

The Chief of Engineers  
HQUSACE  
Attn: CECW-OR  
Washington, D.C. 20314-1000

Re: All Counties, Cities and Townships in Ohio  
Grant of Section 401 Certification  
Authorization of discharges of dredged or fill material to various waters of the  
state for the following Nationwide Permits as detailed in the January 15, 2002  
*Federal Register* (Volume 67, Number 10):

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Maintenance
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Stream and Wetland Restoration Activities
28. Modifications of Existing Marinas
29. Single-family Housing

30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

Gentlemen:

Draft

Pursuant to Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1341; Ohio Revised Code Chapters 119 and 6111; and Ohio Administrative Code (OAC) Chapters 3745-1, 3745-32, and 3745-47, the Director of the Ohio Environmental Protection Agency hereby certifies that the above referenced replacement Nationwide Permits 1-44 as proposed in the January 15, 2002, *Federal Register* will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. These Certifications are specifically limited to 401 Certifications with respect to water pollution and do not relieve the applicant of further certifications or permits as may be necessary under applicable laws.

I have determined that any lowering of water quality in various waters of the state as authorized by these Certifications is necessary. I have considered the technical, social, and economic factors concerning these applications and their impact on waters of the state. These Certifications are issued for impacts to waters of the state that may occur pursuant to activities authorized by Nationwide Permits (NWP's) 1-44 provided the following conditions are satisfied:

**PART 1: NATIONWIDE PERMITS (NWP's) - GENERAL LIMITATIONS AND CONDITIONS**

**A) Streams:**

- 1) Temporary or permanent impacts to intermittent and perennial streams for any single and complete project are limited to a maximum of two hundred (200) linear feet [except for NWP's 12, 21 & 27];

- 2) Temporary or permanent impacts to ephemeral streams for any single and complete project are limited to a maximum of three hundred (300) linear feet [except for NWP's 12, 21 & 27];
- 3) Temporary or permanent impacts to Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation, or with an antidegradation category of State Resource Water, Superior High Quality Water (except as it applies to Lake Erie), Outstanding National Resource Waters, or Outstanding High Quality Waters are prohibited [except for NWP 3 and maintenance activities covered under NWP 7 & 12];
- 4) Temporary or permanent impacts to the designated portions of national or state scenic rivers are prohibited [except for NWP 3 and maintenance activities covered under NWP 12];
- 5) Stream reconstruction activities shall adhere to natural channel design techniques;
- 6) Off-site stream or buffer improvements and/or permanent protective measures required by the Corps:
  - a) These measures shall be focused on the impacted stream, and to the extent practicable, on the causes and sources of stream impairment if the stream is on the Ohio EPA TMDL list which can be found on Ohio EPA web site at:  
  
<http://www.epa.state.oh.us/dsw/tmdl/303dnotc.html>  
(Tables 1 through 6).
  - b) If the applicant cannot find appropriate mitigation on the impacted stream or streams draining to the impacted stream, then mitigation can be in the Ohio EPA 8-digit watershed.
- 7) On-site stream or buffer improvements and/or permanent protective measures required by the Corps:
  - a) Vegetative buffers on both stream banks an appropriate length; and
  - b) A minimum width of 25 feet for preservation of existing vegetative buffers; or
  - c) A minimum width of 50 feet for re-vegetating buffers cleared during construction.
- 8) For linear projects, the mitigation location can be determined as described in OAC 3745-1-54(D)(2).

**B) Wetlands:**

- 1) Temporary or permanent impacts to Category 3 wetlands are prohibited.
- 2) Temporary or permanent impacts to Category 1 and 2 wetlands for any single and complete project are limited to a maximum total of ½ acre [except for NWP 21 & 27].
- 3) Wetland mitigation shall adhere to the requirements set forth in Ohio EPA's Wetland Water Quality Standards (OAC 3745-1-50 through 54). [In the event that suitable mitigation cannot be located on-site (within one mile) or within the watershed, mitigation may be located outside of the watershed if there are significant ecological reasons to do so].

