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December 22, 2011

DEC 23 2011

Ohio Environmental
Protection Agency
Southeast District

Mr. Joe Holland
Environmental Specialist II
Ohio Environmental Protection Agency
Southeast District Office
Division of Material & Waste Management
2195 Front Street
Logan, OH 43138

Dear Mr. Holland;

Subject: Request for Agreement – Surface Water Setback Requirement
Solid Waste Transfer Station Permit to Install Application
Weavertown Environmental Group
New Matamoras, Ohio
CEC Project 112-048

On behalf of Weavertown Environmental Group (WEG), Civil & Environmental Consultants, Inc. (CEC) is submitting this request to the Ohio Environmental Protection Agency (Ohio EPA) Southeast District Office (SEDO) for written agreement regarding the surface water setback criteria for a proposed solid waste transfer station permit to install (PTI) application. The proposed transfer station will be located near New Matamoras, Ohio in Grandview Township, Washington County, Ohio (Figure 1 enclosed). Delineation of the surface water setback position critically affects the location and size of the waste handling area design and the viability of this project.

1.0 BACKGROUND

WEG contracted CEC to prepare a due diligence evaluation of the potential to re-develop their property located near New Matamoras, Ohio for permitting and construction of a solid waste transfer station that will stabilize drilling mud, drill cuttings, petroleum impacted soils and other non-hazardous industrial sludges prior to transportation to an appropriately permitted solid waste landfill. A site features map is provided in the enclosed Figure 2.

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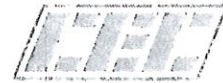
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Charlotte 704/773-6465
Chicago 877/963-6026
Cincinnati 800/759-5614

Cleveland 866/507-2324
Detroit 866/380-2324
Export 800/899-3610
Indianapolis 877/746-0749
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Solid waste transfer station rules in the Ohio Administrative Code (OAC) 3745-27-22 (D) require that the waste handling area cannot be located within 200 feet of any surface waters of the state, as defined in OAC 3745-1-02. OAC 3745-1-02 (S)(31) defines "Surface Water" as "any water on the surface of the earth", however, this rule does not define the lateral limits of the surface water body. To determine the area of the WEG property where the waste handling area could be located, it is required to determine the 200 foot setback from the Ohio River at the WEG property.

CEC researched additional Ohio laws and rules in an effort to determine the definition of the lateral limits of a surface water body. The Ohio Revised Code definition under Title 61, Chapter 6111.01 (H) states that "Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters." Again, this definition does not address the lateral limits of surface waters of the state.

Additional Ohio EPA surface water definitions contained in the Ohio Administrative Code were reviewed including;

- Water Quality Standards definitions in OAC 3745-1-02 (77);
- Section 401 Water Quality Certification definitions in OAC 3745-32-01(N);
- Ohio NPDES Individual Permits definitions in OAC 3745-33-01(PP) and (YY);
- Ohio NPDES General Permits definitions in OAC 3745-38-01(T);
- Permits to Install and Plan Approvals for Water Pollution Control definitions in OAC 3745-42-01(GGG) and (OOO); and
- Voluntary Action Program definitions in OAC 3745-300-01.

CEC did not find any definition of the lateral limits of surface waters of the state defined in any of these rules.

The United States Army Corp of Engineers (USACE) and United States Environmental Protection Agency (USEPA) have federal regulatory authority over wetlands and streams. The USACE has authority to permit work and the placement of structures in navigable waters of the United States under Sections 9 and 10 of the Rivers and Harbors Act of 1899, and to permit the discharge of dredged or fill material in waters of the United States under Section 404 of the Clean Water Act (CWA).



Where the USACE has established jurisdiction over a particular water body, the lateral limits of jurisdiction for that water body are determined pursuant to, e.g., Title 33 Code of Federal Regulations (CFR) Sections 328.4, 329.11, 329.12, and 329.13. Among the indicators of the lateral limits of jurisdiction set forth in those regulations are the shoreward limit of adjacent wetlands, or, where there are no adjacent wetlands, the presence of an ordinary high water mark (OHWM) for non-tidal waters and the high tide line or mean high water mark for tidal waters.

