

AVOIDANCE & MINIMIZATION

Applicants should show "less impact" sites are available within a 25 mile radius

1. 404(B)(1) guidelines do not require this
2. Cost of the site is an issue
3. How do you accomplish a project within the landscape, not just on one site
4. Alternative analysis needed for 404
25 mile limit is arbitrary
Agency review needs to be "reasonable"
5. There may be proprietary information related to siting the facility
6. Can there be performance standards for "Low Impact Design"
Center for Watershed Protection = 22 principles
There are cost benefits
7. Better enforcement will make the developer consider total costs
8. Is Ohio EPA qualified to assess avoidance issues (fiscal/real estate/etc.)?
9. ODOT uses the NEPA process to consider avoidance/minimization
10. There is a future cost that is not always considered – it is a difficult assessment to make
11. Baseline – what does Ohio EPA do now?
12. Possible to refine worksheet – may need to add metrics for onsite avoidance/minimization
13. We can't establish strict avoidance/minimization standards – identify what information is required
14. Modify application to provide necessary information
15. Applicants should document the process by which the application was developed
16. Need to consider other site constraints from other government entities (is basically the NEPA process)
17. Values and functions must be protected – the responsibility for determining the cost of that protection
18. Include GW functions (storm water)
19. Some areas may need more protection than others
20. Cumulative impacts – projects have been split into small parts; there needs to be some weighting in the rules
21. What is the ecological reason for doing this – if you build around them, they won't function anymore
22. Look at the landscape, not just the site.

ENFORCEMENT

1. Two types of enforcement
 - Compliance
 - After-the-fact (ATF)
2. There is no "penalty" for AFT permits – mitigation and/or fees should be doubled
3. State assumes the wetland is Category 3 – large burden of proof on applicant

Wetland Rules Work Group Meeting – September 18, 2007

4. Is better education needed?
5. There needs to be an "incentive" to do the permits from the start

FISCAL ANALYSIS

1. Based on real situations. DSW will select and suggest projects – different types and areas
2. Application costs, mitigation design and construction, mitigation monitoring
3. Increased costs associated with mitigation that is not successful Why are we doing this?
4. Wetland function is not included
5. There needs to be a "disincentive" for violations
Doesn't the law require a judge to establish penalties?
6. MOU update (USACOE)
7. Is a certification a permit (for ORC violation issues)?
Should Ohio EPA be able to enforce on 401 since it is part of a federal permit?
8. Can watershed coordinators be used to document enforcement?
(Certified Data Collector)
9. How long should it take to discover a violation?
10. We need 10 times the staff.
11. Illegal fills – how can they know if a permit has been issued?
Should the local "culture" be changed to better educate everyone?
12. Can Ohio EPA work more closely with SWCDs (for education)?
Can we develop an inquiry form?

PROPOSED RULE DISCUSSION

1. Proposed rule – harder to go to a bank (clarify that if bank is in 14-HUC, it is in the first preference)
2. Mitigation in state (language to clarify)
3. Even Category 1 should be mitigated within 14-HUC
4. Performance standard – when Category 1 in urban areas, hard to meet higher quality
5. Water quality trading – ecological functions
6. Keep it in the 14-HUC (local)
7. Wide variety of Category 1 – could replace storm water function with other BMPs – keep flexibility in rule
8. Why not allow the out-of-state if in 14-HUC
9. In rule, "acceptable options include . . .", e.g., storm water basin with wetland
10. "Impracticability" – old rule – new rule "inability "
11. Why more discretion in option lower in HUC
12. Seem to limit the incentives to develop banks when Ohio EPA would not approve large acreage wetlands to go to a bank
13. Map in rules – update USACOE re-assignment (use regulatory boundaries)
14. More incentives for urban wetland to keep it local (14-HUC)

Wetland Rules Work Group Meeting – September 18, 2007

15. Put acreage limits on Category 1 – would have to go to 14-HUC

Pro – Urban Wetland

- Scarce
- Water quality impact on streams
- Urban wildlife
- Flooding
- Cost to community to treat water
- Remediating flood issue
- Educational use for children
- Recreational analysis/quality of life
- Heat island – wetlands decrease temperature
- Immediate impact
- Diminishing resource

Com – Urban Wetland

- Overstating benefits
- What authority does this have to do with this (303)
- Will we cause greater impact in suburban and rural
- Other programs (storm water) deal with this
- Hard to replace wildlife function
- Cost impact
- Availability of sites
- Public perception – "West Nile Virus"

HOW TO PROTECT

1. Category 1 – enough staying in 14-HUC
2. Lower replacement requirement – e.g., monitoring to incentive to replace near/on-site
3. Replace downstream storm water ponds
4. Need a lot of incentives – monitoring costs, performance criteria
5. Incentives – focus on TMDL (water quality)
 - water quality – landowners
 - developers
 - reduce mitigation ratios in 14-HUC
 - increase mitigation ratios out 14-HUC
 - association w/local SWMPs
 - monitoring
6. Wide variety of Category 1 – don't penalize those low quality ones
7. Mitigate in storm water BMPs
8. No modification – "avoidance" in CWA – dealt with normal process
 - if they couldn't – then
 - storm water BMP adjustment

Wetland Rules Work Group Meeting – September 18, 2007

9. Separate function out (e.g., storm water)
10. Combine storm water and mitigation process
11. Weighted prioritization system
12. Incorporate economic equality (\$ into mitigation they get from property)
13. Category 2 and 3
14. Rules (current proposed) cover them
15. Higher value for 2 or 3