

# Illinois

## Department of Natural Resources

<http://dnr.state.il.us>

524 South Second Street, Springfield, Illinois 62701-1787

George H. Ryan, Governor • Brent Manning, Director

### **Authorization for Incidental Take and Implementing Agreement**

Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5), authorization is hereby granted to the J.T. Cullen Company, Inc. (Cullen) for the incidental take of the state-threatened black sandshell (*Ligumia recta*) and the state-threatened butterfly (*Ellipsaria lineolata*) at Cullen's barge-loading facility on the Mississippi River (approximate River Mile 518.8) in Whiteside County, Illinois, subject to the terms and conditions described in this authorization and implementing agreement. The Illinois Department of Natural Resources (Department) has determined that this authorized take is incidental to the excavation of a channel to allow passage of barges from the Mississippi River to an off-stream mooring cell.

#### Procedural History

Cullen prepared a conservation plan as described by the Act (520 ILCS 10/5.5). That plan and Cullen's request for incidental take of black sandshell and butterfly mussels were received by the Department on January 29, 2002. Public notice of Cullen's request for authorization of incidental take of black sandshell and butterfly mussels was published in the Edwardsville Intelligencer (official state newspaper) on February 14, 2002 and in the Fulton Journal on February 13, 20 and 27, 2002. Public comments on Cullen's conservation plan were accepted by the Department until March 29, 2002. All comments received by the Department were provided to Cullen for their consideration. Cullen prepared an analysis of all public comments. That analysis was received by the Department on April 5, 2002.

#### Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each are listed below.

1. The taking will not be the purpose of, but will only be incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is to provide barge access to an off-stream loading facility adjacent to the Mississippi River in Whiteside County, Illinois. An area of approximately 15,470 square feet will be dredged to provide adequate depth for the passage of barges from the river to a mooring cell and loading facility. The proposed dredged channel will have a base width of 80 feet and will project 150 feet into the river. Cullen will relocate all mussels found within the area to be dredged. Relocation constitutes a "take" under the Act. This take is not the purpose of Cullen's activities, but is incidental to the carrying out of an otherwise lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking:

Cullen has reduced the width of their proposed channel from 100 feet to 80 feet in order to reduce the affected area. Cullen has employed Helms and Associates of Bellevue, Iowa to conduct a basic habitat survey and an initial mussel survey of the impact area in order to estimate the extent of the anticipated take. These surveys were conducted under permits issued to Helms and Associates by the Department. The conservation plan prepared by Cullen includes plans to relocate all mussels, including any individuals of black sandshell or butterfly mussels, to an area of suitable habitat upstream of the area to be dredged before any dredging is carried out. This relocation will be conducted by Helms and Associates and will be done according to all provisions and protocols that are included in federal and state permits held by that company and will be initiated only after execution of this authorization for incidental take.

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided:

The conservation plan prepared by Cullen estimates the cost of the relocation of mussels and monitoring of the project area after dredging is complete at \$165,000 over a 10-year period. Cullen indicates that sufficient cash assets are currently on hand and that an escrow account will be established to cover projected costs. The amount of that escrow account will be determined based on the terms and conditions included in this authorization.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the endangered species or threatened species in the wild in Illinois, the biotic community of which the species is a part, or the habitat essential to the species existence in Illinois:

Based on the pre-project mussel survey conducted at the project site, it is estimated that fewer than 10 individuals of each of the threatened species will be relocated. The risk of mussels that are overlooked during the relocation being killed by the dredging cannot be discounted, but any such losses will be extremely small. The black sandshell and butterfly mussels have decreased in abundance in Illinois and nearby states over several decades and their range has been reduced. In the Mississippi River along northwest Illinois, however, these species are still found in relatively high abundance in some areas. Both species are regularly found in surveys in this region.

The conservation plan includes provisions for proper handling of relocated mussels, including minimization of exposure time, working only under appropriate temperature conditions and adherence to protocols recommended by the U.S. Fish and Wildlife Service for such projects.

Cullen's dredging plan also includes the use of methods and equipment that will minimize downstream deposition of silt during dredging. Barges using the completed channel will operate at reduced engine speeds in order to reduce disturbance of sediments that could be deposited in downstream mussel habitat. Monitoring will include an assessment of sediment particle size to detect any changes that may be related to construction and use of the barge channel.

