



June 28, 2021

Sarah Foreman  
Environmental Protection Specialist  
Solid Waste Permitting Unit  
Solid Waste and Materials Management Program  
4300 Cherry Creek Drive South, B-2, Denver, CO 80246  
sarah.foreman@state.co.us

REF: Twin Landfill Corporation  
Milner Operations - Phase 2

Sarah:

The Phase 2 footprint for Twin Enviro's landfill located in Milner, Colorado, includes an old horseshoe shaped pit that is the foundation for the lateral expansion area of Phase 2. As part of planning for the Phase 2 expansion, Twin requested review of standing water within the horseshow base for jurisdictional determination.

On December 4, 2020 The Department of the Army, Regulatory Division, issued SPK-2020-00877 in response to Twin's request for a jurisdictional determination for the Milner landfill expansion site (attached). The jurisdictional determination is valid for 5 years and indicates that the wetlands present are isolated, not connected, and considered non-jurisdictional. This determination indicates that take of the wetlands would not be subject to the Clean Water Act Section 404 compensatory mitigation requirements.

Twin is now actively planning for Phase 2 and considers the initial step in that process to drain the water that exists in the horseshoe through our normal stormwater drainage system. Twin would obtain necessary permits for the work including an application to CDPHE for routing of the surface water discharge and/or dewatering permits, and Routt County requirements such as a grade & fill permit, as required. Recognizing that the Routt County Master Plan has provisions for evaluation of wetlands as part of development, Twin is committed to working with the County to make the mutual decision that these are not high-quality, nor sustainable aquatic resources given their location in an active landfill operational boundary and because they are not connected.



Twin has taken steps in the past to minimize spring runoff from the horseshoe, and the effects of those steps is recognizable. As a result, one area of the horseshoe does hold a significant amount of water. Following initial draining of the water, Twin will determine if there is a replenishable source of the water (e.g., a spring) and follow up with you accordingly.

Following dewatering, and assuming a spring is not present, Twin would then grade the bottom of the horseshoe in preparation for the demolition of the northern highwall into the horseshoe. The highwall materials would form the eventual base of the lateral expansion and would settle over the years preceding construction plans for Phase 2 lateral expansion, which would include provisions for compaction of subgrade material.

Twin believes the above plan positions us to move forward internally with design revisions, which are required to be submitted to CDPHE review and approval at least five years in advance of planned initiation of liner construction over the lateral expansion of Phase 2.

Twin is requesting your approval with the above plan. Given our drought conditions, we feel it is a prudent time to move forward. Please reach out with any questions or comments on this proposed path forward for dewatering and elimination of standing water and wetlands within the horseshoe area of the site.

Sincerely;

*Transmitted via email*

Marlin Mullet  
CEO/Twin Enviro Services

Cc: Scott Cowman, Routt County Environmental Health  
Les Liman, Twin Enviro  
Rebecca Lindeman, PE, Jardon Engineering & Inspections



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

December 4, 2020

Regulatory Division (SPK-2020-00877)

Twin Enviro Services  
Attn: Mr. Edward Winters  
20650 County Road 205  
Steamboat Springs, Colorado 80477  
[ewinters@twinenviro.com](mailto:ewinters@twinenviro.com)

Dear Mr. Winters:

We are responding to your request for an approved jurisdictional determination for the Milner Landfill Expansion site. The approximately 8.54-acre project site is located at the Milner Landfill, on Routt County Road 205, approximately 1 mile south of U.S. Highway 40, within Section 16, Township 6 North, Range 86 West, Sixth Principal Meridian, centered at Latitude 40.47318°, Longitude -107.03712°, near the unincorporated community of Milner, Routt County, Colorado.

Based on available information we have determined that your site, as depicted on the enclosed October 29, 2020, *Twin Environmental Aquatic Resources Delineation Map*, prepared by HRL Compliance Solutions (enclosure 1), contains approximately 1.91 acres of aquatic resources, consisting of 1.08 acres of palustrine emergent wetland and 0.83 acre of palustrine unconsolidated bottom pond. This letter verifies that the location and boundaries of wetlands were delineated consistent with the wetland definition at 33 CFR §328.3(c)(16), the 1987 *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1), and the applicable regional supplements. Of these aquatic resources, we have determined that the 1.08 acres identified as wetland and 0.83 acre identified as pond on the above-referenced drawing are intrastate, isolated aquatic resources with no apparent interstate or foreign commerce connection. As such, these aquatic resources (i.e. wetlands and pond) are not currently regulated by the U.S. Army Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Clean Water Act. We are enclosing a copy of the *Approved Jurisdictional Determination Form* for your site (enclosure 2). This approved jurisdictional determination is valid for 5 years from the date of this letter, unless new information warrants revision of the determination before the expiration date.

