



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 25 2013

REPLY TO THE ATTENTION OF:

WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. JoAnne C. Rau
Director, Environmental and Safety Management
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432

Re: In the Matter of Dayton Power and Light Company
Consent Agreement and Final Order: Docket No. CWA-05-2013-0016
Administrative Order on Consent: Docket No. CWA-05-2013-0022 ✓

Dear Ms. Rau:

Enclosed please find a copy of the signed fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. Also enclosed is a copy of the signed Administrative Order on Consent (AO). An original of both documents were filed with the Regional Hearing Clerk on September 25, 2013.

Please ensure you pay the civil penalty in the amount of \$120,000 in the manner prescribed in paragraphs 31- 33 of the CAFO and reference the check with the docket number. Your payment is due within 30 days of the filing date. Please ensure the actions described in paragraphs 4-7 under the Order subsection of the AO are carried out within the designated timeframes.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Peter Swenson".

Peter Swenson, Chief
Watersheds and Wetlands Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



IN THE MATTER OF:

**Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432**

Respondent.

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

CWA-05-2013-0022

FINDINGS OF VIOLATION AND 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, (U.S. 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 issues these Findings and this Order.

The Dayton Power and Light Company, 1065 Woodman Drive, Dayton, Ohio, (Respondent), consented to and entered into this Order for the sole purpose of settling the violations alleged in these Findings and this Order. The Respondent's consent to this Order shall not constitute an admission of any finding of fact or conclusion of law.

REGULATORY BASIS

1. 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."
2. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term "person" as "an individual corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

3. 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"

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

5. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term "point source" as "any discernible discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or other vessel or floating craft, from which pollutants are or may be discharged."

6. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as "the waters of the United States"

7. The term "water of the United States" means "all interstate waters [such as lakes, rivers and streams]..." 40 C.F.R. § 230.3(s).

8. 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, the Administrator] shall issue an order requiring such person to comply with such Section"

FINDINGS

9. The Respondent in this action is:

Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432

10. At all times relevant to this Order the Respondent was and remains a "corporation," under the laws of the State of Ohio.

11. At all times relevant to this Order the Respondent owned and operated, at least in part, in law or in equity, 245 acres of real property, located generally just north and east of its J.M. Stuart Power Station at 745 U.S. Route 52, Manchester, Ohio 45144, ("the Site"). (Exhibit No. 1).

12. On June 15th, 2010, the Respondent applied for a United States Army Corps of Engineers ("USACE") Section 404 Permit to dredge and fill waters, ("Permit"), on Site. On April 19, 2012, USACE issued to the Respondent the Permit. The Permit authorized the Respondent to fill parts of Carter Hollow and associated streams.

13. In early 2012, and prior to the issuance of the Permit, the Respondent's activities from bulldozers, log skidders, and tree harvesting equipment resulted in the deposit of dirt, sand or rock in Carter Hollow and associated streams at the Site. U.S. EPA estimated the length of impacted streams to be 19,193 linear feet. (Exhibit No. 2).

14. Respondent was a "person" within the meaning of the definition set forth in section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. The addition of rock, sand, and dirt into the waters referenced in paragraph 13 constituted 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).

16. The rock, sand, and dirt referenced in paragraphs 13 and 15 constituted "pollutants" within the meaning of the definition set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The bulldozers, log skidders, and tree harvesting equipment referenced in paragraph 13 constituted "point sources" within the meaning of the definition set forth in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. The Respondent's activities referenced in paragraph 13 were discharges of pollutants from point sources into navigable waters and constituted a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

19. Each day the Respondent's discharged pollutants remained in the navigable waters constituted an additional day of violation of section 301 of the CWA, 33 U.S.C. § 1311.

ORDER

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, **IT IS HEREBY ORDERED:**

1. The Respondent shall refrain from any activity at the Site which will result in placement of pollutants in Carter Hollow and adjacent Streams, 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. §§ 1251-1387.2.2.

