FINAL

Effective Date: June 25, 2020
Expiration Date: June 24, 2025

6/25/2020

OHIO GENERAL PERMIT FOR FILLING CATEGORY 1 AND CATEGORY 2 ISOLATED WETLANDS AND EPHEMERAL STREAMS

Pursuant to Section 6111.021 and 6111.03(J)(1) of the Ohio Revised Code (ORC), the Director of the Ohio Environmental Protection Agency hereby authorizes the filling of, and the discharge of dredged material into, Category 1 and Category 2 isolated wetlands where the proposed project involves the filling of, or the discharge of dredged material into, Category 1 and Category 2 isolated wetlands of a total of ½ acre or less, and any filling or discharge of dredged material into ephemeral streams, in accordance with the conditions specified in Parts I through IX of this general permit.

Coverage under this general permit is conditioned upon payment of applicable fees, outlined in Part II. below, and submittal of a complete Pre-Activity Notice (PAN) when required.

This Isolated Wetland and Ephemeral Stream General Permit shall be effective for five (5) years and shall expire at midnight on the expiration date shown above.

Laurie A. Stevenson
Director

Part I. COVERAGE UNDER THIS PERMIT

Isolated Wetlands: Coverage under this permit is limited to the filling of, and the discharge of dredged material into, Category 1 and Category 2 isolated wetlands of up to a total of one-half acre or less. The filling of, or discharge of dredged material into, greater than one-half acre of Category 1 or 2 wetlands, or any Category 3 isolated wetlands is specifically not authorized under this general permit.

Ephemeral Streams: Coverage under this permit is limited to the filling of and the discharge of dredged material into ephemeral streams, as defined herein, determined to not be waters of the United States and not subject to Section 404 or 401 of the Clean Water Act.

Projects for the filling of or discharge of dredged material into ephemeral streams that impact less than 300 linear feet are required to comply with all terms and conditions of this permit except the following:

1) Notification Requirements in Part II;
2) General Conditions in Part III. A), H), I), and J);
3) Restoration Monitoring and Reporting when the PAN is required in Part IV E);
4) Mitigation Terms and Conditions in Part V and Part VI; and
5) Limitations in Part VII.

Part II. NOTIFICATION REQUIREMENTS

A) Notification requirements outlined in this section are required for any amount of fill or discharge into isolated wetlands and the fill or discharge into ephemeral streams exceeding 300 linear feet.

   1) For culvert maintenance and replacement: Only the impacts to ephemeral streams beyond the enclosed configuration of an existing culvert structure apply toward the linear foot notification and mitigation thresholds referenced in this permit.

B) Contents of Notification: For coverage under this general permit, a PAN must be submitted, when required per condition A. above, to the Ohio EPA and must contain the following information:

   1) A completed Isolated Wetland and Ephemeral Stream General Permit Application Form;

   2) An acceptable wetland delineation as performed in accordance with the 1987 U.S. Army Corps of Engineers wetland delineation manual and any other procedures and requirements adopted by the U.S. Army Corps of Engineers for delineating wetlands, including a determination from the U.S. Army Corps of Engineers that the wetlands and ephemeral streams proposed to be covered by this general permit are not Waters of the United States and not subject to Section 404 of the Clean Water Act;

   3) A completed Ohio Rapid Assessment Method (ORAM 5.0) wetland categorization form for each isolated wetland on the project site. Ohio EPA will make the final assignment of a wetland category in accordance with OAC 3745-1-54 of the Ohio Administrative Code (OAC);

4) A stream physical habitat assessment (e.g.., Qualitative Habitat Evaluation Index or Headwater Habitat Evaluation Index) for each ephemeral stream on the project site;

5) A detailed project description;

6) Maps showing project footprint, including a U.S. Geological Survey topographic map, and other maps that may be pertinent to assessing the functional level of the isolated wetlands and flow regime of the ephemeral streams proposed to be covered under the PAN, such as county soil maps and National/Ohio Wetland Inventory maps;

7) Photographs of each isolated wetland and ephemeral stream proposed to be covered by this permit with a photograph location map showing photograph number and direction the photograph was taken; and

8) For isolated wetlands, an acceptable mitigation proposal in accordance with ORC Sections 6111.022(D) and 6111.027 including documentation that mitigation credits have either been purchased or reserved. If the proposal includes in-lieu fee mitigation for wetland impacts, an evaluation of other mitigation alternatives must be provided.