If you object to this determination, you may request an administrative appeal under Corps regulations at 33 Code of Federal Regulations (CFR) Part 331. A *Notification of Appeal Process (NAP) and Request for Appeal (RFA) Form* is enclosed (enclosure 3). If you request to appeal this determination, you must submit a completed RFA form to the

South Pacific Division Office at the following address: Administrative Appeal Review Officer, Army Corps of Engineers, South Pacific Division, CESPDPDO, 1455 Market Street, 2052B, San Francisco, California 94103-1399, Telephone: 415-503-6574, FAX: 415-503-6646.

In order for an RFA to be accepted by the Corps, we must determine that the form is complete, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that the form was received by the Division Office within 60 days of the date of the NAP. It is not necessary to submit an RFA form to the Division Office unless you object to the determination in this letter.

This approved jurisdictional determination has been conducted to identify the limits of aquatic resources subject to U.S. Army Corps of Engineers jurisdiction under Section 404 of the Clean Water Act for the particular site identified in this request. We recommend that you provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

Please refer to identification number SPK-2020-00877 in any correspondence concerning this project. If you have any questions, please contact Tucker Feyder at our Colorado West Section Regulatory Office, 400 Rood Avenue, Room 224, Grand Junction, Colorado 81501, by email at [Tucker.J.Feyder@usace.army.mil](mailto:Tucker.J.Feyder@usace.army.mil), or telephone at (970) 243-1199, extension 1017. We appreciate feedback, especially about interaction with our staff and our processes. For program information or to complete our Customer Survey, visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx).

Sincerely,

NALL.SUSAN.

