



Location

Clinton County, Iowa

State(s)

IA

Congressional District(s)

IA-2

Status

An application for the proposed quarry submitted by Wendling Quarries, Inc. (Applicant), but was incomplete and withdrawn without further action on September 3, 2010. By letter dated February 20, 2013, the Applicant expressed their desire to re-submit the application. On May 16, 2013, the Applicant, along with representatives of Kagel Environmental, LLC (Consultant), Senator Grassley's office, Rock Island District Corps of Engineers (District), United States Environmental Protection Agency (USEPA) Region 7, U.S. Fish and Wildlife Service (FWS) and the Iowa Department of Natural Resources (IDNR) met to conduct a pre-application consultation to discuss the proposed project, its environmental impacts and the permitting process. The requirements for a complete application and public noticed were discussed, as well as the processing timeline, 404(b)(1) guidelines, jurisdiction and environmental concerns. The District agreed to send the Applicant and Consultant the list of requirements for a complete application, and sent that information on May 20, 2013. The Applicant stated that they would move forward in developing a permit application and include avoidance, minimization and mitigation measures. To date, the District has not received an application from the Applicant, but have responded to their inquiries through email and phone conversations on May 22, May 28, June 5, June 17, July 17 and July 18, 2013. On December 9, 2013, Wendling Quarries submitted a FOIA request to the District and we mailed the response on December 18, 2013. By letter dated December 4, 2014 from their attorney's office Snell & Wilmer L.L.P., the Applicant stated that they planned to initiate timber harvesting and gravel excavation, as they do not need a permit for the work, and that the District should notify them if we still feel we have jurisdictional authority. Our response, dated December 19, 2014, re-stated our position on their need for a permit and our jurisdictional authority. By letter dated December 31, 2014, Snell & Wilmer provided their legal and technical argument regarding their opinion that no permit is needed. We responded by letter dated January 13, 2015 and re-stated and explained our position and justification for jurisdictional authority and their need for a permit, as well as responses to their specific questions. In June 2015, the Applicant submitted an Ordinary High Water Mark Survey in response to our January 2015 letter. In addition, they submitted a letter which re-iterated why they believe they do not need a Section 404 or Section 10 Permit. In the letter, the Applicant stated that they will begin work soon regardless of whether a DA Permit was obtained. By letter we responded on August 21, 2015 and stated that the site is under Section 10 and 404 Jurisdiction and they have not provided the information we need to move forward. On December 4, 2015, Regulatory received a wetland delineation, mining plan and an



additional letter from their attorneys that stated the Corps had no Section 10 Authority and that Wendling could complete the project without a permit. After review, Regulatory determined that the site is not Section 10 because it lies completely above the Ordinary High Water Mark of the Mississippi River and is landward of the River. The open water on the interior of the site does not have a sufficient connection to the Mississippi River to consider them jurisdictional under Section 10 jurisdiction. In our response (sent February 17, 2016), we informed Wendling that the site is not under Section 10 Jurisdiction, but it is under 404. We also informed them again about our concerns with the mechanized land clearing and their lack of a clear plan showing how this could be accomplished without causing a discharge. We provided an Approved Jurisdictional Determination and again stated that they should submit a Joint Permit Application, provide their full plan and we could initiate the Public Notice procedure. They were informed that if work commences at this site, we may transfer this to the USEPA for enforcement action. On April 14, 2016, Wendling Quarries Appealed the Approved Jurisdictional Determination. The appeal was denied on May 13, 2016 by the Mississippi Valley Division Commander, Major General Michael C. Wehr. We have not received any follow up communication since then from Wendling Quarries. The District's position is still that the site is under Section 404 jurisdiction and no plan has been submitted that shows how the site can be mechanically cleared without a discharge of fill material. There are 76.7 acres of jurisdictional waters and wetlands on the site.

Description

Wendling Quarries, Inc. (Applicant), proposes to excavate sand and gravel from a 61.1-acre site adjacent to the Mississippi River, impacting approximately 42 acres of Waters of the U.S., including forested riverine wetland. The site also contains a known rookery for Great Egrets and Great Blue Herons. To date, the Rock Island District Corps of Engineers (District) has not received a 404 permit application or avoidance, minimization and mitigation measures from the Applicant.

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