2. The Respondent submitted a Stream Mitigation Plan ("Plan") which is incorporated by reference into this Order. (Exhibit No. 3). This Plan preserves 25,865 linear feet of perennial, intermittent, and ephemeral stream on the Smith/Kuhns, Shaw, Dilges, Carroll, and Shield Properties in Adams County, Ohio. The Plan is consistent with the requirements of 33 C.F.R. Section 332.4(c), 40 C.F.R. Section 230.94(c). The Plan describes how the mitigation compensates for the impacts to the waters on the Site and benefits the water quality of the Ohio River.

3. The Respondent shall commence mitigation activities on the relevant streams in accordance with the approved plan or portion thereof upon USACE CWA Section 404 Authorization. The mitigation activities will be commenced consisted with the timelines incorporated into the 404 authorization.

4. Within 30 calendar days of the filing of these Findings and this Final Order on Consent with the Regional Hearing Clerk, the Respondent shall contact the USACE for the appropriate CWA Section 404 Authorization. The Parties to this Order shall request the USACE to impose the Plan as a condition of the CWA Section 404 Authorization.

5. Within 120 days of completion of the mitigation measures in the plan, the Respondent shall submit to EPA written certification that it completed implementation of its Plan. Such certification shall include certified copies of the filed real estate instruments for the proposed stream mitigation activities, and a copy of the Respondent's CWA Section 404 Authorization.

6. This Order shall terminate within 60 days of such certification, unless USEPA notifies the Respondent in writing that it failed to comply with the Plan and articulates those failures. The Respondent shall respond to USEPA's notice within 60 days of receipt of such notice.

7. Submittals provided under paragraphs 5 of this Order shall be certified and submitted by the Respondent under authorized signature to the following address:

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

EPA reserves any rights to use the information requested herein in an administrative, civil, or criminal action. Respondent reserves any rights to object to the use of the information requested herein in any such administrative, civil, or criminal action.

8. Neither the issuance of this Order by EPA nor the compliance with its terms affects the 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 cited herein.

9. Neither the issuance of this Order by EPA, nor consent of this Order by the Respondent, shall be deemed to relieve the Respondent of its liability for any penalty, remedy or sanction authorized to be imposed pursuant to section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), or (g), for any violation of applicable requirements of the CWA. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each violation specified in this Order.

10. Violation of the terms of this order may result in further enforcement action under section 309 of the CWA, 33 U.S.C. § 1319. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may assess civil administrative penalties of \$16,000 per day of violation, up to a maximum of \$177,500 under section 309(g) of the CWA, 33 U.S.C. § 1319(g), or seek civil judicial penalties of \$37,500 per day of violation 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).

11. The Respondent's completion of this Order and the Plan resolves any and all claims for injunctive relief on behalf of EPA which arose from the alleged violations of the CWA.

12. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review of this Order.

13. Notwithstanding the above paragraph, Respondent does not admit any statement of fact or conclusion of law in this Order. This Order shall not be construed as any admission of fact or conclusion of law.

Date: May 30, 2013

JoAnne C. Rau
JoAnne Rau
Director of Environmental and Safety Management
The Dayton Power and Light Company