B.1231397210

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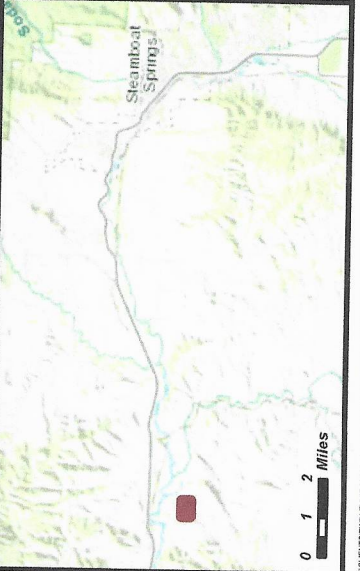
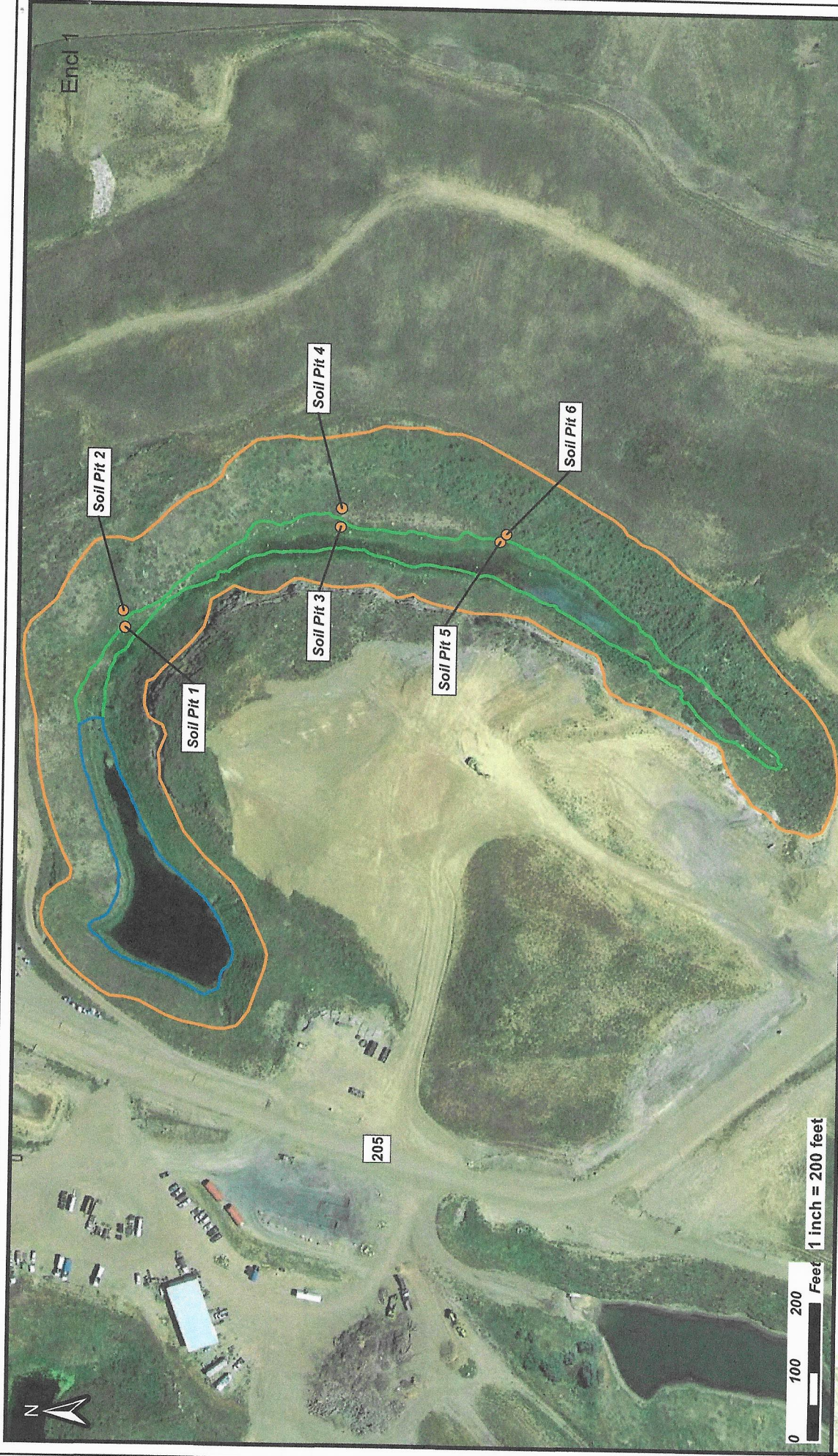
Susan B. Nall  
Chief, CO West Section

Enclosures

cc:

Ms. Kristy Winser, Routt County Planning Director, [kwinser@co.routt.co.us](mailto:kwinser@co.routt.co.us)  
Mr. Luke Schneider, Twin Enviro Services, [lschneider@twinenviro.com](mailto:lschneider@twinenviro.com)  
Mr. Maurice Foye, HRL Compliance Solutions, [mfoye@hrlcomp.com](mailto:mfoye@hrlcomp.com)









Notes / Comments:

Imagery date: 8/26/2019 - courtesy of Google Earth.

Delineation conducted by: Bryan Watt

### Mapped Features

-  Soil Pit
-  Pond (0.83 acres)
-  Wetlands (1.08 acres)
-  Survey Area (8.54 acres)

## Twin Environmental Aquatic Resources Delineation Map

### Milner Landfill

Routt County, CO

DISCLAIMER: This representation and the Geographic Information System (GIS) used to create it are designed for informational purposes only. HRL assumes no liability for any use of the information or any results derived therefrom. HRL makes no warranty, either expressed or implied, as to the quality or accuracy of the underlying data.



Author: A. Aspy  
Revision: 0  
Date: 10/29/2020



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

Encl 2

**SECTION I: BACKGROUND INFORMATION**

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 23, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, Milner Landfill Expansion, SPK-2020-00877

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Colorado** County/parish/borough: **Routt County** City: **Milner**  
Center coordinates of site (lat/long in degree decimal format): Lat. **40.473183°**, Long. **-107.037117°**  
Universal Transverse Mercator: **13 327312.7 4482271.16**

Name of nearest waterbody: **Yampa River**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **N/A**

Name of watershed or Hydrologic Unit Code (HUC): **Upper Yampa, 14050001**

☒ 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 23, 2020

☐ 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. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

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. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): <sup>1</sup>

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet, wide, and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The project site contains approximately 1.08 acre isolated wetland, and 0.83 acre isolated pond.

