



Modification of the 401 Water Quality Certification for Nationwide Permits

What are nationwide permits?

Nationwide permits (NWP) are a type of general permit issued by the U.S. Army Corps of Engineers (Corps) under Section 404(e) of the Clean Water Act to authorize activities that have minimal individual and cumulative adverse environmental effects. General permits are issued for a period of no more than five years. The current version of the NWP was finalized in 2012 and will expire in 2017. Under Section 401 of the Clean Water Act, Ohio EPA must certify that the activities will comply with state water quality standards. Ohio EPA issued the 401 water quality certification (WQC) for the NWP on March 30, 2012 (non-coal permits) and April 19, 2013 (coal permits). The current NWP, with the Ohio EPA 401 WQC, for the state of Ohio can be found at: www.lrh.usace.army.mil/Portals/38/docs/regulatory/nationwide/2012%20Nationwide%20Permits%20for%20the%20State%20of%20Ohio%20%28with%20EPA%20401%20Water%20Quality%20Certifications%29.pdf

Why modify the 401 WQC for the NWP?

After using it for a year and a half, Ohio EPA discovered that certain conditions found in the issued 401 WQC for the NWP required clarification, revision, or correction. Stakeholders asked that the 401 WQC be modified to provide clarity and reduce redundancies between the NWP and 401 WQC. Given the extent of the proposed changes (as outlined below), Ohio EPA determined this is the best time to modify the 401 WQC. The time between the finalizing the modification and reissuing the NWP in 2017 will allow both the Corps and Ohio EPA to analyze the new processes and address any issues that may arise during the 2017 reissuance.

What work has been done regarding the proposed modification?

On June 20, 2014, Ohio EPA public noticed a proposed modification to the 401 WQC for the NWP and a public hearing was held on Sept. 4, 2014. After receiving many comments regarding the original proposal, a stakeholder forum was held on Oct. 20, 2014 to allow further comment on the qualitative assessment portion of the proposed modification. After receiving stakeholder input, Ohio EPA went back to the drawing board and developed a new method to determine eligibility for coverage under the 401 WQC for the NWP with regard to stream quality. Information regarding the new method can be found at:

oeпа.maps.arcgis.com/apps/webappviewer/index.html?id=2e9f1c2195fc4889bf464d443a537701.

Ohio EPA believes that this new method of designating high quality sub-watersheds, based upon sampling already conducted by Ohio EPA scientists, will allow the Agency to be protective of water quality and eliminate the need for applicants to spend time sampling when data already exists.

The previously public noticed modification has been abandoned and a new modification has been drafted. This new modification introduces the new stream eligibility concept, further clarifies the Director's Authorization process, ensures consistency throughout the document, and clarifies conditions within the 401 WQC that may have been confusing. The major changes within the modification are outlined in the table below.

Modification of the 401 WQC for the NWP

Proposed Major Modifications to the 401 WQC for the NWP

| NWP Condition to be Modified | Proposed Changes |
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| General Condition B | Addition – The best management practices were expanded to help ensure compliance with state water quality standards. |
| General Condition C | Revision – The mitigation section was revised to more closely align the 401 WQC with language provided by the Corps in the nationwide permits. |
| General Condition D | Revision – This section was renamed “Director’s Authorization.” The new condition combines language from former conditions D.4 and D.5, and also references the newly-created <i>Appendix A</i> which more clearly defines requirements that must be met to obtain a Director’s Authorization. |
| General Condition E | Revision and Addition – The contents of this section were formerly in General Condition D. Conditions that explain that Ohio EPA has included a new definition of temporary impacts and will be applying the Corps’ definition of single and complete linear and non-linear projects to the 401 WQC have been added to this section. |
| General Condition E.7 | Addition – This condition was added to ensure that applicants are performing wetland assessments using the Ohio Rapid Assessment Method (ORAM) to demonstrate the wetland category. The condition also references the newly-created <i>Appendix B</i> which further explains the process to comply with this condition. |
| General Condition E.8 | Addition – This condition was added to ensure that applicants are using the newly-developed stream eligibility mapping tool to determine the eligibility of streams proposed for impact. The condition also references the newly created <i>Appendix C</i> which further explains the process to comply with this condition. |
| NWP # 1, 2, 9, 10, 11, 28, 35 | Deletion – The 401 WQC conditions were removed from NWPs which are for Section 10 activities only. 401 WQCs are not required for activities that are authorized only under Section 10 of the Rivers and Harbors Act permits. |
| NWP # 4, 6, 7, 12, 13, 14, 15, 16, 18, 21, 22, 23, 25, 29, 30, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 45, 49, 50, 51, | Revision – The new stream eligibility conditions have replaced the stream aquatic life use designation and antidegradation category conditions for all NWP where those conditions currently exist. |
| NWP # 3, 4, 5, 6, 7, 12, 14, 29, 33, 39, 40, | Revision – The existing culvert and culvert extension condition was revised for all NWP where this condition currently exists. The inclusion of the language “new culvert” was confusing and often misinterpreted. This portion of the condition has been removed. |
| NWP # 5, 31 | Deletion –The stream conditions were removed from the NWP for Scientific Measurement Devices and Maintenance of Existing Flood Control Facilities. |
| NWP # 4, 5, 6, 7, 13, 14, 15, 16, 18, 21, 22, 23, 25, 29, 30, 31, 33, 34, 36, 39, 40, 41, 42, 43, 45, 49, 50, 51 | Deletion –The 300 or 500 linear foot threshold was removed from all NWP where the condition currently exists in order to more closely align the 401 WQC with the NWP and to avoid duplicative conditions where they already exist. The Corps already includes a 300 linear foot threshold for NWP # 12, 14, 21, 27, 29, 39, 40, 42, 43, 50, 51 and a 500 linear foot threshold for NWP # 13. |