Because wetlands have been included in the definition of a surface water body under Ohio rules, CEC reviewed the USACE Wetland Delineation Manual¹ which states in Part IV, Section G that "water in a depression normally must be sufficiently persistent to exhibit an ordinary high-water mark or the presence of wetland characteristics before it can be considered as a water body potentially subject to Clean Water Act jurisdiction."

The USACE has published a Regulatory Guidance Letter (RGL) No. 05-05 dated December 7, 2005 which includes in Section 2 General Considerations, a discussion of Regulations and Policy. Section 2 of the RGL states that "For purposes of Section 404 of the Clean Water Act, the lateral limits of jurisdiction over non-tidal water bodies extend to the ordinary high water mark (OHWM), in absence of adjacent wetlands." The RGL also summarizes that for Sections 9 and 10 of the Rivers and Harbor Act of 1899, the lateral extent of Federal jurisdiction, is limited to the traditional navigable waters of the United States, which extends to the OHWM, whether or not adjacent wetlands extend landward of the OHWM."

CEC reviewed the online National Wetlands Inventory Map published by the U.S. Fish & Wildlife Service which indicates that there are no wetlands on, or adjacent to the Ohio River, at the WEG New Matamoras property.

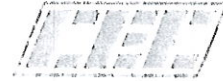
2.0 OHIO EPA AGREEMENT REQUESTED

As a result of this research described above, which searched for a definition of the lateral limits of a surface water body or waters of the state, CEC telephoned Mr. Rich Fox of Ohio EPA SEDO on October 27, 2011 to propose that the Ohio River OHWM be used as the reference contour for the 200 foot offset from surface water. Mr. Fox acknowledged that using the OHWM is acceptable as the reference elevation for the 200 foot setback from surface water for a transfer station permit application.

The USACE Navigation Chart No. 178 enclosed in Attachment A provides the Ohio River OHWM in the vicinity of the WEG site. The WEG site is at approximate river mile 143.5. The OHWM is equal to 608.9 feet above mean sea (amsl) level at river mile 140 (upstream of the site) and 606.9 feet amsl at river mile 145 (downstream of the site). A reasonable and slightly

¹ US Army Corp of Engineers, Waterways Experiment Station, January 1987 – Final Report, Wetlands Research Program Technical Report Y-87-1 (on-line edition).

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conservative value for the OHWM at the WEG site is 607.9 feet above mean sea level. The enclosed Figure 3 shows the setback criteria for a solid waste transfer PTI application, including the 200 foot surface water setback based on the OHWM for the Ohio River.

The surface water offset criteria for a solid waste transfer facility is critical to the development of the WEG site near New Matamoras, Ohio. Thus, CEC and WEG are requesting that Ohio EPA, SEDO provide written agreement that the ordinary high water mark provided on USACE Navigation Chart No. 178, will define the lateral extent of the Ohio River for the purposes of delineating the 200 foot offset from a surface water of the state on the WEG property in accordance with the transfer station siting criteria in OAC 3745-27-22 (D).

3.0 CLOSING

Civil & Environmental Consultants, Inc. and the Weavertown Environmental Group appreciate consideration of this Request for Agreement by the Ohio Environmental Protection Agency, Southeast District Office. This proposed transfer station facility will provide jobs and revenue to the local economy, as well as a needed service for the oil and gas exploration and production industry. Please contact me if you have any questions or if you require additional information regarding this matter.

Very truly yours,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read "Roy A. Stanley".

Roy A. Stanley, CPG
Project Manager

A handwritten signature in black ink, appearing to read "John DiNunzio".