**SECTION III: CWA ANALYSIS**

A. TNWs AND WETLANDS ADJACENT TO TNWs

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

☐ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:

Tributary stream order, if known:

(b) **General Tributary Characteristics (check all that apply):**

Tributary is: ☐ Natural

☐ Artificial (man-made). Explain:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.



☐ Manipulated (man-altered). Explain:

**Tributary properties with respect to top of bank (estimate):**

Average width: feet

Average depth: feet

Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts           | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles         | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock         | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain: |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

Subsurface flow: **Pick List**. Explain findings:

☐ Dye (or other) test performed:

Tributary has (check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> Bed and banks  |   |
| <input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank            | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                                  | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):  |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:            |   |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

Identify specific pollutants, if known:

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
- ☐ Federally Listed species. Explain findings:

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.



A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
☐ TNWs: linear feet, wide, Or acres.  
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet, wide.  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters:

<sup>8</sup>See Footnote # 3.

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
- ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area:                  acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area:                  acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area:                  acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**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):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain:
- ☐ Other factors. Explain:

**Identify water body and summarize rationale supporting determination:**

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters:                  linear feet,                  wide.

☐ Other non-wetland waters:                  acres.

Identify type(s) of waters:

☐ Wetlands:                  acres.

**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):

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.



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, wide.  
☒ Lakes/ponds: **0.83** acres.  
☐ Other non-wetland waters: acres. List type of aquatic resource:  
☒ Wetlands: **1.08** acres.

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, wide.  
☐ 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: *Aquatic Resources Delineation Report 404 Investigation for Twin Enviro Services Milner, Routt County, Colorado November 4, 2020 by HRL Compliance Solutions, Inc.*
- ☒ 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; Milner**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS, 2019. Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture (NRCS). Web Soil Survey. <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. Accessed September 21, 2020.
- ☒ National wetlands inventory map(s). Cite name: U.S. Fish and Wildlife Service (USFWS). 2020. National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington D.C. Available online at <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>. Accessed on September 21, 2020.
- ☐ State/Local wetland inventory map(s):  
☐ FEMA/FIRM maps:  
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth, 2019.  
or ☒ Other (Name & Date): Appendix D, Habitat Photographs.
- ☐ Previous determination(s). File no. and date of response letter:  
☐ Applicable/supporting case law:  
☐ Applicable/supporting scientific literature:  
☐ Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** A site visit was not conducted, but the requestor did provide an aquatic resources delineation. The wetland and pond in question are not part of a larger wetland complex. The project investigation area is located in a historic strip mine, creating a relatively narrow crescent-shaped man-made basin with very steep banks. Rock outcrops above the basin show layers of shale and coal. The landfill adjacent to Project site is currently in use, but associated disturbances do not extend into the basin. There is not a surface connection to a Traditional Navigable Water (TNW) and no evidence of a subsurface connection. The closest TNW is the Yampa River, which is approximately 2,006-linear feet (0.38 mile) to the north. This wetland does not have an outlet and does not extend to nor is in the floodplain of the Yampa River.



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

Encl 3

Applicant: Mr. Edward Winters, Twin Enviro Services

File No.: SPK-2020-00877

Date: December 4, 2020

Attached is:

See Section below

INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)

A

PROFFERED PERMIT (Standard Permit or Letter of permission)

B

PERMIT DENIAL

C

→ APPROVED JURISDICTIONAL DETERMINATION

D

PRELIMINARY JURISDICTIONAL DETERMINATION

E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/cecw/pages/reg\\_materials.aspx](http://www.usace.army.mil/cecw/pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to 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.
- **OBJECT:** 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 reverse). 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 reverse). 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 or appeal the approved JD or provide new information.

- **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 reverse). This form must be received by the division engineer 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.



