

		Comment/Theme	Proponents	Notes
1		Comments relating to strengthening of 401 program with respect to environmental protection		
1	a	Opposition to any ability of the Director to waive requirements for a 401 Certification. If waivers allowed, should be an appealable action.	CRWP Columbus Parks OEC Sierra Club Aaron Rourke	
1	b	Ohio EPA needs to do a better job of overseeing mitigation sites, to track mitigation projects, conduct follow-up monitoring, and enforcement where appropriate.	CRWP Columbus Parks Friends of GMR Cuyahoga River RAP OEC ODNR - Soil and Water Conservation B & N Coal Aaron Rourke	See Theme 1.e. Friends of GMR and the Cuyahoga River RAP have several suggestions regarding monitoring requirements that should be addressed.
1	c	Should be a watershed hierarchy in the stream rules similar to that found in the wetland rules	OEC	
1	d	Rules should focus primarily on avoidance and minimization rather than on mitigation.	OEC Sierra Club Aaron Rourke	
1	e	Ohio EPA lacks the staff and training to properly review, monitor and oversee the proposed program because of its complexity; <u>or</u> Ohio EPA needs to improve staffing levels, training, and expertise to a higher level in order to better evaluate and monitor mitigation activities; <u>or</u> protocol will require that better data be submitted and evaluated, necessitating more sophisticated training of staff and the regulated community as well as an adequate way to store and disseminate data.	CRWP FACT Edith Chase Friends of GMR Ohio Home Builders CH2M Hill ODOT ODNR - Soil and Water Conservation B & N Coal	Two opinions presented with respect to this issue: some comments advocated advocate increased staffing and training in order to better monitor and evaluate impacts and proposed mitigation to allow better oversight and enforcement. Other comments raised concerns regarding the potential for greater potential for delays in permitting, poor customer service, and difficulties in rule implementation. See also Item 6 e.

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1	f	Ohio EPA should assert authority over dredging operations, not just fill activities.	OEC	Opinion expressed that ORC 6111 gives OEPA authority above and beyond the CWA authority for addressing dredging as an activity that causes water pollution.
1	g	Ohio EPA should prevent any degradation of Outstanding State Waters or Superior High Quality Waters	OEC	
1	h	Stronger language should be provided to give the director criteria to deny permit applications.	OEC Sierra Club	
1	i	Higher mitigation ratios should be required for after-the -fact applications.	OEC	
1	j	Ohio EPA should require buffers for wetlands and streams that remain on-site.	OEC	
1	k	General support for stream debit/credit approach to evaluation of mitigation.	OEC Lake SWCD	
2	Comments relating to the need for the 401 program to better protect watersheds			
2	a	Ohio EPA should consider how 401 permits affect attainment conditions in TMDL listed watersheds. Research should be done regarding cumulative impacts of 401 certifications with respect to TMDL's, NPDES storm water phase II, and 319 watershed planning activities.	N.E. Ohio Watershed Council FACT Friends of GMR Cuyahoga River RAP CH2M Hill OEC Sierra Club ODNR - Soil and Water Conservation	Many comments relating to this issue that reflect the missions of the various groups that provided comments. CH2M Hill proposes providing mitigation credit for upland projects that protect stream integrity, and that cumulative impacts of factors such as imperviousness be considered when making 401 decisions.
2	b	Stream mitigation rules should incorporate more sophisticated formulae for requirements regarding stream buffers for mitigation sites based upon watershed size, stream quality, and other factors.	CRWP Columbus Parks Nature Conservancy Friends of GMR OEC Sierra Club ODNR Aaron Rourke	Concerns also expressed by CRWP regarding the interface of 401/404 with local zoning and stream buffer ordinances.

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2	c	Impacts to ephemeral streams, LRW, etc. should require mitigation above and beyond to use of BMP's. Although BMP's should be required as outlined, they are not adequate to prevent all downstream impacts on water quality and therefore some mitigation should be required to account for the loss of function	ODNR	
2	d	Out of watershed (generally viewed as out of the 8 or 10 digit HUC) mitigation should not be allowed.	CRWP FACT Friends of the Hocking River Nature Conservancy MAD Scientist Edith Chase Tinkers Creek Watershed Partners West Creek Preservation Committee Cuyahoga River RAP Sierra Club, Ohio Chapter Aaron Rourke	There are varying interpretations on this theme that range from suggesting denial of any application where out of watershed mitigation is proposed to much more significant disincentives than what is currently proposed.
2	e	Stream mitigation protocol should recognize specific needs for Urban/Suburban landscape. Often there is insufficient room to accommodate the buffer requirements found in the protocol	West Creek Preservation Committee Cuyahoga River RAP CH2M Hill Richard E. Jacobs Group Roetzel and Andress	
2	f	On-site stream relocation should only be allowed to provide a portion of the mitigation credits for a project. Some off-site mitigation should be required in order to offset impacts to fish and wildlife	ODNR - DOW	
2	g	More specifics needed with respect to restoration targets and stream channel condition classification in order to provide better guidance with respect to some of the mitigation success criteria and scoring procedures.	ODNR - Soil and Water Conservation	
2	h	Future land use and quality for fish and wildlife should be considered in evaluating mitigation sites. Where threats or detriments exist, requirements should be placed within the permit to ensure that habitat is improved or pollutant threats eliminated.	ODNR -DOW	

