

## Section 401 Water Quality Certification and Isolated Wetland Permit Introduction

When a project is planned in Ohio that will impact a wetland, stream, river, lake, or other water of the U.S., the Ohio Environmental Protection Agency (Ohio EPA) must issue a Section 401 Water Quality Certification (401 WQC) or a state isolated wetland permit. A Section 401 WQC is a required component of a federal permit and must be issued before a federal permit or license can be granted. The bulk of federal permits requiring 401 WQC from Ohio EPA are Section 404 Dredge and Fill Permits, which are issued by the U.S. Army Corps of Engineers (USACE).

Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill materials into waters of the United States. The basic premise of the USACE's Section 404 Regulatory program is that dredged or fill material cannot be discharged into water if the nation's waters would be significantly degraded or if a feasible alternative exists that is less damaging to the aquatic environment. Dredge and fill activities are controlled by a permit process administered by the U.S. Army Corps of Engineers and overseen by the U.S. Environmental Protection Agency (U.S. EPA).

This means that any person or company planning to discharge fill materials to Ohio wetlands or other water bodies such as streams, rivers, and lakes by filling, excavating, open-trench cutting, or mechanical clearing, must receive 401 WQC authorization from Ohio EPA and must also apply for, and receive, a federal Section 404 Dredge and Fill Permit from the USACE.

Ohio EPA works closely with the USACE and coordinates the permit application processes as much as possible. Ohio EPA recommends that any potential applicant first contact the USACE to begin the application process and determine if the proposed project will impact waters of the U.S. and to determine whether or not a federal permit is required.

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Although both Ohio EPA and the USACE regulate impacts to wetlands and other waters of the U.S., they have different authority and jurisdictions. This is why both Ohio EPA and the USACE need to be contacted before any discharge to or activity in a wetland, stream, river, lake, or other water of the U.S. occurs.

If the USACE determines that a proposed project will require a USACE Section 404 Permit, then the applicant must also apply for, and obtain, a Section 401 Water Quality Certification from Ohio EPA. The Ohio EPA will review the proposed activities to determine if they will comply with Ohio law, including state water quality standards.

Isolated wetlands (those wetlands not regulated under the federal Clean Water Act) are regulated under Ohio's State Isolated Wetlands law. Impacts to isolated wetlands require State Isolated Wetland Permits from Ohio EPA. Again, because the federal government's jurisdiction is different than the state's, Ohio EPA must be contacted to determine which, if any, state authorization(s) is/are needed before an applicant may legally discharge pollutants (including fill materials) to wetland, streams, rivers, lakes, and other waters.

Ohio EPA encourages you to read more about our Section 401 Water Quality Certification Program and State Isolated Wetlands Permitting Program by visiting our [Web site](#).

### Authority

According to the federal [Clean Water Act](#), anyone who wishes to discharge dredged or fill material into the waters of the U.S., regardless of whether on private or public property, must obtain a Section 404 permit from the U.S. Army Corps of Engineers (Corps) and a Section 401 Water Quality Certification (WQC) from the state.

- **Section 404** of the Clean Water Act. Many waterbodies and wetlands in the nation are waters of the U.S. and are subject to the Corps Section 404 regulatory authority. An applicant for a 404 permit must also submit an application to the state for certification under Section 401. [Section 404 permit from Corps](#)

NOTE: If the waterbody or wetland is not a water of the U.S., it is not subject to the Corps authority; however, it is subject to Ohio EPA authority.

- **Section 401** of the Clean Water Act requires that any applicant for a Section 404 permit also obtain a Water Quality Certification from the State. The purpose of the certification is to confirm that the discharge of fill materials will be in compliance with the State's applicable Water Quality Standards.
- **State Isolated Wetlands Permit** . About 90 percent of Ohio's original wetlands have been destroyed. An estimated 45 percent of Ohio's remaining wetlands are isolated. Isolated wetlands are not connected or adjacent to waterways like rivers and streams, but they provide many of the same benefits to the environment as non-isolated wetlands, and exhibit many of the same characteristics. These isolated wetlands are regulated differently than USACE jurisdictional waters; they are regulated solely by the state. House Bill 231 was signed into law on July 17, 2001, giving the authority to regulate isolated waters of the state to Ohio EPA.

## Purpose of the pre-application meeting

Planning a project which will impact wetlands, streams, rivers, lakes, or other regulated water resources, and anticipating how Ohio EPA will respond to your application can be difficult. In an effort to avoid delays, confusion, and ensure that Ohio's environment is protected, Ohio EPA offers pre-application coordination for all applicants who need to apply for a Section 401 Water Quality Certification or Isolated Wetland Permits. Most delays in the application review process are caused by applicants not providing all the information required by Ohio EPA. Through the pre-application coordination process, Ohio EPA representatives can help ensure you know exactly what you need before you submit your application.