**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**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.)

**ADDITIONAL INFORMATION:** The appeal 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 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:

Tucker J. Feyder  
Project Manager  
U.S. Army Corps of Engineers  
Sacramento District  
400 Rood Avenue, Room 224  
Grand Junction, CO 81501  
Phone: (970) 243-1199 X 1017  
Email: [Tucker.J.Feyder@usace.army.mil](mailto:Tucker.J.Feyder@usace.army.mil)

If you only have questions regarding the appeal process you may also contact:

Thomas J. Cavanaugh  
Administrative Appeal Review Officer  
U.S. Army Corps of Engineers  
South Pacific Division  
1455 Market Street, 2052B  
San Francisco, California 94103-1399  
Phone: 415-503-6574, FAX 415-503-6646  
Email: [Thomas.J.Cavanaugh@usace.army.mil](mailto:Thomas.J.Cavanaugh@usace.army.mil)

**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.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:



## COLORADO

Hazardous Materials  
& Waste Management Division

Department of Public Health & Environment

### VIA EMAIL ONLY

July 20, 2021

Mr. Marlin Mullett  
Twin Landfill Corporation  
P.O. Box 774362  
Steamboat Springs, CO 80477

RE: **CDPHE Conditional Approval of the Phase 2 Dewatering Plan**  
Milner Landfill, Routt County, Colorado

CDPHERM HAZ SW - Permitting - RTT16

Dear Mr. Mullett:

The Colorado Department of Public Health and Environment (“CDPHE” or “Department”), Hazardous Materials and Waste Management Division (“Division”) received a letter, dated June 28, 2021, prepared by Twin Landfill Corporation (“Twin”). The letter contained an exemption for the wetlands located within the Phase 2 expansion area from the requirements of Section 404 of the Clean Water Act from the United States Army Corps of Engineers (“USACE”). The letter also contained a proposed plan for dewatering and excavating the area.

The Division has reviewed this letter to determine its compliance with the Solid Waste Disposal Sites and Facilities Act, CRS 30-20-100.5 *et. seq.* (“Act”), the Regulations Pertaining to Solid Waste Sites and Facilities, 6 CCR 1007-2, Part 1 (“Regulations”), and the site’s approved Engineering Design and Operations Plan, dated December 2020 (“EDOP”). Based on the Division’s review, the above-referenced letter meets the requirements of the Act, Regulations, and EDOP. Therefore, the Division hereby approves the letter as submitted under the following conditions:

**Condition 1.** Twin must notify the Division within 30 days if a spring is discovered after the removal of standing water in the ponded areas of the Phase 2 expansion area. The Division must also be notified, be provided necessary information for review, and approve proposed activities prior to any fill placement in the area.

**Condition 2.** Twin has indicated that it intends to begin grading the horseshoe area and demolish the northern face of the existing knoll. If the excavated material meets the requirements of the approved Construction Quality Assurance and Quality Control (“CQAQC”) Plan, it may be used as the rock sub-base material as described in the EDOP in the area of elevated groundwater in Phase 2 (i.e. “Doug’s Drainage”). The rock fill must be in-place for a minimum of five years *prior to any liner or subgrade construction for*



*Phase 2.* Additionally, all blasting designs must be included in relevant certification reports as described in the CQAQC Plan.

In accordance with the approved EDOP and the Regulations, Twin is required to include the following components in the Phase 2 design revision that will be submitted to the Division at least five (5) years prior to liner construction in Phase 2:

1. The accurate limit of waste for Pits 5 and 6 after it has been thoroughly investigated and delineated by Twin.
2. A demonstration of the requirement for a liner over the vertical expansion areas where refuse has been previously placed.
3. A detailed progression plan for the modules in Phase 2. The progression plan should carefully consider the management of leachate and stormwater.
4. A plan for groundwater characterization to comply with the Regulations, particularly in Doug's Drainage.

Please note that the Division's acceptance of the letter does not preclude separate review action by Routt County.

The Division is authorized to bill for its review of technical submittals at \$125 per hour pursuant to the Act and Regulations. An invoice for the Division's review of the above-referenced letter will be sent to Twin under separate cover.

Please contact me by phone at (720) 251-4841 or by email at [sarah.foreman@state.co.us](mailto:sarah.foreman@state.co.us) should you have any questions or comments concerning this letter.

Sincerely,

Sarah Foreman  
Solid Waste Permitting Unit  
Solid Waste & Materials Management Program  
Hazardous Materials & Waste Management Division

Jill Parisi, PE  
Solid Waste Permitting Unit  
Solid Waste & Materials Management Program  
Hazardous Materials & Waste Management Division

cc: Scott Cowman - Director, Routt County Environmental Health Department  
Alan Goldich - Routt County Planning Department  
Rebecca Lindeman, PE - Jardon Engineering & Inspections LLC  
Brian Long - CDPHE, Solid Waste Compliance Assurance Unit  
Les Liman - Twin Landfill Corporation