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2	i	Stormwater BMP's as options for mitigation in certain situations rely upon out-of-date technical references. Criteria should be incorporated that use the best available practices in order to protect water quality.	OEC	
3	Comments relating to the inclusion of the PHWH in rule package			
3	a	There needs to be a definition of "stream" in the OAC	Ohio Contractors Richard E. Jacobs Group Roetzel and Address	
3	b	PHWH use designations should be codified (<u>or</u> Ohio EPA should not enforce these uses unless they are codified).	Nature Conservancy Lake SWCD Edith Chase Utilities Cuyahoga River RAP CH2M Hill Richard E. Jacobs Group OEC Sierra Club Sands Hill Coal B & N Coal Roetzel and Address	
4	Comments related to opinion that more study and input needed prior to rule promulgation			
4	a	Ohio EPA has not done enough scientific or economic impact research to show that this proposal is a sound approach to mitigation or is needed in light of the current program. Economic impact analysis is necessary and will show extreme burden on regulated community.	Ohio Contractors Association Ohio Home Builders AMP Ohio Richard E. Jacobs Group ODOT Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy Chartwell Intl. B & N Coal CONSUL Energy Roetzel and Address	
4	b	Need to consider and harmonize the Ohio approach to proposed rules on the federal side.	Ohio Home Builders Richard E. Jacobs Group Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy Chartwell Intl. Roetzel and Address	

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4	c	Ohio EPA should change the paradigm for 401 mitigation to emphasize in-lieu fee programs and mitigation banking rather than use a case-by case approach.	CH2M Hill	It should be noted that there were a significant number of comments by environmental and watershed groups indicating their opposition to banking because it exports functions from the watershed.
4	d	There is a need for expert peer review of the mitigation document, headwater habitat approach and documentation, etc. before moving forward.	Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy Chartwell Intl. B & N Coal	
4	e	Ohio EPA should convene an EAG to deal with this rule package (some comments indicated an opinion that this is required under state law)	Ohio Home Builders Utilities Ohio Coal Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy B & N Coal First Energy CONSUL Energy	
4	f	If Ohio EPA decides to proceed, it should be done as a test program on a voluntary basis for a set period of time to see how the system performs. Once a thorough evaluation is done and necessary adjustments are made, then the program could be adopted.	Richard E. Jacobs Group Maureen Brennan, et al. Roetzel and Andress	
5		Comments questioning the legality of the draft rule package or the procedures used in approaching the rule-making		
5	b	Rules illegally take jurisdiction over upland areas.	Richard E. Jacobs Group Maureen Brennan, et al.	
5	c	Ohio EPA cannot (or should not) promulgate a rule that incorporates the stream mitigation document by reference.	Ohio Coal Ohio contractors Association Utilities Ohio Home Builders Ohio Chamber of Commerce Sands Hill Coal Chartwell Intl.	

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5	d	Ohio EPA should wait until decisions are finalized at the federal level prior to moving forward with the mitigation rules (Supreme Court, Nationwide Permits, Corps/USEPA rules)	Richard E. Jacobs Group Maureen Brennan, et al. Roetzel and Andress	
5	e	Rules exceed Ohio EPA's authority as authorized by the Legislature	Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy Chartwell Intl.	Comment refers to an analysis done by the Ohio Chamber of Commerce for specific examples.
6	Comments relating to specific content of the rules package			
6	a	Requirement for 30% of stream mitigation credits to come from restoration/enhancement should be removed. 100% preservation is often the best mitigation option for the regulated community and the environment.	Richard E. Jacobs Group ODOT Roetzel and Andress	
6	b	Comment that the stream mitigation protocol mandates a 1.5:1 ratio for mitigation under all circumstances. Feels there should be varying standards dependent upon size of project, impact type and the quality of stream; or the use of 1.5:1 as base line mitigation ratio not warranted since it was not mandated in law.	Richard E. Jacobs Group Murray Energy CONSUL Energy Roetzel and Andress	
6	c	Same level of data gathering and analysis required regardless of the size of the project. Data requirements for small scale projects should be minimized with increasing levels of documentation needed as project size increases.	Richard E. Jacobs Group ODOT Roetzel and Andress	
6	d	Increased data gathering requirements are burdensome and unnecessary. Will increase costs with little benefit. There is a shortage of qualified people available to do these assessments and often limitations as to when assessments can be done (seasonality). Will cause delays in permitting process	Utilities Ohio Home Builders Ohio Coal ODOT Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy Chartwell Intl. B & N Coal	