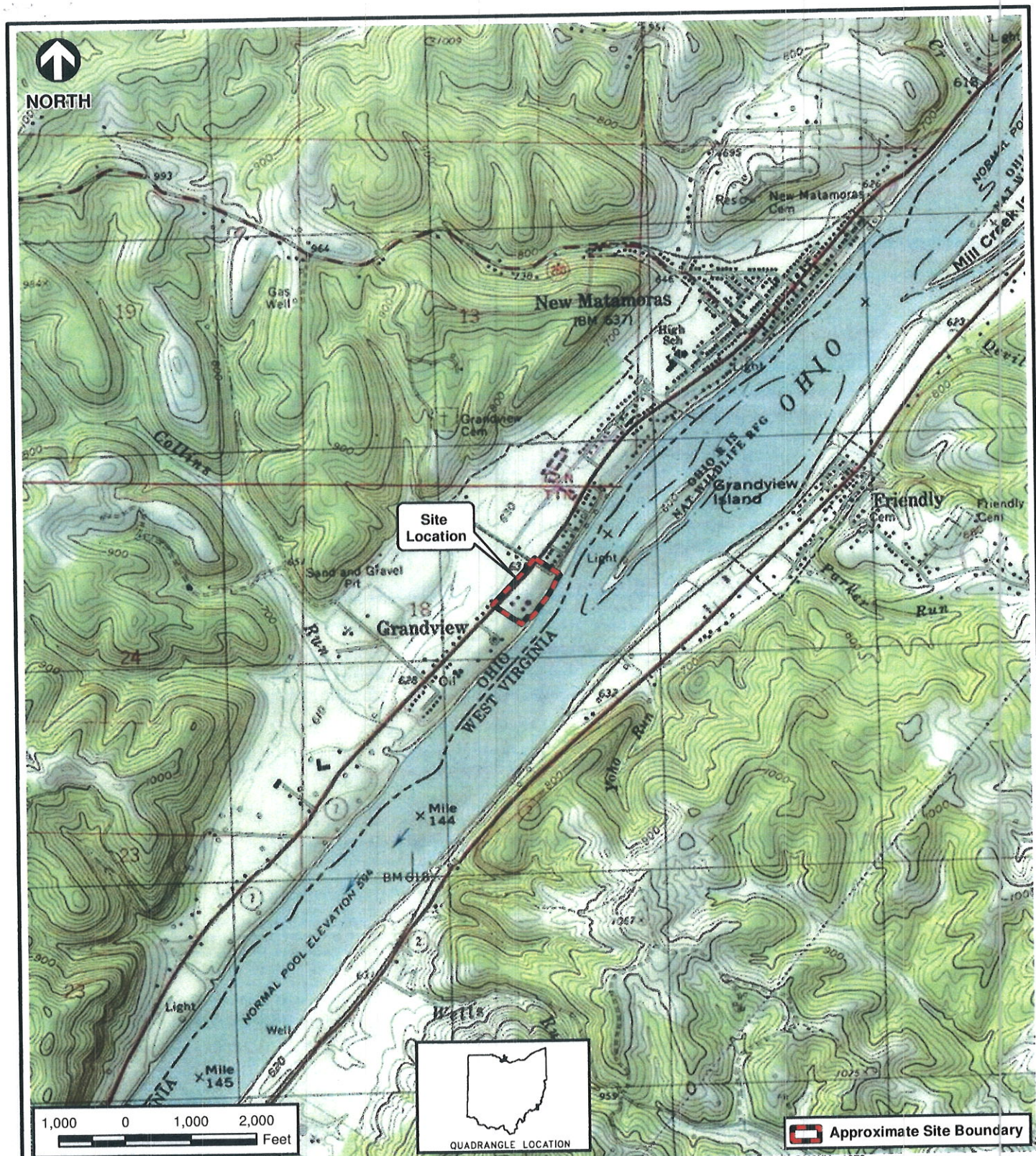
John DiNunzio, CPG
Vice President

Enclosures

cc: Mr. Daryl Heiser – WEG



FIGURES



Civil & Environmental Consultants, Inc.

