



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, KANSAS CITY DISTRICT  
700 FEDERAL BUILDING  
601 E 12<sup>TH</sup> STREET  
KANSAS CITY MO 64106-2896

January 25, 2010

Regulatory Branch  
(NWK-2004-02347)  
Jackson County, Missouri

Mr. David L. Flick, Principal  
Terra Technologies, Inc.  
4707 West 135<sup>th</sup> Street, Suite 280  
Leawood, Kansas 66224

Dear Mr. Flick:

This is in response to a request from Mr. William J. Penny, Penny's Concrete, Incorporated, on January 12, 2010, for a modification of Department of the Army (DA) permit No. 2004-02347. This request has been reviewed in accordance with Federal regulation Title 33 Code of Federal Regulations (C.F.R) 325.7, and with Section 404 of the Clean Water Act (Title 33 United States Code Section 1344 (33 U.S.C. 1344)). It has been determined that your proposed modification will not significantly increase the scope of the previously authorized activity.

Therefore, in accordance with your request, DA permit No. 2004-02347 is hereby modified to authorize the reduction of the forested wetland part of the mitigation area from 6.04 acres to 2.76 acres. The modified work requires you to accept and comply with the following special condition of the original permit. Special condition "c" is hereby modified to read:

c. You must create 2.3 acres of herbaceous wetland and preserve 2.76 acres of forested wetland along Sni-a-bar Creek to compensate for the 0.82 acres of wetlands filled by the project as illustrated on the "New Proposed Mitigation Plan" map (enclosure 1, map dated January 12, 2010). A Conservation Easement must be placed on the 5.08-acre mitigation area in order to protect and to preserve the wetlands (2.32-acre herbaceous and 2.76-acre forested wetlands) in perpetuity. You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official with the responsibility for maintaining records of title to or interest in real property. You must furnish a copy of the recorded instrument, with the recorder's stamp, to the Kansas City District within 6 months from the date of this permit modification.

If you agree with the terms and conditions of this DA permit modification, please acknowledge acceptance within 10 days of your receipt of this letter, and attach a copy of this letter (and enclosures) to your copy of permit No. 2004-02347 in order to reflect all work authorized under the permit. This is a legal document and you are legally bound by the terms and conditions upon acknowledgement, or upon expiration of any Administrative Appeal options if exercised. This modification does not preclude the necessity of obtaining other Federal, state, or local approvals for the work.

Since the original mitigation plan was a condition of the MDNR 401 water quality certification, the permittee will need to apply for a new 401 certification and provide a copy to this office.

If you object to the terms and conditions of this DA permit modification, you may request reconsideration under the Administrative Appeals program, or you may request, within 10 days of your receipt of this letter, a meeting with the District Engineer, or a public hearing. Enclosed you will find a

Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form (enclosure 2). If you request reconsideration of this decision you must submit a completed RFA form to the Kansas City District at the following address:

District Commander  
ATTN: Regulatory Branch Chief  
U.S. Army Engineer District, Kansas City  
601 East 12<sup>th</sup> Street, Suite 402  
Kansas City, MO 64106-2896  
Voice: 816-389-3990, FAX: 816-389-2032

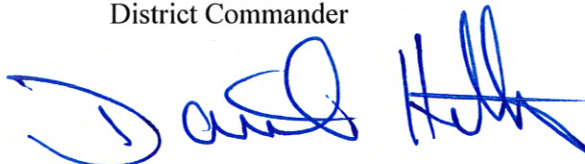
In order for an RFA to be accepted by the U.S. Army Corps of Engineers (Corps), the Corps must determine that it is complete, that it meets the criteria for reconsideration under 33 C.F.R. Part 331.6.b., and that it has been received by the District Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by March 26, 2010.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. We have placed an automated version of our Customer Service Survey form on our website at: <http://per2.nwp.usace.army.mil/survey.html>. At your request, we will mail you a paper copy that you may complete and return to us by mail or fax.

If you have any questions concerning the work authorized by this letter, please feel free to write me or call Michael T. McFadden at (816) 389-3432 or by FAX at (816) 389-2032.

Sincerely,

Roger A. Wilson, Jr.  
Colonel, Corps of Engineers  
District Commander



By: David R. Hibbs  
Assistant Branch Chief  
Regulatory Branch

Enclosure







## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant:	File Number:	Date:
Attached is:		See Section below
<input checked="" type="checkbox"/>	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	C. PERMIT DENIAL	C
<input type="checkbox"/>	D. APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I -** The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or request modification of the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **REQUEST MODIFICATION:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- **RECONSIDERATION BASED ON NEW INFORMATION:** You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

Enclosure 2



SECTION II –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

- A. Modification of an INITIAL PROFFERED PERMIT (Item A).
- D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

- B. Administrative Appeal of a PROFFERED PERMIT (Item B).
- C. Administrative Appeal of a PERMIT DENIAL (Item C).
- D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:  
DISTRICT ENGINEER  
**Attn: Mark D. Frazier**  
**Chief, Regulatory Branch**  
U.S. Army Engineer District, Kansas City  
601 East 12<sup>th</sup> Street, Room 402  
Kansas City, MO 64106-2896  
Telephone: 816-389-3990  
(Use this address for submittals to the District Engineer)

If you wish to submit an appeal or have questions regarding the appeal process you may contact:  
DIVISION ENGINEER  
**Attn: David W. Gesl**  
**Administrative Appeals Review Officer**  
U.S. Army Engineer Division, Northwestern Division  
P.O. Box 2870  
Portland, OR 97208-2870  
Telephone: 503-808-3825

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
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