**C) General:**

- 1) Impacts shall be measured linearly from upstream to downstream, including the length of stream impoundments, when calculating the total length of stream impacts [except for NWP 12, for which impacts shall be measured bank-to-bank].
- 2) NWPs cannot be combined to increase any of the aforementioned limitations.
- 3) Authorization under this Certification does not relieve the permittee from the responsibility of obtaining any other federal, state or local permits, approvals or authorizations required by law, including without limitation, National Pollutant Discharge Elimination System (NPDES) permits or Permits to install (PTIs).
- 4) Locally required post development stormwater ponds shall incorporate specific design features for water quality such as those listed in Chapter One of the Ohio Department of Natural Resource's *Rainwater and Land Development* document. These features include: infiltration trenches, extended detention, wet pools, forebays, aquatic benches and wetlands, optimum flow length, reverse flow pipe, optimum pool depth, shading and buffer plants, and runoff reuse.
- 5) The Best Management Practices (BMPs) listed below shall be utilized with all NWPs when applicable.
  - a) The filling of, and discharge of dredged material into, Category 3 wetlands is prohibited under this permit;
  - b) Only suitable material, free of toxic contaminants in other than trace quantities, shall be used as fill material;
  - c) The use of asphalt and rubber tires as fill is prohibited under this permit;

- d) All hydric topsoil removed from a trench shall be separated and saved for later placement as the topmost backfill layer when the trench is refilled;
- e) The stockpiling of side-cast dredged material in wetlands in excess of three (3) months is prohibited;
- f) The applicant will comply with all requirements for final stabilization of the site contained in applicable NPDES construction stormwater permits for the site;
- g) Vegetated buffer strips extending to the top of both stream banks and beyond as stipulated by the Corps or Ohio EPA, using native tree and shrub species with rapid growth characteristics, shall be planted as soon as practicable after impacting stream channel slopes;
- h) Impacts to riparian vegetation shall be minimized to the maximum extent practicable. Entry to stream channels shall be through a single point of access per stream bank whenever practicable to minimize disturbance to the riparian corridor;
- i) Excavating equipment shall not be placed below the Ordinary High Water Mark of any surface water, except when no other alternative is practicable;
- j) In-stream activities shall not result in the destabilization of the stream banks or stream bed so that aquatic habitat is degraded or adversely affected by turbidity, erosion or scouring;
- k) In-stream work shall be conducted during low-flow conditions whenever practicable in order to minimize adverse impacts to water quality away from the project site, except in cases of emergency situations which threaten human life or property; and
- l) All dredged material placed at an upland site shall be controlled so that sediment runoff to remaining streams and wetlands is minimized to the maximum extent practicable; and
- m) Runoff from disturbed areas shall be controlled so that sediment runoff to remaining streams and wetlands is minimized to the maximum extent practicable.

**PART 2: NATIONWIDE PERMITS (NWP's) - SPECIAL LIMITATIONS AND CONDITIONS**

***Nationwide Permit 1 (Aids to Navigation)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 2 (Structures in Artificial Canals)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 3 (Maintenance):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations:

- 1) Total surface water and vegetation impacts on either side of the replacement structure shall be limited to the greater of 25 feet beyond the structure, or 25 feet beyond the toe of the slope of the structure's approach embankment. [Where the use of a crane is necessary to conduct a maintenance activity, total impacts shall not exceed 50 feet on either side of the structure or approach embankment]. In either case, total impacts, including the structure, shall not exceed 200 feet [except for stabilization projects]. Width shall be measured at the structure's narrowest point as it crosses the waterbody, and be measured parallel to stream flow.
- 2) Culvert replacement:
  - a) This Certification shall only authorize minor deviations from the existing structure's centerline and minor deviations in culvert dimensions, unless these deviations are necessary to follow current safety standards.
- 3) Bridge Replacement:
  - a) This Certification shall only authorize minor deviations from the existing structure's centerline, unless these deviations are necessary to follow current safety standards.
  - b) Bridge replacements shall not result in additional lanes unless necessary to follow current safety standards.
- 4) Maintenance or repair of existing fills (stabilization projects):
  - a) Impacts from maintenance or repair of existing fills shall not exceed the dimensions of the fill prior to the damage; and