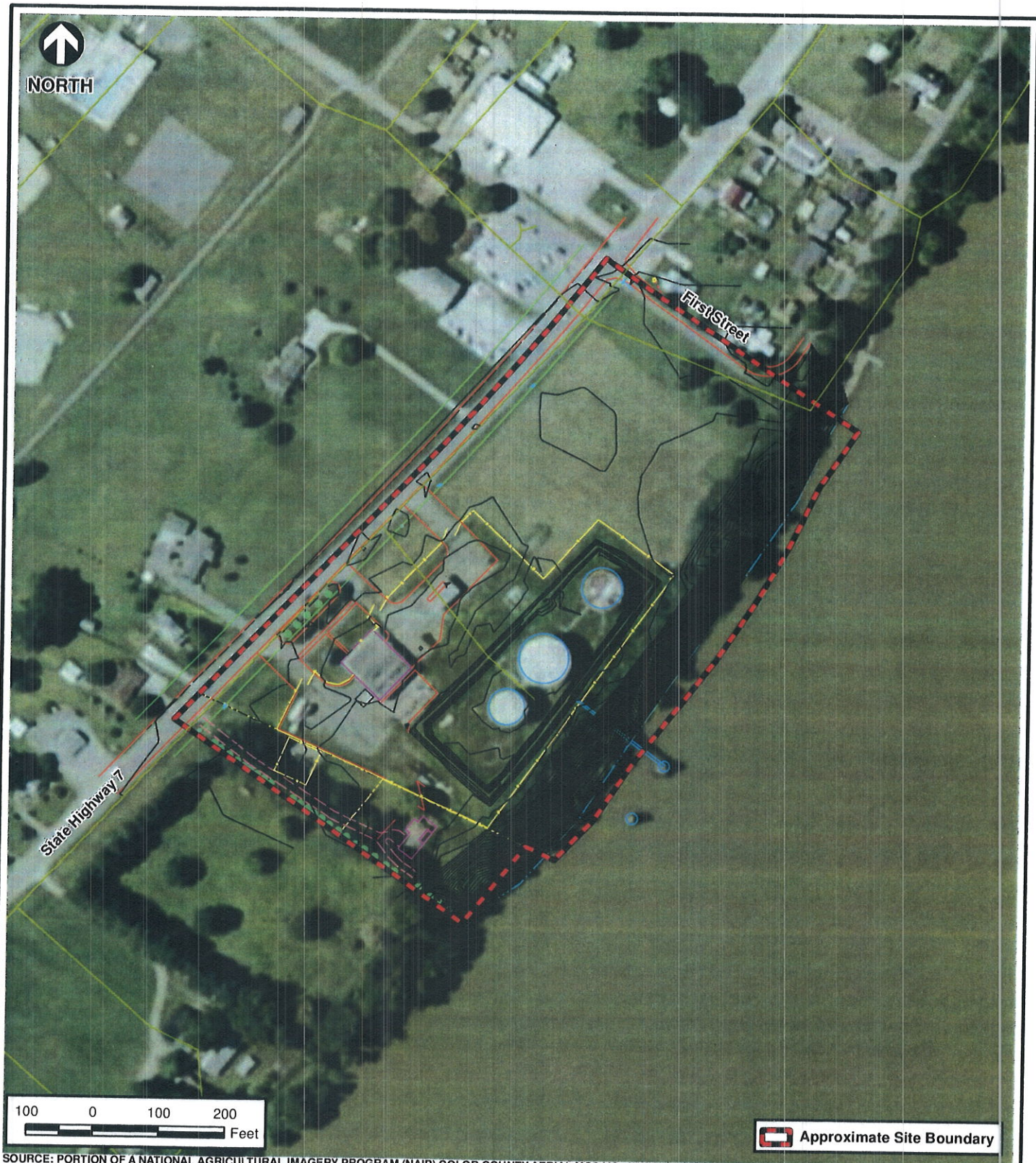
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WEAVERTOWN ENVIRONMENTAL GROUP
PRELIMINARY DUE DILIGENCE SERVICES
PROPOSED SOLID WASTE TRANSFER STATION
AND TANK STORAGE FACILITY
NEW MATAMORAS, OHIO

SITE LOCATION MAP

DRAWN BY: MJB	CHECKED BY: JSC	APPROVED BY: RAS*	FIGURE NO: 1
DATE: DECEMBER 20, 2011	DWG SCALE: 1" = 2,000'	PROJECT NO: 112-048	

Signature on File *



SOURCE: PORTION OF A NATIONAL AGRICULTURAL IMAGERY PROGRAM (NAIP) COLOR COUNTY AERIAL MOSAIC - WASHINGTON COUNTY, OHIO, 2009.
 EXISTING BASE FILE PROVIDED BY WEAVERTOWN ENVIRONMENTAL GROUP DRAWING NO. 9112D1. A.M.S.L. IS AN ABBREVIATION FOR ABOVE MEAN SEA LEVEL