Date: June 11, 2013

Tinka G. Hyde
Tinka G. Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5

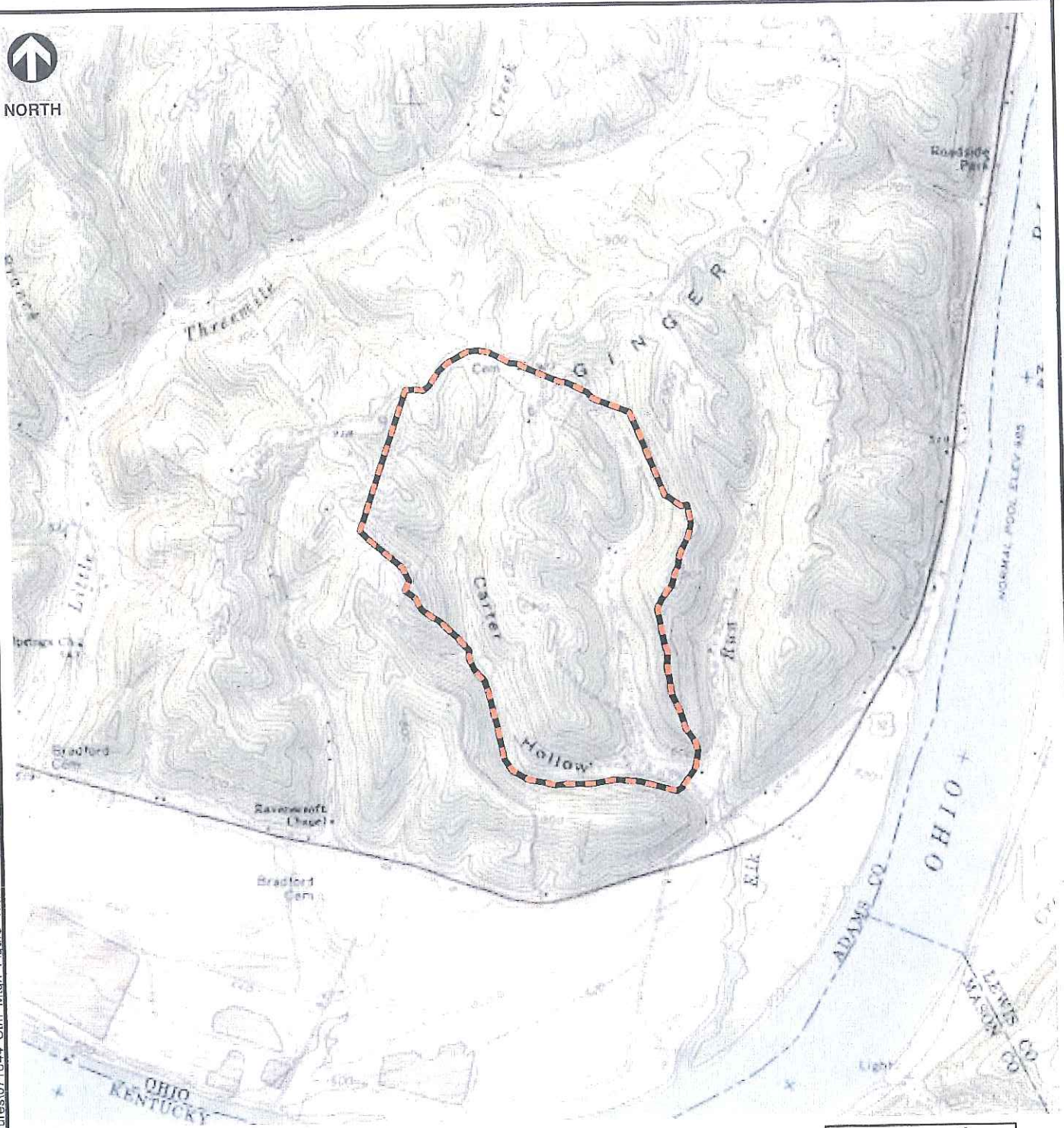



EXHIBIT 1



NORTH

J:\Projects\2007\071644\Maps\Stream_milam\Final_Figures\071644_Sim_Migan_Figure_1.mxd



 Approximate Site Boundary



QUADRANGLE LOCATION

SOURCE: PORTION OF THE USGS 7.5 MINUTE TOPOGRAPHIC QUADRANGLE MAP - MAYSVILLE EAST, OHIO - 1975.


Civil & Environmental Consultants, Inc.
 Cincinnati, OH
 (513) 985-0226 (800) 759-5614
 Pittsburgh, PA Chicago, IL Cleveland, OH Columbus, OH Detroit, MI
 Export, PA Indianapolis, IN Nashville, TN St. Louis, MO Phoenix, AZ

Site Location Map -
THE DAYTON POWER AND LIGHT COMPANY
Proposed Carter Hollow Landfill
Adams County, Ohio