- b) This nationwide shall not authorize the replacement of existing open structures, such as piers, with closed structures.
- 5) For replacement vertical bulkheads, the following conditions apply:
- a) For ship channels and harbors adjacent to federal navigation channels within the following harbors: Sandusky Harbor, Huron Harbor, Vermilion Harbor, Lorain Harbor, Conneaut Harbor, Port Clinton Harbor, Rocky River Harbor, Cleveland Harbor, Fairport Harbor, Ashtabula Harbor, and Toledo Harbor, 1,000 feet of existing vertical bulkheads may be replaced if recessed areas for aquatic habitat, or other aquatic habitat improvements, are incorporated within the design and construction of the replacement vertical bulkhead;
  - b) For all other areas, except Lake Erie, Lake Erie Islands, or Sandusky Bay, up to 1,000 feet of existing vertical bulkheads may be replaced. Toe stone shall be placed at the base of these new vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent;
  - c) Replacement vertical bulkheads are not to be placed more than one foot waterward of the intersection of the ordinary high water level of the waterbody and the existing shoreline;
  - d) Minor dredging necessary for the installation of the replacement vertical bulkhead is authorized;
  - e) Placement of fill between the replacement vertical bulkhead and existing shoreline is authorized; and
  - f) Toe stone shall be placed at the base of these new vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent. When required, toe stone shall be placed at an average rate of one-third the total height of the replacement vertical bulkhead at a 2:1 slope.
- 6) Removal of accumulated sediment:
- a) Removal of accumulated sediment shall occur only once per year, except in cases of emergency situations which threaten life or property.

- b) Removal of accumulated sediments shall be limited to low-flow conditions whenever practicable, except in cases of emergency situations which threaten life or property.

***Nationwide Permit 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Nationwide Permit shall not authorize weirs and flumes.

***Nationwide Permit 5 (Scientific Measurement Devices)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Nationwide Permit shall not authorize weirs and flumes.

***Nationwide Permit 6 (Survey Activities)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 7 (Outfall Structures and Maintenance):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations:

- 1) This Certification shall only authorize outfall structures which have been authorized by a Permit-to-Install (PTI) and/or National Pollutant Discharge Elimination System (NPDES) permit issued by Ohio EPA pursuant to Ohio Revised Code Chapter 6111, and Ohio Administrative Code Chapters 3745-31 and -33.

***Nationwide Permit 8 (Oil and Gas Structures)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 9 (Structures in Fleeting and Anchorage Areas)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 10 (Mooring Buoys)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 11 (Temporary Recreational Structures)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 12 (Utility activities):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations:

- 1) The length of any utility buried line within any single waterbody shall not exceed twice the width of that waterbody at the location of the crossing.
- 2) This Certification shall not authorize the crossing of buried utility lines of more than five hundred (500) total linear feet of forested wetlands (woody vegetation 6 meters tall or taller).
- 3) Buried utility line stream crossings shall not exceed a total of three (3) per stream mile per stream.
- 4) The total width of any mechanized land clearing or grading for buried utility lines shall not exceed twenty five (25) feet on either side of a utility line, or a total width of fifty (50) feet on both sides of a utility line.
- 5) All hydric topsoil removed from a trench shall be separated and saved for later placement as the topmost backfill layer when the trench is refilled.
- 6) This Certification shall not authorize the stockpiling of side cast dredged material in excess of 3 months.
- 7) Applicants who intend to use chemicals regulated by the Ohio Department of Agriculture in any waters of the State (including wetlands) shall comply with all Ohio Department of Agriculture requirements regarding the use and application of the chemicals.
- 8) New buried utility lines crossing more than 1,500 feet of wetlands and ephemeral, intermittent, and perennial streams (measured bank-to-bank) and with impacts located in more than two hydrologic units as defined in Ohio Administrative Code 3745-1-54(F) are not certified.