A Pre-Application meeting is an informal, completely voluntary (though highly recommended) process where you meet with an Ohio EPA 401 Coordinator to discuss a project that is in its early planning stages.

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## Purpose of the request form for pre-application meeting

If your project is large, complex, or has the potential to impact sensitive areas, Ohio EPA recommends that you contact program staff to discuss your project. You may also wish to contact Ohio EPA, Section 401 staff if you have never applied for permits before or to simply gather information on needed permits. Ohio EPA 401 Coordinators each cover a specific territory, so please contact the specific [Ohio EPA 401 Coordinator](#) for the county in which you will be working.

You can call, e-mail, or write a letter to Ohio EPA 401 Coordinator to open the lines of discussion regarding your project. It may also be beneficial for Ohio EPA staff to meet you or your environmental consultant on-site to discuss your project. Contact the corresponding Ohio EPA 401 Coordinator to arrange a pre-application meeting or discussion on a project. Staff from the 401 WQC/Isolated Wetlands Program may, if needed, invite staff from the Ohio Environmental Protection Agency, Storm Water Section and the U.S. Army Corps of Engineers (USACE) to attend on-site meetings. Ohio EPA staff may also provide you with contact information for Ohio Department of Natural Resources or other regulatory staff and request that you contact these agencies to invite them to a pre-application meeting.

To obtain the most useful, project specific comments, we recommend you provide as much information as possible to the Ohio EPA 401 Coordinator.

## Who must submit a request form for pre-application meeting?

A pre-application meeting is a preliminary step in the process of applying for a Section 401 Water Quality Certification and/or Isolated Wetlands Permit. A pre-application meeting is completely voluntary ; however, there are many benefits to having a pre-application meeting, including:

- You may be able to avoid delays and confusion regarding what permits are necessary for your project and what you are required to submit with the permit application.
- You and the 401 Coordinator can discuss potential problems, timeframes, and ways to change your project to reduce or further minimize impacts.
- You will have direct contact with the 401 Coordinator who will be reviewing your application for a Section 401 Water Quality Certification and/or Isolated Wetlands Permit;

Any person or company planning to discharge fill materials to Ohio wetlands or other water bodies such as streams, rivers and lakes by filling, excavating, open-trench cutting, or mechanical clearing, must receive 401 WQC authorization from Ohio EPA and must also apply for, and receive, a federal Section 404 Dredge and Fill Permit from the USACE.

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If you plan to apply for a Section 401 Water Quality Certification and/or Isolated Wetlands Permit, it is in your best interest to request a pre-application meeting.

## How do I know if my project will impact wetlands, streams, lakes or other regulated water resources?

In order to know if wetlands are on your property, it is highly recommended that you hire a wetland or environmental consultant to conduct a wetland delineation on the property. The wetland consultant will put together a report for you, called a wetland delineation report. This report must be submitted to the U.S. Army Corps of Engineers for review and approval before the delineation report is considered accurate and legal. The U.S. Army Corps of Engineers has the responsibility of making wetland determinations and determining the limits of federal jurisdiction. The U.S. Army Corps of Engineers will write a letter to you once they have reviewed your wetland delineation report – this letter will state the jurisdiction of the delineated wetlands and will also state whether or not the U.S. Army Corps of Engineers concurs with the delineation. Keep this letter, and your wetland delineation report, in a safe place as you will need to submit a copy of both to OhioEPA if you wish to apply for permits.

- [U.S. Army Corps of Engineers - "Recognizing Wetlands" Brochure \[PDF\]](#)

Please note - wetlands do not have to have standing water in them in order to be regulated by Ohio EPA or the U.S. Army Corps of Engineers. Determining the boundaries of wetlands is a task that must be conducted by a qualified wetland consultant. Wetlands are delineated by carefully examining a site for the presence of wetland indicators. In order to be a legal wetland, an area must have all three of the following present:

- A dominance of wetland vegetation;
- The presence of soils exhibiting hydric characteristics; and,
- Indicators of hydrology (the presence of surface water or waterlogged soils) for a sufficient period of time in most years to influence the types of plants and soils that occur in that area, in order to legally be considered a wetland.

To obtain additional information regarding Ohio EPA Section 401 Water Quality Certifications and Isolated Wetland Permits, or to obtain an application form, contact Ohio EPA at (614) 644-2001. You can also visit the [401 Water Quality Certification Program](#) page.