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| NWP Condition to be Modified | Proposed Changes |
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| NWP # 5 Condition 2.b | Editorial change – Addition of the term “ <i>when impacts exceed 0.50 acres.</i> ” This was left out when the original certification was issued which consequently does not allow <u>any</u> wetlands to be impacted under the 401 WQC for the NWP. |
| NWP # 12 Condition 2 | Revision –This condition was moved below Special Condition 2 to ensure consistency with NWP #14 that also has this condition. |
| NWP # 12 Conditions 5, 7, 9, 11 | Deletion –These conditions were removed from the 401 WQC as they were difficult to interpret and enforce. Removal was also necessary to ensure that Corps definition of single and complete linear project would be appropriately applied to the 401 WQC. |
| NWP # 12 Condition 8 | Revision –This condition was modified to clarify the previous language that was confusing. |
| NWP # 21 Condition 4 NWP # 49 Condition 6 NWP # 50 Condition 4 | Revision –This condition was simplified to require only the Application and Hydrology Mining Map to be submitted. The other requirements of this condition are already submitted as part of the pre-construction notification submitted to the Corps. |
| NWP # 27 Condition 7 | Deletion –This condition was removed from the 401 WQC because it often created an unnecessary delay in processing this NWP for the Corps. |
| NWP # 31 Condition 3 | Deletion –This condition was removed from the 401 WQC due to the intent of the NWP for maintenance of existing flood control structures. Removal of those conditions will alleviate any unnecessary delays for projects to maintain flood control structures. |
| NWP # 33 Condition 4 | Deletion –This condition was removed due to the addition of the temporary impact definition in General Condition E. |
| NWP # 49 Condition 2.d | Addition – This condition was added to clarify that the stream eligibility conditions do not apply if the project area includes 20 percent or less of new (not previously mined) land. |
| NWP # 49 Conditions 3, 4, 5, 7, 8 | Deletion –These conditions were removed as the Corps requires that the applicant demonstrate a net increase in aquatic resource functions as a result of the project. |
| NWP # 49 Condition 4 | Addition – This condition was added to clarify that mitigation will not be required for impacts to streams that were previously subject to mining. Re-mining within these streams is expected to provide an ecological benefit. |

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How can I comment on the proposed modification?

Please submit your comments in one of the following ways:

- By attending the public hearing on Jan. 11, 2016 at 9:00 a.m. at the Ohio Department of Agriculture, Bromfield Building Auditorium located at 8995 E. Main St. Reynoldsburg, OH 43068
- By email: dsw_rulecomments@epa.ohio.gov
- By fax: (614) 644-2745
- By postal mail:
 - Ohio EPA Division of Surface Water
 - ATTN: 401/IWP/Storm Water Section Manager
 - P.O. Box 1049
 - Columbus, OH 43216-1049

Comments on the proposed modification must be received no later than 5:00pm on Jan. 19, 2016

How can I get more information?

- Copies of this fact sheet, the proposed modification of the 401 WQC, the current NWP for the state of Ohio with 401 WQC, a comparison document of the current 401 WQC with the proposed modification and the response to comments from the first proposed modification are on the Division of Surface Water's website at:
www.epa.ohio.gov/dsw/401/permitting.aspx

Contact

For more information, contact Harry Kallipolitis at harry.kallipolitis@epa.ohio.gov or (614) 644-2146.