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SITE AND VICINITY AERIAL MAP

DRAWN BY:	MJB	CHECKED BY:	JSC	APPROVED BY:	RAS*	FIGURE NO:
DATE:	DECEMBER 20, 2011	DWG SCALE:	1" = 200'	PROJECT NO:	112-048	2

Signature on File *

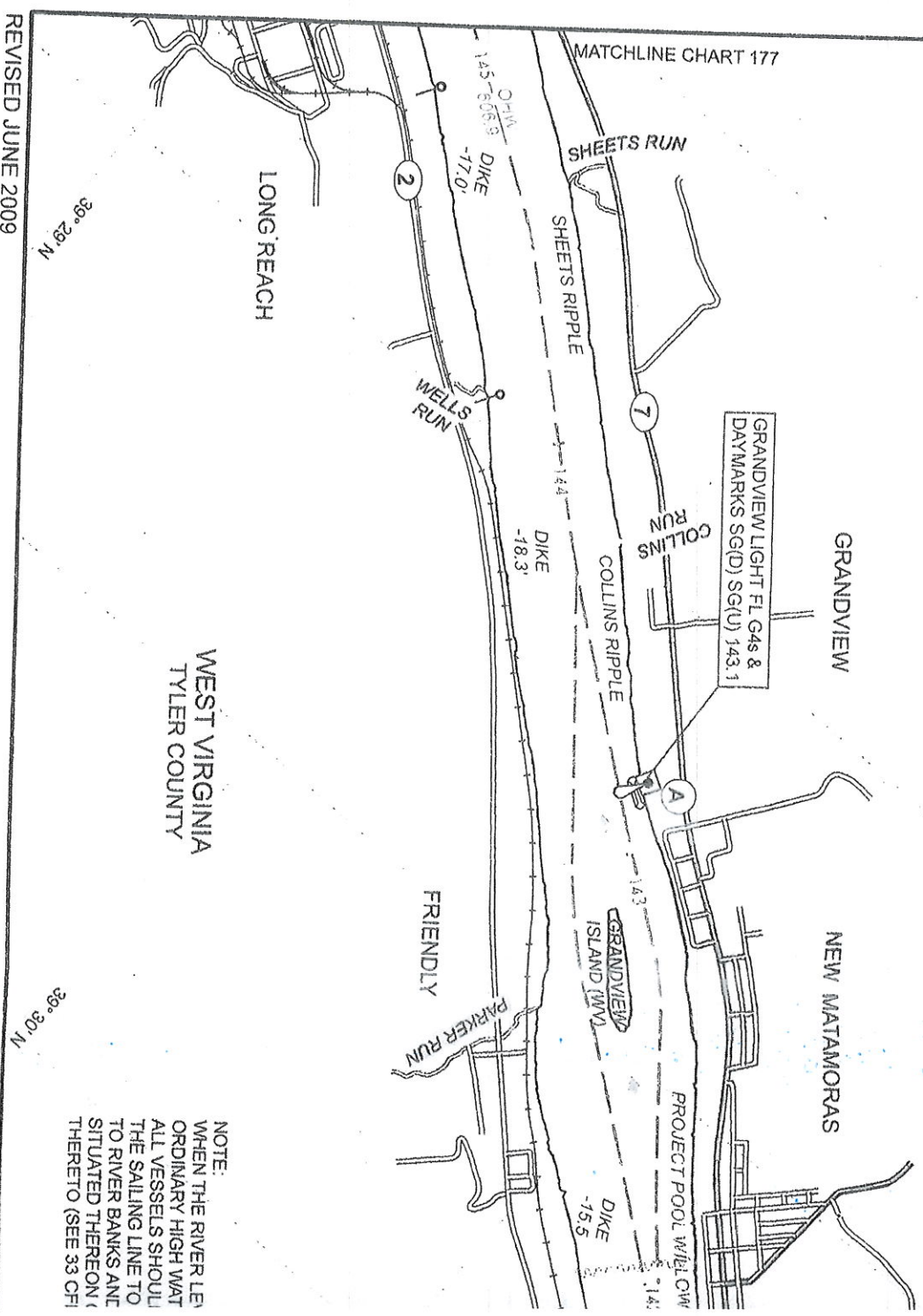


ATTACHMENT A

81° 06' N
81° 05' N
39° 32' N

OHIO
WASHINGTON COUNTY

(A) TRI-STATE PETROLEUM, INC.
(FIXED GREEN LIGHT)