9) For ephemeral stream permanent impacts, an acceptable mitigation proposal including documentation that mitigation credits have either been purchased or reserved, or a permittee-responsible mitigation plan, if applicable.

C) Fees: A PAN shall be accompanied by an application fee of $200.00 and a review fee of $500.00 per acre of isolated wetland to be impacted (ORC 3745.113).

D) Timing: Within fifteen (15) business days after the Director's receipt of a PAN, Ohio EPA shall notify the applicant whether the application is complete. If the application is not complete, Ohio EPA shall include in the notice an itemized list of the information or materials necessary to complete the application. If the applicant fails to provide the information or materials that are necessary to complete the application within sixty (60) days after the Director's receipt of the PAN, Ohio EPA may return the application and take no further action on it.

The Director shall notify the applicant within thirty (30) days after the Director's receipt of a complete PAN:

1) If the proposed filling of, or the discharge of dredged material into isolated wetland(s) and/or ephemeral stream(s) will not result in a significant negative impact on state water quality and is authorized to proceed under this general permit; or
2) If the proposed filling of, or the discharge of dredged material into isolated wetland(s) and/or ephemeral stream(s) will result in a significant negative impact on state water quality and therefore, the project is not authorized to proceed under this general permit.

If the applicant has not received notice that the project is not authorized by this general permit within thirty (30) days after the Director's receipt of a complete PAN, the applicant may move forward with the proposed project in accordance with the conditions stated in this general permit.

Part III. GENERAL CONDITIONS

Projects subject to this general permit shall comply with the following conditions except as provided in Part I of this permit:

A) The project shall be constructed in accordance with the information as set forth in the complete PAN.

B) The terms and conditions outlined in this section apply to project and/or mitigation construction as described in this permit.

C) A copy of this permit shall remain on-site for the duration of the project and/or mitigation construction activities.

D) In the event of an inadvertent spill, the permittee must immediately call the Ohio EPA Spill Hotline at 1-800-282-9378, as well as the Ohio EPA Section 401 Manager (614-644-2001).

E) Unpermitted impacts to surface waters of the state occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401 Manager (614-644-2001), for further evaluation.

F) Pesticide application(s) for the control of plants and animals shall be applied in accordance with the NPDES General Permit to Discharge Pesticides In, Over or Near Waters of the State available at: https://www.epa.ohio.gov/portals/35/permits/OHG870002%20FINAL%20PERMIT.pdf and may require a pesticide applicator license from the Ohio Department of Agriculture.

G) Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.

H) In the event that there is a conflict between the application, including the mitigation plan (if applicable), and the conditions within this permit, the permit condition shall prevail unless Ohio EPA agrees, in writing, that the application or other provision prevails.

I) When a project will result in the temporary removal of hydric topsoil from isolated wetlands, the hydric soil shall be separated and placed as the topmost backfill layer when the wetlands are restored.

J) Wetland narrative and chemical criteria described in OAC 3745-1-51 and 3745-1-52 of the Administrative Code shall be maintained in isolated wetlands wholly or partially avoided.

K) Best Management Practices (BMPs)

1) All isolated wetlands and ephemeral streams which are to be avoided, shall be clearly indicated on site drawings, demarcated in the field and protected with suitable materials (e.g., silt fencing) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process and removed after completion of construction.

2) Unless subject to a more specific storm water National Pollutant Discharge Elimination System (NPDES) permit, all best management practices for storm water management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available at: http://www.epa.ohio.gov/dsw/storm/index.aspx, or any watershed specific construction general permit.

3) Sediment and erosion control measures and best management practices must be designed, installed, and maintained in effective operating condition at all times during construction activities as required by applicable storm water permits. Proper maintenance ensures corrective measures will be implemented for failed controls within 3 days of discovery.

