieu Fee Mitigation Program



Final Credit Request Form

Contact information	Purchaser's Name		Rauch Excavating Inc.			
	Address		3724 Middlesboro Road			
	Consultant's Name		NA			
	Consultant Project Lead		NA			
	Address		NA			
	Phone Number		NA			
	Email		NA			
Project Information	Project Name		5669 Route 22 & 3			
	Corps ID No. (if applicable)		LRH-2014-469-LMR			
	Water Quality Certification No. (if applicable)		NA			
	Latitude/Longitude		39.354636, -84.106307			
	8-digit HUC		Little Miami - 05090202			
Impacts	Stream (linear feet)		Ephemeral	Intermittent	Perennial	Total
	404 Wetlands (acres)		Category 1	Category 2	Category 3	Total
	Forested					
	Nonforested			2.23		2.23
	Isolated Wetlands (acres)		Forested			
	Nonforested					
Mitigation Credits Required	Stream Credits					
	Wetland Credits/Type		1.0 nonforested wetland			
	Total Purchase Amount (\$)		\$60,000			

By Purchaser's signature, Purchaser agrees to all the terms and provisions of the Purchase Agreement on the back of this form.

[PURCHASER] Brian Rauch, Rauch Excavating, Inc.		[PURCHASER'S CONSULTING FIRM]	
Signature:		Signature:	
Print:	Date:	Print:	Date:

Please send form (email or hard copy) to: The Nature Conservancy; Attn: Devin Schenk; Mitigation Program Manager; 6375 Riverside Drive, Suite 100; Dublin, Ohio 43017; dschenk@tnc.org

Ohio Stream and Wetland In-Lieu Fee Mitigation Program
Mitigation Credit Purchase Agreement



The Nature Conservancy (TNC) operates the Ohio Stream and Wetland In-Lieu Fee Mitigation Program (the "Program") which is an In-Lieu Fee Mitigation Program approved to sell stream and wetland credits throughout the state of Ohio. Brian Rauch, Rauch Excavating, Inc. (Purchaser) desires to purchase credits from the Program for the 5669 Route 22 & 3 Project (Corps ID No. LRH-2014-0469-LMR). In so doing, Purchaser hereby agrees to the following terms and conditions:

1. **PURCHASE PRICE:** Purchaser shall, subject to the terms and conditions hereinafter provided, pay to TNC the price per credit set forth in the "Letter of Credit Availability and Reservation" (the "Reservation Letter"). If a Reservation Letter was not received by Purchaser within the last one hundred (100) days, the Purchaser shall contact TNC for confirmation of the Purchase Price. The Purchase Price shall be paid in the following manner:
 - A. Upon signing and delivery of this Form and Agreement, Purchaser will submit payment in full of the Purchase Price to TNC.
 - B. Payment should be in immediately available funds in the form of a cashier's check or certified check payable to the Ohio Water Development Authority. If payment is by check not in the form of a cashier's check or certified check, payment shall not be deemed to have been made until the check has cleared.
2. **CREDIT SALE COMPLETION REQUIREMENTS:** The sale of credits identified in the Final Credit Request Form shall be deemed to have occurred upon the completion of ALL of the following requirements: (i) payment in full of the Purchase Price by Purchaser in accordance with the above terms, and (ii) issuance of a Payment Voucher by TNC to Purchaser. Payments for the purchase of credits from the Program are not tax deductible contributions.
3. **NO ENDORSEMENT:** TNC plays no role in the Corps' or OEPA's decision to approve or deny a permit or whether mitigation is a necessary condition of any such permit or whether the permitted activity complies with laws, rules or regulations. Further, provision of any credits by TNC under this Program shall in no event be construed as an endorsement or support for the permitted activity.
4. **NON-REFUNDABLE:** The purchase of mitigation credits is non-refundable.
5. **NO USE OF TNC NAME/LOGO:** Purchaser may not use TNC's name or logo in any way without prior written consent from TNC, except to the extent necessary to comply with legal or contractual requirements to specify the source of the purchase of credits.

The Nature Conservancy

By: _____ Date: _____

Josh Knights, Ohio State Director

EXHIBIT 2

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the disposal site for dredged or excavated material. (Authorities: Sections 10 and 404)

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect (March 19, 2017, to March 18, 2022) the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions apply to this nationwide permit.
2. This certification shall only authorize projects constructed by the Corps and maintained by the Corps or transferred by the Corps to a local sponsor.

32. Completed Enforcement Actions. Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions apply to this nationwide permit.
2. This certification does not authorize any project with impacts to category 3 wetlands; impacts to category 1 and category 2 wetlands that exceed three acres; or impacts to any stream in excess of 500 linear feet unless Ohio EPA has been informed, in writing, of each specific project that exceeds these criteria and based on this information, has not chosen to issue a State Administrative Order or Consent Order resulting from a State enforcement action.

33. Temporary Construction, Access and Dewatering. Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of

materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams located in ineligible areas as depicted in the GIS NWP Stream Eligibility Map, Appendix C;
 - d. streams located in possibly eligible areas as depicted in the GIS NWP's Stream Eligibility Map determined to be high quality through one of the NWP eligibility flowcharts, Appendix C;
 - e. state wild and scenic rivers;
 - f. national wild and scenic rivers; and
 - g. general high quality water bodies which harbor federally and state listed threatened or endangered aquatic species.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, any culvert extension shall not exceed 300 linear feet.

4. This certification does not authorize construction or maintenance or modification of marina basins;
5. This nationwide permit shall not authorize temporary construction access and dewatering associated with mining activities.

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Authority: Section 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams located in ineligible areas as depicted in the GIS NWP Stream Eligibility Map, Appendix C;
 - d. streams located in possibly eligible areas as depicted in the GIS NWPs Stream Eligibility Map determined to be high quality through one of the NWP eligibility flowcharts, Appendix C;
 - e. state wild and scenic rivers;
 - f. national wild and scenic rivers; and

In the Matter of: Rauch Excavating, Inc., City of Morrow, Ohio
Docket No. CWA-05-2018-0011

CERTIFICATE OF SERVICE

I hereby certify that today I filed with the Office of Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (C-19J), Chicago, Illinois, 60604-3590, the original and one copy of this fully executed Clean Water Act Section 309(a) Consent Administrative Order.

I hereby certify that today I served a true and correct copy of this fully executed Clean Water Act Section 309(a) Consent Administrative Order as follows:

Copy to Respondent by Certified U.S. Mail, Return-Receipt Requested:

Marty Hubbell
Diehl & Hubbell, LLC
Counsel for Respondent
304 E. Warren St.
Lebanon, OH 45036

Copy to Counsel for Complainant, Via E-Mail:

Luis Oviedo
Oviedo.Luis@epa.gov

Copy to Regional Judicial Officer, Via E-Mail:

Ann L. Coyle
coyle.ann@epa.gov

Date

8-17-18

Kerryann Weaver
Kerryann Weaver
Life Scientist
Region 5
U.S. Environmental Protection Agency