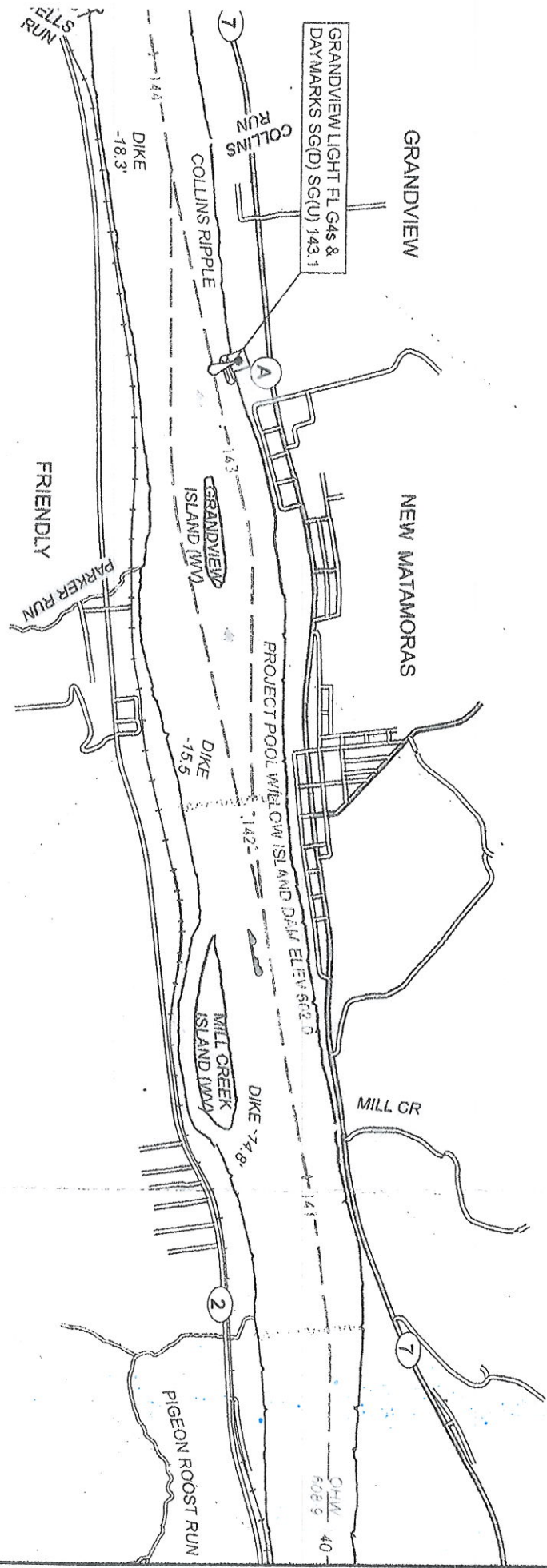


REVISED JUNE 2009

WEST VIRGINIA
TYLER COUNTY

NOTE:
WHEN THE RIVER IS
ORDINARY HIGH WATER
ALL VESSELS SHOULD
THE SAILING LINE TO
TO RIVER BANKS AND
SITUATED THEREON
THEREIN (SEE 33 CFR)

(A) TRI-STATE PETROLEUM, INC.
(FIXED GREEN LIGHT)



WEST VIRGINIA
TYLER COUNTY

NOTE:
WHEN THE RIVER LEVEL IS ABOVE THE
ORDINARY HIGH WATER ELEVATION,
ALL VESSELS SHOULD OPERATE NEAR
THE SAILING LINE TO PREVENT DAMAGE
TO RIVER BANKS AND STRUCTURES
SITUATED THEREON OR ADJACENT
THERE TO (SEE 33 CFR 207.300(U)).

1,000 0 SCALE 1"=2000'
1,000 2,000 3,000 Feet

CHART NO. 178
RIVER MILE 140.0 - 145.0