DWN. BY: MJB	SCALE: 1" = 2,000'	DATE: 06/22/2011
CHKD. BY: MAVB		

PROJECT NO:
071-644

FIGURE NO:
1

EXHIBIT 2

Carter Hollow Impacted Streams and Tributaries

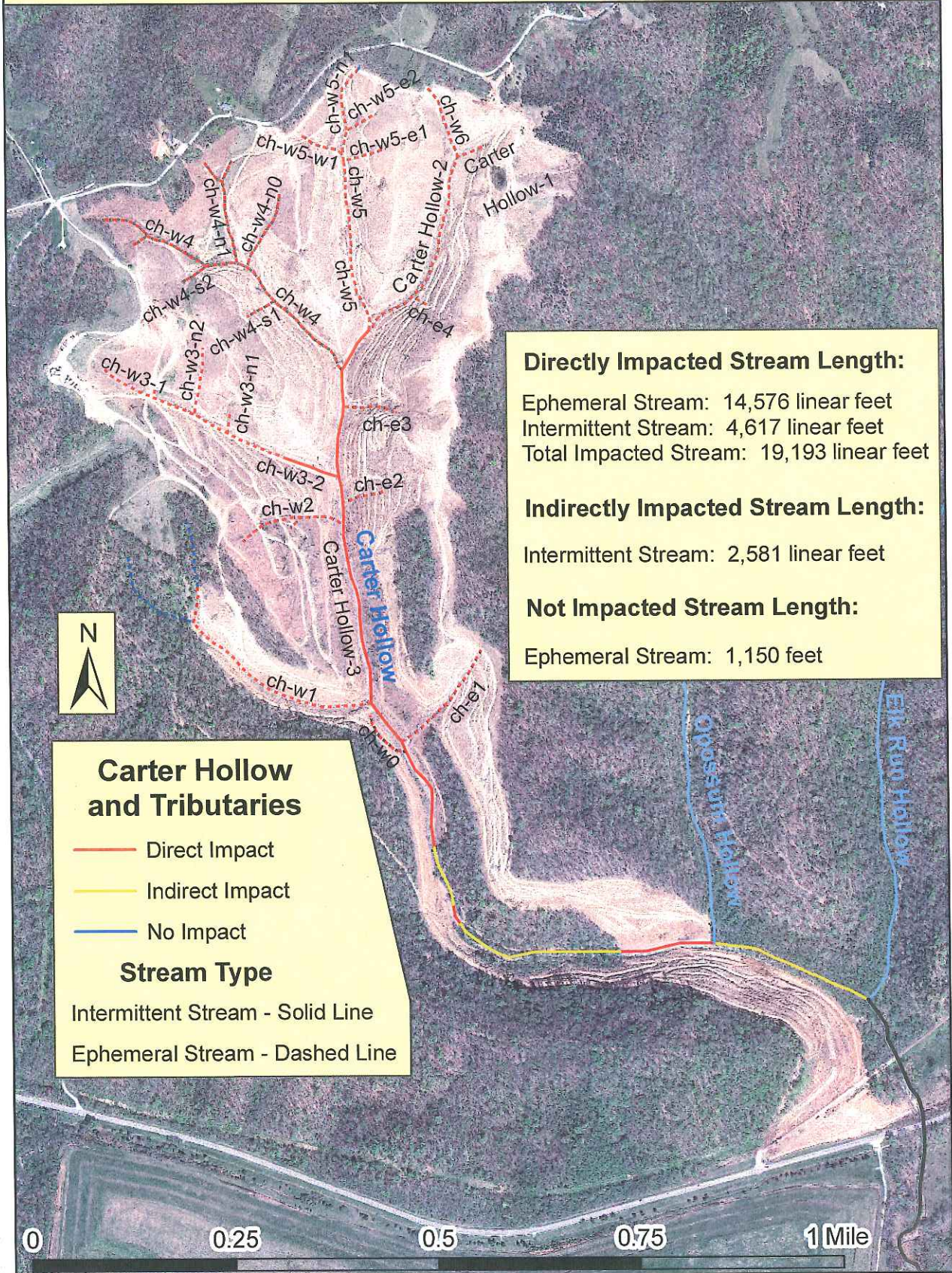


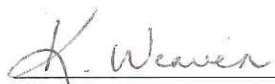
EXHIBIT 3

CWA-05-2013-0022

CERTIFICATE OF SERVICE

I, Kerryann Weaver, hereby certify that an original of the Administrative Order on Consent (Docket No. CWA-05-2013-0022) was filed with the Regional Hearing Clerk on 9/25/13, and that a copy was served by United States Mail, Certified and Postage Prepaid, on the _____, upon the following:

Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432



Kerryann Weaver
U.S. Environmental Protection
Agency - Region 5 (WW-16J)
77 W. Jackson Blvd.
Chicago, IL 60604