4) Disturbance and removal of vegetation from the project construction area is to be avoided where possible and minimized to the maximum extent practicable. Entry to surface waters shall be through a single point of access to the maximum extent practicable to minimize disturbance to riparian habitat.

5) Straw bales shall not be used as a form of sediment control unless used in conjunction with another structural control such as silt fencing. Straw bales may be utilized for purposes of erosion control such as ditch checks.

6) Heavy equipment shall not be placed below the ordinary high water mark of any surface water, except when no other alternative is practicable.

7) Fill material shall consist of suitable non-erodible material and shall be maintained and stabilized to prevent erosion.

8) All dewatering activities must be conducted in such a manner that does NOT result in a violation of water quality standards.

9) All disturbed areas which remain dormant in excess of fourteen days must be protected from erosion within seven days from the last earth disturbing activity.

10) All areas of final grade must be protected from erosion within seven days.

11) In the event of authorized in-stream activities, provisions must be established to redirect the stream flow around or through active areas of construction in a stabilized, non-erosive manner to the maximum extent possible.

12) Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt shall not be used as fill or bank protection.

13) To be used for fill or bank stabilization, concrete rubble shall be in accordance with ODOT specifications, free of exposed re-bar, and, free of all debris, soil and fines.

14) Chemically treated lumber which may include, but is not limited to, chromated copper arsenate and creosote treated lumber, shall not be used in structures that come into contact with waters of the state.

15) At the completion of construction activities, all temporary fill material must be removed to an area that has no waters of the state and the stream and wetland bottom shall be restored to pre-construction conditions and replanted with native seed mixes to the maximum extent practicable.

16) Culverts

a) When practicable, culverts shall be installed at the existing streambed slope, to allow for the natural movement of bedload and aquatic organisms.

b) When applicable, the culvert base or invert with the substrate shall be installed at or below the sediment to allow the natural channel bottom to develop and to be retained.

c) The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms.

d) Where culverts are installed for temporary crossings, the bottom elevations of the stream shall be restored as nearly as possible to pre-project conditions.

Part IV. RESTORATION OF TEMPORARY EPHEMERAL STREAM IMPACTS

A) Temporary impacts are those that facilitate the nature of the activity or aid in the access, staging or development of construction; are short-term in nature, not to exceed two years, and that are expected, upon removal of the temporary impact, to result in the surface water returning to conditions which support pre-impact function with minimal or no human intervention within 12 months following the completion of the temporary impact.

B) All ephemeral streams subject to temporary impacts, shall be restored onsite to pre-existing contours and conditions upon the completion of the temporary impacts.

C) The flow regime shall be restored to that of the pre-impact ephemeral flow regime.

D) The ephemeral stream physical habitat, as measured prior to impact, shall be restored.

E) Restoration Monitoring and Reporting when a PAN is required

1) When a PAN is required per condition Part II.A, all restored ephemeral streams shall be monitored for up to two years following the completion of restoration activities. If the restoration areas are meeting or exceeding the restoration performance criteria after the first year of post construction monitoring, the permittee may request to be released from any further monitoring. If the restoration areas are not meeting the restoration performance criteria by the end of the second year of post construction monitoring, the monitoring period may be extended, and/or the permittee may be required to revise the existing restoration plan.

2) When a PAN is required per condition Part II.A, annual restoration reports shall be submitted to Ohio EPA by December 31 of each year following the end of the first full growing season and completion of restoration construction. Each report shall contain, at a minimum, the following information:

   a) The status of all restoration required for the project as specified in the application and authorization.

   b) Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the permittee, consultant, and/or owner.

   c) Discussion of the status of the stream channel and restoration of pre-impact flow regimes.

   d) Stream physical habitat assessment (e.g., Qualitative Habitat Evaluation Index or Headwater Habitat Evaluation Index) utilizing the same methodology as the pre-impact assessment.

   e) A minimum of three high resolution color photographs taken at the restored area, including one facing upstream, one facing downstream, and a close up which clearly depicts the substrate composition and size for each restored stream. Photographs must accurately depict the quality of the stream and may not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow or ice.