***Nationwide Permit 13 (Bank Stabilization)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions:

- 1) The following conditions apply to new vertical bulkheads:
  - a) Up to 1,000 feet of new vertical bulkhead may be placed on shorelines on Lake Erie, Lake Erie Islands, and Sandusky Bay that are composed of bedrock with slopes predominately greater than 75 percent. No toe stone shall be placed at the base of these new vertical bulkheads.
  - b) Up to 50 feet or less of new vertical bulkhead for boat docking purposes may be placed anywhere on Lake Erie, Lake Erie Islands, and Sandusky Bay. Toe stone shall be placed at the base of these new vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent.
  - c) For areas not located on Lake Erie, Lake Erie Islands, or Sandusky Bay, up to 200 feet of new vertical bulkheads may be placed in areas with less than 35 percent of the existing shoreline in the immediate area already with vertical bulkheads. Toe stone shall be placed at the base of these new vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent.
- 2) The following conditions apply to replacement vertical bulkheads:
  - a) For ship channels and harbors adjacent to federal navigation channels within the following harbors: Sandusky Harbor, Huron Harbor, Vermilion Harbor, Lorain Harbor, Conneaut Harbor, Port Clinton Harbor, Rocky River Harbor, Cleveland Harbor, Fairport Harbor, Ashtabula Harbor, and Toledo Harbor, up to 1,000 feet of existing vertical bulkheads may be replaced if recessed areas for aquatic habitat, or other aquatic habitat improvements, are incorporated within the design and construction of the replacement vertical bulkhead;
  - b) For all other areas, except Lake Erie, Lake Erie Islands, or Sandusky Bay, up to 1,000 feet of existing vertical bulkheads may be replaced. Toe stone shall be placed at the base of these new vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent.
- 3) The following conditions apply to both new and replacement vertical bulkheads:

- a) Vertical bulkheads may not be placed more than one foot waterward of the intersection of the ordinary high water level of the waterbody and the existing shoreline;
  - b) Minor dredging necessary for the installation of the vertical bulkhead is authorized;
  - c) Placement of fill between the vertical bulkhead and existing shoreline is authorized; and
  - d) Toe stone, when required, is installed at an average rate of one-third the total height of the vertical bulkhead at a 2:1 slope.
- 4) The following conditions apply to bank stabilization projects not involving vertical bulkheads:
- a) This Nationwide Permit shall only authorize the use of rock, stone, vegetative erosion control measures, broken concrete (without exposed reinforcing bar) and clean soil.
  - b) Bank stabilization projects on Lake Erie shall be in known Coastal Erosion Areas established by the Ohio Department of Natural Resources.
- 5) The following conditions apply to all bank stabilization projects:
- a) No material shall be placed in such a manner so as to restrict surface water flow into or out of any tributary.
  - b) Any fill used for bank stabilization shall be limited to that amount necessary to provide erosion protection.
  - c) This Nationwide Permit shall not authorize bank stabilization projects over 1,000 feet in length.

***Nationwide Permit 14 (linear transportation projects):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

**Ohio State Certification Special Conditions and Limitations:**

- 1) Total surface water and vegetation impacts on either side of the structure shall be limited to the greater of 25 feet beyond the structure, or 25 feet beyond the toe of the slope of the structure's approach embankment. [Where the use of a crane is

necessary to construct a linear transportation project, total width of the impacts shall not exceed 50 feet on either side of the structure or approach embankment]. In either case, total impacts, including the structure, shall not exceed 200 feet. Width shall be measured at the structure's narrowest point as it crosses the waterbody, and be measured parallel to stream flow.

- 2) Stream crossings shall not exceed a total of three (3) per stream mile per stream.
- 3) Culverts [except for ephemeral streams]
  - a) At least the lower 10% of all culvert bottoms shall be buried below the existing stream grade. Hydraulic design shall be based upon the remaining open portion of the culvert.
  - b) Additional flood plain culverts shall be installed where the flood prone area is greater than twice the width of the stream at Ordinary High Water Mark (OHWM).

***Nationwide Permit 15 (U.S. Coast Guard Approved Bridges)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 16 (Return Water From Upland Contained Disposal Areas)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Nationwide Permit shall be limited to the authorization of the disposal of dredged materials dredged from state-owned properties, where there are no known areas of contaminated sediments, provided best management practices are used to minimize adverse impacts to water quality.

***Nationwide Permit 17 (Hydropower Projects)***

Ohio State Certification for this nationwide permit has been denied.

***Nationwide Permit 18 (Minor Discharges)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions:

- 1) If used to authorize utility line backfills and bedding, this Nationwide Permit shall authorize sidecasting or stockpiling of dredged or fill material for a maximum of 3 months.
- 2) Dredged material shall be placed directly at an upland site in such a way that sediment runoff to any surface water is controlled and minimized.
- 3) This Nationwide Permit shall not authorize disposal of fill material into Lake Erie, where that is the primary project purpose.