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6	e	Stream mitigation protocol is very complicated and it is uncertain how well it will function to compensate for proposed impacts; <u>or</u> Protocol too complicated for small scale applicants, watershed groups, etc. to be able to deal with without expensive consultant assistance - will create a burden if avenues for technical assistance, training, etc. not provided)	Nature Conservancy Ohio Contractors Association Utilities Ohio Home builders CH2M Hill AMP Ohio Richard E. Jacobs ODOT Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy Chartwell Intl. B & N Coal CONSUL Energy Roetzel and Andress	
6	f	Requiring buffers to be maintained in perpetuity adjacent to mitigated streams is not reasonable in the coal mining context since the coal company does not control these lands. It will be difficult to obtain permission to do stream relocation/restoration in these contexts because of the loss of acreage to the land owner.	Ohio Coal Sands Hill Coal Murray Energy	
6	g	Limits should be set on the discretion of the agency to "increase" mitigation requirements including post-mitigation protection and maintenance requirements	Murray Energy	
6	j	Ohio EPA should rely sole upon its existing stream evaluation documents and procedures to set mitigation requirements. The stream mitigation protocol should not be used because it is unproven and burdensome.	B & N Coal	
6	k	Stream mitigation rule should rely solely upon linear foot ratio tables.	B & N Coal	
6	l	Rules should take into account the management of man-made drainageways in a way that does not require permitting or mitigation under the 401 requirements. There should be a separate definition for these types of waterways.	Richard E. Jacobs Group Roetzel and Andress	
6	m	Mitigation credit should be allowed for treatment of acid mine drainage damaged streams.	ODOT	

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6	n	<p>Requirements for perpetual protection of mitigation sites is too burdensome as it will result in perpetual liability and ability of Ohio EPA to require additional work at a much later time. Also a concern that contingency requirements will create uncertainties regarding costs in mitigation implementation. Also a comment indicating provisions for "Environmental Covenants" in the ORC that should be incorporated as an acceptable means for mitigation site protection. (Note: Jacobs Group states that for re-located or man-made streams, they may have to be moved again at a later time, so this requirement for mitigation sites is burdensome.)</p>	<p>Ohio Contractors Ohio Coal Utilities ODOT Richard E. Jacobs Group Sands Hill Coal Murray Energy CONSUL Energy Roetzel and Andress</p>	

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7		Comments relating to economic impacts of the draft stream mitigation rules		
7	a	Considerable cost increase that will create a financial burden, loss of jobs, etc. An economic assessment of impacts of rule package should be completed and the program adjusted to remove unreasonable burden on regulated community.	Ohio Contractors Ohio Home Builders Utilities Ohio Coal, et al. Ohio AMP Richard E. Jacobs Group Maureen Brennan, et al. Ohio Chamber of Commerce Murray Energy Chartwell Intl. B & N Coal CONSUL Energy Roetzel and Address	
8		Industry-specific comments		
8	a	Mining activities are unique in that they require impacts to streams that are unavoidable. Restoration of a mining site may be delayed by 30 years or more. The proposed rules as written will present a severe detriment on the mining industry.	Ohio Aggregates and Industrial Mining Assoc. Ohio Coal Cravat Coal Sands Hill Coal Murray Energy CONSUL Energy	
8	b	Linear projects should be dealt with uniquely since the impacts are spread out over many watersheds. Looking at cumulative impacts may severely over-estimate the actual environmental harm being done by a project.	ODOT First Energy	
8	c	Mitigation for impacts associated with coal mining should be exempt from permanent protection and maintenance requirements in the rules.	Murray Energy	
8	d	Special off site mitigation requirements with reduced ratios should be established for the establishment of slurry and coarse refuse impoundments associated with mining operations because of the national energy policy and security concerns.	Murray Energy	
8	e	All construction projects for the installation of pollution control equipment at power plants should be exempt from the rules. There should be significantly lower off site mitigation requirements for these types of projects.	First Energy	