## What projects typically impact wetlands, streams, lakes or other regulated water resources?

It is important to not only know what aspects of your project may have a significant impact on water resources, but it is important to know when you need permits. You will need a Section 401 Water Quality Certification if your project involves any of the following:

- Filling a wetland
- Excavating a wetland
- Mechanical clearing in a wetland (using heavy equipment such as bulldozers to remove or clear trees and stumps)
- Constructing a pond in a wetland
- Stabilizing a streambank or shoreline
- Relocating a stream
- Constructing a roadway, bridge or other pedestrian/vehicle crossing in or over a stream
- Constructing, refacing, or repairing any seawall
- Constructing an underwater beach
- Filling out into a lake, stream, or river
- Dredging a wetland, stream, lake, or river
- Dredging or excavation of any potentially contaminated sediments.
- Sand, gravel, peat, or other related mining activity within any waterbody.
- Channelizing or removing meanders from any stream, ditch, or river.
- Excavating a stream to construct in-stream stormwater detention/retention.
- Construction of any type of permanent or temporary dam, causeway, or other related structure.

The previous list of activities is NOT all-inclusive. There are other activities that trigger the need for Section 401 Water Quality Certification from Ohio EPA and a Section 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers, but the aforementioned activities are more common.

The previous list of regulated activities can involve or contribute to adverse impacts to water quality. You must be able to demonstrate to Ohio EPA how your project is avoiding and minimizing impacts associated with all regulated activities.

## How can I save time and money?

If you design your project in a manner that avoids impacts to and/or conserves and protects wetlands, streams, lakes, rivers, and other regulated waterbodies, you can avoid delays and potential additional expenses. It is highly recommended that you do not begin to plan or lay out your site/development until you have had a wetland delineation completed and verified by the U.S. Army Corps of Engineers.

Early in the project planning process, after you have had a wetland delineation completed and have identified wetlands and streams on your proposed site, review your plans and consider if you can avoid filling wetlands and moving, culverting or crossing streams.

In many cases, you may be able to reconfigure buildings/layouts on a site in a manner that will avoid impacts to wetlands, streams, and other regulated waters. Any money you spend to re-design your site plans to avoid impacts to regulated water resources may be money you save later. Specifically, by avoiding impacts to wetlands, streams, lakes, and other regulated areas, you will gain huge benefits; first, you may not need to get permits if you simply avoid wetlands and waterbodies. Second, you will save time and effort by not having to budget for, plan, engineer, build,

plant, and monitor wetland and stream mitigation, which is required for almost all impacts to wetlands and streams. Last, if you don't avoid impacts to these regulated water resources, Ohio EPA will require you to demonstrate avoidance. This is much easier to do early in the process, not days before you are scheduled to build.

## What happens after the form is submitted to Ohio EPA?

Once the request form is received by Ohio EPA. A 401 Coordinator will be assigned based on the most current [watershed contacts map](#). The 401 Coordinator will review the request form, assign an EPA Identification number to the project, and determine if it is appropriate to hold the meeting at Ohio EPA or at the project site. The meeting location is determined by Ohio EPA and will depend on the size and complexity of the project, the experience level of the applicant and/or consultant/agent, the applicant's agenda goals, as well as the amount of assessment completed on the project at the time of application. The 401 Coordinator will contact the applicant to arrange the pre-application meeting, clarify project and/or request form details, and possibly, request that additional information be submitted.

## What happens at the Pre-Application meeting?

In general terms, the pre-application meeting is the potential applicant's first chance to discuss their project ideas with an Ohio EPA 401 Coordinator, and the 401 Coordinator's first chance to *review* and comment on the project.

What happens at the pre-application meeting will depend on the applicant's stated goals (on the pre-application request form) and the amount of information provided in Section 4 of the form.

## What happens after the Pre-Application meeting?

Following the Pre-Application meeting, the applicant and/or the agent/consultant will receive a follow-up letter. The letter will include:

1. a narrative and map defining the project location;
2. a summary description of the proposed work;
3. a summary of what took place at the pre-application meeting;
4. a list of any suggestions the 401 Coordinator made at the site visit;
5. Potentially, a request for further information Ohio EPA will need if the applicant wishes to proceed with the project;
6. a list of possible/potential Ohio EPA concerns with the project;
7. an explanation of next steps; and,
8. a checklist of documentation required for the submittal of a complete application.

If the applicant plans to proceed with the project, the next logical step would be to submit an [application](#) to Ohio EPA. Mail the complete application to:

Section 401 Supervisor  
Ohio EPA/DSW  
P.O. Box 1049  
Columbus, Ohio 43216-1049

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