***Nationwide Permit 19 (Minor Dredging)***

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions:

- 1) This Nationwide Permit shall not authorize dredging in stream riffles as defined in 40 CFR 230.45.
- 2) This Nationwide Permit shall not authorize dredging in surface waters that contain contaminated sediments. The applicant shall contact Ohio EPA for a determination whether a particular surface water contains contaminated sediments.

***Nationwide Permit 20 (Oil Spill Cleanup)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 21 (Surface Coal Mining Activities)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions:

Water quality certification is provided for stream and wetland impacts to the following thresholds for surface coal mining, including mining within previously mined areas, conducted under a permit issued by the Ohio Department of Natural Resources, Division of Mineral Resources Management (DMRM) that incorporates the standards of the federal Surface Mining Control and Reclamation Act, and including activities conducted under contracts to reclaim forfeited coal mining operations or abandoned mine land areas. This certification would allow a maximum extent of 3,000 linear feet of total impacts to intermittent and perennial streams, and impacts to certain wetland acreages as qualified below:

- 1) For natural stream reaches, the aggregate total of impacts to intermittent and/or perennial streams authorized under Nationwide Permit (NWP) 21 shall not exceed

1,500 linear feet with no more than 500 linear feet of impacts permitted to undesignated perennial streams.

- 2) No impacts to streams designated as Warmwater Habitat or having an equivalent or higher designation, as set forth in OAC rule 3745-1-07 through 32, are permitted under NWP 21. Projects that impact streams designated Warmwater Habitat or with an equivalent or higher designation require individual 401 water quality certification.
- 3) Impacts to an additional 1,500 linear feet of streams impacted by previous mining may be authorized by this certification.
- 4) Total perennial, intermittent and ephemeral stream length and Qualitative Habitat Evaluation Index (or equivalent) data in a form prescribed by Ohio EPA and including a copy of the mining permit map showing the ephemeral, intermittent, and perennial sections of each stream shall be provided to Ohio EPA both prior to any impacts and five years following stream reconstruction.
- 5) Impacts to any waterways authorized under NWP 21 shall be reclaimed and/or reconstructed using natural stream channel design standards identified in the ODNR/DMRM-Ohio EPA Joint Stream Reconstruction Guidelines, when appropriate. The reclamation of streams with less than 2% slope will be completed using natural channel design techniques.

A maximum of 3 acres of total wetland impacts would be allowable under this NWP 21, with:

1. No more than 3 acres of impacts to Category 1 wetlands permitted.
2. No more than ½ acre of impacts to Category 2 wetlands permitted.
3. No impacts to Category 3 wetlands permitted.
4. Wetland mitigation shall be provided in accordance with Ohio EPA's wetland water quality standards (OAC rule 3745-1-50 through 54).

***Nationwide Permit 22 (Removal of Vessels)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 23 (Approved Categorical Exclusions)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

This Nationwide Permit shall only authorize activities described in 23 CFR Part 771.117 of the Federal Highway regulations.

***Nationwide Permit 24 (State Administered Section 404 Program)***

Not Applicable.

***Nationwide Permit 25 (Structural Discharges)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 26 (Reserved)***

***Nationwide Permit 27 (Stream and Wetland Restoration Activities):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations:

- 1) This Certification only authorizes activities that restore streams to natural channel characteristics.
- 2) This Certification does not authorize impacts to more than ½ acre of Category 2 forested wetlands unless Ohio EPA is a signatory to a Mitigation Banking Review Team (MBRT) instrument which addresses the impact.

***Nationwide Permit 28 (Modifications of Existing Marinas)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 29 (Single-Family Housing)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 30 (Moist Soil Management for Wildlife)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 31 (Maintenance of Existing Flood Control Facilities)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Nationwide Permit shall only authorize projects constructed by the Corps of Engineers and maintained by the Corps or transferred by the Corps to a local sponsor.