These measures will assure that any potential take of the black sandshell and butterfly mussels will not have a significant negative effect on the species, their habitat or prospects

for survival and recovery.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - Section 1080.40(b)], will be performed:

Addition measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and Cullen's signature on this authorization indicates their commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application:

Public notice was printed in the Edwardsville Intelligencer on February 14, 2002 and in the Fulton Journal on February 13, 20 and 27, 2002. Comments were received by the Department via mail and e-mail through March 29, 2002. All comments were forwarded to Cullen for their consideration. An analysis of the comments was prepared by Cullen and provided to the Department on April 5, 2002. Comments were received from nine individuals or organizations. All comments were supportive of Cullen's conservation plan and encouraged the Department to authorize the requested incidental take. Cullen's conservation plan was not altered in response to the comments received from the public.

#### Authorization

It is the determination of the Department that the measures that would be implemented by Cullen at the project site will adequately minimize and mitigate the anticipated taking (relocation) of black sandshell and butterfly mussels associated with construction of a barge channel linking the Mississippi River and an off-stream mooring cell. Further, it is our opinion that the take authorized herein will not diminish the likelihood of the survival of the black sandshell and butterfly mussels in the wild within the State of Illinois, the biotic community of which the species are part or the habitat essential to the species' existence in Illinois.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 - Section 1080.40(b)], this authorization is issued subject to the following additional terms and conditions:

1. This authorization is effective upon signature of the Department and shall remain in effect for a period of 11 years after completion of the proposed barge channel, unless terminated pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 - Section 1080.80).
2. Prior to dredging, Cullen shall conduct, or cause to be conducted, a thorough survey of the dredged channel plus an area extending at least 50 feet riverward and at least 150 feet downstream of the dredged channel and shall relocate any freshwater mussels found within the area that will be directly affected by dredging to suitable habitat upstream of the project site. Handling of mussels shall be in compliance with any and all conditions and/or protocols included in the state and federal authorizations for this work. Relocated mussels shall be identified to species and enumerated. A report on the species and numbers of mussels relocated and the location(s) at which they were released shall be provided to the Department within 60 days of completion of the relocation.

3. Cullen shall conduct, or cause to be conducted, a thorough survey of the dredged channel and an area extending at least 50 feet riverward and at least 150 feet downstream of the dredged channel for freshwater mussels in the second year, fourth year, seventh year and tenth year following completion of the barge channel. For example, if dredging is completed in 2002, these surveys shall be conducted in 2004, 2006, 2009 and 2012. Any freshwater mussels located within the dredged channel during these surveys shall be relocated to suitable habitat upstream of the project site. Handling of mussels shall be in compliance with any and all conditions and/or protocols included in the state and federal authorizations for this work. Relocated mussels shall be identified to species and enumerated. A report on the species and numbers of mussels relocated and the location(s) at which they were released shall be provided within 60 days of completion of the relocation.

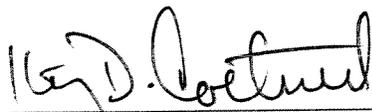
4. Concurrent with the mussel surveys described in Item 3 above, Cullen shall conduct, or cause to be conducted, an analysis of the particle sizes of river sediments downstream of the dredged channel and within the area surveyed for freshwater mussels. Results of this analysis shall be reported to the Department within 60 days of the collection of the sediment sample.

5. The effective period of this authorization may be altered by mutual agreement between Cullen and the Department.

6. This authorization may be revoked pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 - Section 1080.80) if the Department finds that Cullen has failed to comply with any of these terms and conditions or has been responsible for the relocation of black sandshell or butterfly mussels beyond that which is incidental to the construction of a barge access channel at approximate River Mile 518.8 in Whiteside County, Illinois.

7. The Cullen official identified below is authorized to execute this agreement. Execution by Cullen indicates acceptance of all terms and conditions described in this document.

For the Illinois Department of  
Natural Resources



Kirby Cottrell, Director  
Office of Resource Conservation

4/10/02  
Date Signed

For J.T. Cullen Company, Inc.

  
Signature

Eric N. Johnson, President  
Printed Name and Title

4/10/02  
Date Signed