

MODIFICATION OF THE JUNE 15, 1984  
M.A. NORDEN COMPANY, INC. SECTION 404(c) FINAL DETERMINATION

Background

On June 15, 1984, the U.S. Environmental Protection Agency (EPA) issued a Final Determination pursuant to Section 404(c) of the Clean Water Act prohibiting the discharge of dredged or fill material at the M.A. Norden Company, Inc. (Norden Company) site, Mobile, Alabama. The site consists of approximately 25 acres of highly diverse freshwater marshes, shrub swamps, and forested swamps. EPA determined that unacceptable adverse effects would occur to shellfish beds and fishery areas and wildlife areas as a result of the proposed project. The proposed project involved discharges of dredged and fill material into 25 acres of wetlands associated with the construction of a waste recycling and storage facility. Notice of the Final Determination was published in the Federal Register on July 18, 1984, (49 Federal Register 29142).

On October 5, 1992 and August 5, 1993, the Norden Company petitioned EPA for reconsideration of the total site prohibition identified in EPA's June 15, 1984 Final Determination concerning the Norden Company site. Norden Company requested a modification of the Final Determination to discharge 9,300 cubic yards of dredged or fill material into approximately 1.5 acres of wetlands within the area prohibited under Section 404(c) in order to construct a road to provide access to an adjacent upland site. This new proposal would reduce the direct impacts of the original proposal from 25 acres of wetlands filled to approximately 1.5 acres filled.

EPA announced Norden Company's request for modification of the Final Determination and requested public comment in the May 13, 1994, Federal Register (59 Federal Register 25050). The 30 day comment period ended on June 12, 1994. In addition, EPA formally notified the U.S. Army Corps of Engineers Headquarters by letter and requested any comments on Norden Company's proposal. EPA also mailed copies of the Federal Register notice to other parties that might be interested in the proposed action, including nearby property owners, environmental groups, and other Federal, State, and Local agencies.

EPA received no comments from the public in response to the Federal Register notice. The U.S. Army Corps of Engineers Headquarters responded in a July 1, 1994, letter to EPA and indicated that they had no comment at this time, preferring to maintain their ability to make an objective and independent decision on a permit application from the Norden Company, should EPA amend the Final Determination. The U.S. Fish and Wildlife Service, Alabama Field Office (FWS), submitted comments in a June 7, 1994, letter. While neither supporting nor objecting to reconsideration of the Final Determination, they indicated that there may be less environmentally damaging alternatives to the

proposed road fill and that these alternatives should be fully explored.

### Findings and Conclusions

EPA has carefully reviewed Norden Company's proposal and the information it submitted. Specifically, the proposal is to extend an existing abandoned railroad spur across the site as a vehicular road for use by heavy truck (container) traffic from the Port of Mobile facilities to a storage area on the upland. The existing railroad spur is 30 feet wide and 900 feet long. As currently proposed by the Norden Company, the railroad spur would be widened and extended, at a slight angle, approximately 600 feet across the wetlands and drainage canal to reach an upland area. Approximately 9,300 cubic yards of sand material on geotextile fabric is proposed to be placed in the wetlands for roadbed fill. The typical road section would be 36 feet wide at the top and 60 feet wide at the base with 3:1 side slopes. Silt screens would be erected and the side slopes would be seeded and mulched to prevent erosion and sedimentation of the adjacent waters and wetlands. Four concrete culverts (three 24 inch diameter culverts and one 36 inch diameter culvert) would be placed through the fill underneath the roadway to allow for exchange of water between the divided portions of the wetland.

In addition to Norden Company's proposal, EPA has carefully reviewed the comments by FWS, and the existing administrative record from the Norden Company Section 404(c) action. Based on this review, EPA concludes that environmental impacts associated with the construction of the proposed road would not result in unacceptable adverse effects to the Norden Company Section 404(c) area within the meaning of EPA's Section 404(c) regulations.

In reaching this decision, EPA considered that the impacts of the current Norden Company proposal are significantly less than those of the original proposal which precipitated the Section 404(c) action. The original Final Determination noted that the Norden site was a "productive wetland, typical of the area, that contributes organic material to the fish and shellfish communities of the Mobile Bay estuary, provides valuable habitat for wildlife, and acts as a pollutant filtering mechanism which helps to reduce degradation of water quality in the adjacent open water system." The originally proposed 25 acres of impacts to waters of the United States have been reduced through the modification of the project so that approximately 1.5 acres will be impacted. In addition, the project will be constructed in such a way as to allow for downstream transport of detritus and continued connection to the Mobile Bay estuary.

The Norden Company has made a prima facie showing that there are no practicable alternatives which are less environmentally damaging. Alternate routes which would avoid the wetlands do not seem to be practicable based on the information available. If the Final Determination is modified, the project must still go

through the Corps' permit process, where the issue of practicable, less environmentally damaging alternatives will receive thorough investigation. Under the circumstances, the theoretical possibility of alternatives does not make the limited impacts of the revised project unacceptable.

For these reasons, EPA has concluded that it is appropriate to modify the original June 15, 1984, Final Determination to allow M.A. Norden Company, Inc. to seek authorization from the U.S. Army Corps of Engineers to discharge dredged or fill material into waters of the United States associated with the construction of the road described in the Norden Company's submissions to EPA on October 5, 1992, and August 5, 1993, and summarized above. Prior to any discharge activities, however, the project must be authorized pursuant to applicable permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

#### Modification

The June 15, 1984, Norden Company Final Determination is hereby modified as follows:

The M.A. Norden Company, Inc., may seek authorization from the U.S. Army Corps of Engineers to discharge dredged or fill material into waters of the United States within the area previously prohibited by EPA as described in its June 15, 1984, Final Determination under Clean Water Act Section 404(c). Discharges would be limited to activities associated with the construction of an access road as described in Norden Company submissions dated October 5, 1992, and August 5, 1993.

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*8-29-94*

Date