***Nationwide Permit 32 (Completed Enforcement Actions)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions:

- 1) This Nationwide Permit shall not authorize any project with greater than 3 acres of wetland impacts, or impacts over 500 linear feet in any stream unless Ohio EPA has been informed in writing of each specific project that exceeds these criteria, and based on this information, has chosen not to issue a State Administrative Order, or Consent Order resulting from a State enforcement action.
- 2) The Corps of Engineers shall provide notification to Ohio EPA prior to any settlement agreement being finalized. The Corps shall provide such notification with a copy of the draft settlement document for Ohio EPA's review and comment. Ohio EPA will provide notice to the Corps that it intends to provide substantive site-specific comments within 5 days of the receipt of the draft settlement document. Ohio EPA will provide these comments to the Corps within 16 days of the receipt of the draft document. The Corps shall fully consider Ohio EPA's comments prior to finalizing the settlement document, and provide Ohio EPA with a copy of the final settlement agreement

***Nationwide Permit 33 (Temporary Construction, Access and Dewatering)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions:

- 1) Temporary shall be defined as less than one year in duration;
- 2) This Nationwide Permit does not authorize construction, or maintenance, or modification of marina basins;
- 3) This Nationwide Permit does not authorize activities in special aquatic sites as defined in 40 CFR 230.3(q-1);
- 4) This Nationwide Permit shall not authorize temporary construction access and dewatering associated with mining activities.

***Nationwide Permit 34 (Cranberry Production Activities)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 35 (Maintenance Dredging of Existing Basins)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 36 ( Boat Ramps)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Nationwide Permit shall not authorize boat ramps where dredging is required to establish water depths necessary for boat launching.

***Nationwide Permit 37 (Emergency Watershed Protection and Rehabilitation)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 38 (Cleanup of Hazardous and Toxic Waste)***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 39 (Residential, Commercial and Institutional Activities):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

***Nationwide Permit 40 (Agricultural Activities):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Certification shall be used only once per farm. For the purposes of this condition, farm shall be defined to include all individual farm tracts, whether or not such tracts are contiguous, that are owned by the applicant.

***Nationwide Permit 41 (Reshaping Existing Drainage Ditches):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations:

- 1) This Certification only authorizes impacts to existing maintained and channelized ephemeral water conveyances.
- 2) Reshaping of existing agricultural and roadway drainage ditches greater than 200 linear feet but less than 500 linear feet in total length that have been created or previously modified and maintained for the purpose of draining abutting existing agricultural land or existing roadways shall not require an individual Section 401 Certification if either:
  - a) The ditch was man-made and is existing; or
  - b) The stream/ditch has existing entrenchment ratios that are less than 1.4 and the proposed dredging impacts do not reduce the sinuosity of the stream/ditch channel.
- 3) Prior to the commencement of the project, all drainage ditch reshaping projects must be certified in writing by either the Natural Resources Conservation Service or Soil and Water Conservation District or County Engineer in the County where the project occurs, or by a certified professional engineer, that the project complies with the above criteria. In order to be authorized under this paragraph, such certification shall be maintained by the person or entity engaged in the project and a copy shall be sent to: Ohio EPA, Division of Surface Water, Section 401 Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

***Nationwide Permit 42 (Recreational Facilities):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Certification shall not authorize the construction, modification or expansion of golf courses or ski areas.

***Nationwide Permit 43 (Stormwater Management Facilities):***

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations: This Certification shall not authorize the construction of new stormwater management facilities.

***Nationwide Permit 44 (Mining Activities)***

The Corps has revoked this NWP from use in Ohio. This NWP generally covers non-coal mining activities.

You are hereby notified that these actions of the Director are final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code by any person who was a party to this proceeding. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after the notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Enforcement Section of the Office of the Attorney General within three days (3) of the filing with the Commission. An appeal may be filed with the Environmental Review Appeals Commission, 236 East Town Street, Room 30, Columbus, Ohio 43266-0557.

Sincerely,

Draft

Christopher Jones  
Director

CJ:ms

cc: District Engineers, U.S. Army Corps of Engineers - Buffalo District  
District Engineers, U.S. Army Corps of Engineers - Huntington District  
District Engineers, U.S. Army Corps of Engineers - Louisville District  
District Engineers, U.S. Army Corps of Engineers - Pittsburgh District  
Dave Schulenberg, U.S. EPA, Region V  
Ken Lammers, U.S. Fish & Wildlife Service  
Kim Baker, ODNR, Office of Real Estate & Land Management  
Lisa Morris, Ohio EPA, DSW