



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 28 2003

OFFICE OF
WATER

Ms. Molly Holt, Esquire
Attorney-Advisor
Office of the Assistant General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway
Suite 6111
Silver Spring, MD 20910

Dear Ms. Holt:

I am responding to the letter of December 10, 2002, from Scott B. Gudes, Deputy Under Secretary for Oceans and Atmosphere, to Administrator Whitman, requesting our views on the issues dealing with Barnes Nursery's request that the Secretary of Commerce override the State of Ohio's consistency determination pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended. I appreciate the opportunity to provide information to you on this issue.

In June 2001, the Environmental Protection Agency (EPA) staff found that Barnes Nursery's project did not meet the Clean Water Act (CWA) Section 404(b)(1) Guidelines, and recommended denial of the project. In addition, EPA recommended that the fill be removed following restoration measures prescribed by the State. A copy of EPA's correspondence is enclosed for your information.

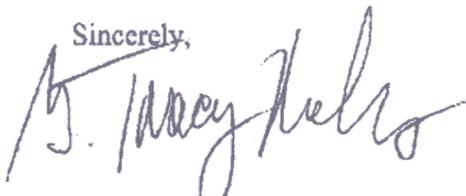
I understand that the State of Ohio has proposed to deny its CWA Section 401 water quality certification for this project based on a determination that it will adversely affect water quality. Barnes Nursery has appealed the State's decision, and is currently scheduled for an adjudicated hearing on April 7, 2003. As you know, under the CWA, the States are responsible for determining whether discharges would cause degradation of water quality.

Internet Address (URL) • <http://www.epa.gov>

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Thank you very much for providing us the opportunity to comment on this important issue. I hope this information is useful. If you have any questions, please feel free to call either Kevin Pierard, Chief, Watersheds and Wetlands Branch, in EPA's Region 5 office in Chicago, Illinois, at 312/886-4448, or Dave Schulenberg, Senior Enforcement Officer, also in Region 5, at 312/886-6680.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Tracy Mehan, III". The signature is written in a cursive style with a large initial "G" and a long, sweeping underline.

G. Tracy Mehan, III
Assistant Administrator

Enclosure

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

07 JUN 2001 01:13 PM 1:19

REPLY TO THE ATTENTION OF:

WWB-16J

Paul Leuchner, Chief
Regulatory Branch
U.S. Army Corps of Engineers, Buffalo District
1776 Niagara Street
Buffalo, NY 14207-3199

Re: Public Notice CELRB-CO-R-2000-02170(1) Barnes Nursery, Inc.

Dear Mr. Leuchner:

The U. S. Environmental Protection Agency has reviewed the individual public notice referenced above for Barnes Nursery, Inc. This application is for an after-the-fact permit to retain 14,100 cubic yards of fill placed on two acres of mudflats in East Sandusky Bay, Erie County Ohio.

Despite the avowed environmental enhancement purposes of the project, State biologists maintain that the fill placed to date under a Nation-wide Permit NWP 27, exceeded permit conditions, and has already harmed the ecosystem of the adjacent Sheldon's Marsh State Nature Preserve (SNP). Some fill was removed April 18, 2001 under an emergency order to prevent further damage to the area.

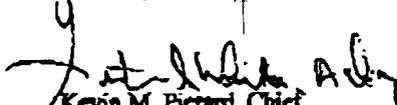
The current request is an attempt to retain and reconfigure the remaining fill, now that the Corp has judged the NWP 27 application to be defective and has withdrawn Mr. Barnes permit, requiring re-permitting or restoration.

In our opinion the proposal and continued presence of the remaining fill will cause and irreversible loss of the ecological factors for which the area was designated as a SNP. Photos clearly show the effect the berm placement has had on siltation patterns in the East Bay.

To repeat what we said in our October 12, 2000 letter the State will likely deny water quality certification of this project based on its impacts to Category 3 wetlands under their protection. Therefore, we recommend that a permit be denied for this work and that fill be removed in its entirety. This should be followed by any additional restorative measure prescribed by the State.

Thank you for the opportunity to provide comments on this project. If you have any questions about this response please contact Wayne Gorski of my staff at the letterhead address or by phone at 312-886-0140.

Sincerely,


Kevin M. Pierard, Chief
Watersheds and Wetlands Branch

cc: Ric Queen, OEPA
Don Povolny, ODNR