



State of Ohio Environmental Protection Agency

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July 21, 2000

Lt. Col. Glen R. DeWillie, District Engineer
U.S. Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, New York 14207-3199
ATTN: Mr. Phil Frapwell

RE: Compliance with State of Ohio Section 401 Certification and Nationwide Permit
Conditions of Nationwide Permit #27 for Barnes Nursery Project (PCN 2000-01800, Erie
County, Ohio

Dear Lt. Colonel DeWillie:

The Ohio Environmental Protection Agency (Ohio EPA) has recently been apprised of the above referenced project that was authorized by the U.S. Army Corps of Engineers (Corps) in a June 20, 2000 letter. The dredging and filling activity authorized under Nationwide Permit (NWP) #27 has already begun. The Ohio EPA has very serious concerns about the short and long term environmental impacts of this project and its compliance with the State of Ohio's recently issued Section 401 certification for NWP #27 and with the express terms and conditions of NWP #27.

The project authorized is being undertaken in one of the few natural barrier beach/lagoon wetland complexes remaining in the State of Ohio on Lake Erie's south shore and immediately adjacent to the Sheldon Marsh State Nature Preserve. Besides being a rare habitat type in Ohio, the area harbors endangered species and is a significant waterfowl and neotropical songbird stopover and breeding location. This wetland complex is a Category 3 wetland under Ohio's Wetland Water Quality Standards.

Under the recent §401 Water Quality Certification issued by Ohio EPA for NWP #27 on June 7, 2000, temporary and permanent impacts to Category 3 wetlands were not certified to be authorizable under a Nationwide Permit. In addition, the proposed activity does not appear to satisfy several of the requirements specified in NWP #27. First, NWP #27 states it is applicable to "...activities in waters of the United States associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetland and riparian areas, the creation of tidal and nontidal wetlands and riparian areas..." As one of the last remaining barrier beach/lagoon complexes, it is Ohio EPA's position that the activity authorized here does not restore a former

Bob Taft, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director

water, enhance a degraded wetland, or create wetlands where they did not previously exist. In fact, Ohio EPA has serious concerns that this project will in fact adversely alter the natural hydrology of this important complex.

For these reasons, Ohio EPA requests that the June 20, 2000 authorization be revoked and that Corps notify the applicant to suspend all work on this project until individual Section 401 and 404 applications have been reviewed and approved. In the case that such applications are not submitted or approved, the wetland should be restored to its original condition.

Ohio EPA has contacted Mr. Barnes of Barnes Nursey, Inc., and verbally informed him of its concerns and asked him to voluntarily cease activity under this project. It is our understanding that he has agreed to voluntarily suspend operations. We have been informed that staff for the Corps has been in contact with the applicant and also requested that work be suspended and that the applicant has agreed to do so. Ohio EPA has also been informed by the Corps that a meeting with the applicant has been scheduled. Ohio EPA would appreciate the opportunity to participate in any discussions regarding the future of this project.

We appreciate the opportunity to work with Corps as we both begin to implement the new and revised Nationwide Permits and the State of Ohio's certification and Wetland Water Quality Standards. If you have any questions, please contact Mr. Ric Queen (614.644.2872) of the Division of Surface Water's 401/Wetlands Unit.

Sincerely,



Lisa Morris, Chief
Division of Surface Water

cc William Moody, ODNR
Wayne Warren, ODNR
Stu Lewis, ODNR
Ric Queen, OEPA
Greg Schneider, OEPA
John Mack, OEPA
Robert Barnes, Barnes Nursey, Inc.