

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 25, 2015

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2015-04394-NTD City of Appleton NE Asphalt Site

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Outagamie** City: **Appleton**

Center coordinates of site (lat/long in degree decimal format): Lat. **44.34263° N**, Long. **-88.43906° W**.

Universal Transverse Mercator: **16**

Name of nearest waterbody: **unnamed tributary to Bear Creek**

Name of watershed or Hydrologic Unit Code (HUC): **Wolf (04030202)**

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: **November 25, 2015**

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **One 4.8 acre wetland is present within the review area. This wetland is identified as Wetland 2 on the attached Figure 1. Wetland 2 is man-induced and is incidental to quarry activities and ongoing yard waste operations. According to information contained in an exemption letter issued by the Wisconsin Department of Natural Resources (WDNR) on November 6, 2015, Wetland 2 does not exhibit wetland/waterway history. Wetland 2 is not mapped as wetland on the Wisconsin Wetland Inventory and the NRCS soil survey for Outagamie County maps non-hydric soils within the delineated boundaries of Wetland 2. According to WDNR, an examination of historic aerial photos ranging from 2015 back to 1992 depict active disturbance within the subject area including quarry activities and recent placement of leaf litter/compost within the area creating an artificial hydric soil condition. Information provided in delineation report submitted by R.A. Smith National dated September 15, 2015 supports WDNR's findings. It is the Corps' determination that Wetland 2 resulted from past quarry operations and the placement of leaf litter/compost within the review area. Yard waste operations are currently ongoing and have not been abandoned. Therefore, Wetland 2 is not a water of the United States.**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A

C. SIGNIFICANT NEXUS DETERMINATION: N/A

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A

¹ Supporting documentation is presented in Section III.F.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): N/A

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- Other (explain, if not covered above): **The preamble to 33 CFR 328.3 identifies various types of waters that are generally not considered "Waters of the United States. These include "waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States".**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands:

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **R.A. Smith National Delineation Report dated September 15, 2015.**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:24K Quad WI-Appleton**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Outagamie County, Wisconsin**
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s): **Wisconsin Wetland Inventory (SWDV)**
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **2005, 2010, 2014 provided by R.A. Smith National**
or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): **WDNR Exemption Determination dated November 6, 2015.**

B. ADDITIONAL COMMENTS TO SUPPORT JD:



Review Area

4.8 acres
for Artificial
(emption)