Part V. MITIGATION FOR PERMANENT EPHEMERAL STREAM IMPACTS

A) Mitigation for permanent impacts to ephemeral streams is required for impacts over 300 linear feet in order to qualify for coverage under this general permit. Restoration or enhancement projects that will result in a net improvement of water quality may not be required to provide additional mitigation (e.g. 319 projects, H2Ohio projects, Water Resource Restoration Sponsor Program (WRRSP), or mitigation banks and in-lieu fee projects). To qualify for consideration, applicants must submit a demonstration as part of the mitigation proposal that the project will result in a net improvement in water quality.

   Impacts to previously mined ephemeral stream reaches as a result of remining and subsequent reclamation will require no further mitigation.

B) The permittee shall conduct mitigation through either purchasing credits from an approved mitigation bank with a service area that includes the impacted 8-digit Hydrologic Unit Code (HUC) watershed, purchasing credits from an approved In-lieu fee program that serves the impacted 8-digit HUC watershed, or constructing permittee-responsible mitigation that is within the impacted 8-digit HUC watershed.

C) Mitigation for the permanent filling of, or the permanent discharge of dredged material into ephemeral streams covered under this permit when required shall be conducted as follows:
- Ephemeral streams with sand/silt/muck/clay dominated substrates at a minimum rate of one linear foot for every linear foot (1:1) of permanently impacted ephemeral stream.
- Ephemeral streams with bedrock/boulder/cobble/gravel/sand mixed substrates at a minimum rate of one and a half linear feet for every linear foot (1.5:1) of permanently impacted ephemeral stream.
- Alternative mitigation ratios may be considered, and approved by Ohio EPA, based upon project and site-specific conditions, such as providing enhanced storm water volume reduction practices (e.g. pervious pavement, infiltration best management practices) installed in accordance with the Construction Storm Water permit for the proposed watershed associated with the impacted ephemeral stream.

D) When mitigation will occur at an approved mitigation bank or In-lieu Fee program, mitigation credits must be acquired within 30 days after receipt of the written notice of approval authorizing impacts to ephemeral streams. Proof mitigation credits have been purchased shall be sent to Ohio EPA within 30 days after receipt of approval for coverage under this general permit.

E) Permittee Responsible Mitigation

1) All permittee responsible mitigation for ephemeral streams shall be monitored for up to five years following the completion of mitigation construction activities. If the mitigation areas are meeting or exceeding the performance criteria prior to the end of the fifth year of mitigation monitoring, the permittee may request to be released from any further monitoring. If the mitigation areas are not meeting the performance criteria by the end of the fifth year of mitigation monitoring, the monitoring period may be extended, and/or the permittee may be required to revise the existing mitigation plan.

2) Construction of permittee responsible mitigation, shall commence within 30 days after completion of fill activities authorized under this general permit, and shall be completed prior to termination of coverage of approval under this general permit.

3) The permittee responsible mitigation site shall be protected long term (e.g. environmental covenant, conservation easement, deed restriction), and appropriate practicable management measures, including appropriate vegetative buffers, shall be implemented to restrict harmful activities that jeopardize the mitigation.

4) Annual monitoring reports shall be submitted to Ohio EPA by December 31 of each year following the end of the first full growing season and completion of mitigation construction. Each report shall contain, at a minimum, the following information:

a) The status of all mitigation required for the project as specified in the application and authorization.

b) Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the permittee, consultant, and/or owner.

c) Clearly identify the specific monitoring period the report is intended to represent, as well as the calendar year the monitoring occurred. The report shall also provide a summary of current mitigation status, which compares the previous years' monitoring information with the current report including graphs and tables showing trends or other information as requested by Ohio EPA.

d) A list of species planted in all mitigation areas.

e) The first-year report shall include plan views and cross sections of the as-built mitigation area including the location and types of planting.

f) Discussion of stability of the mitigation stream channel.

g) Stream physical habitat assessment (e.g., Qualitative Habitat Evaluation Index or Headwater Habitat Evaluation Index) of the mitigation stream channel.

h) A minimum of three high resolution color photographs taken for each mitigation stream, including one facing upstream, one facing downstream, and a close up which clearly depicts the substrate composition and size for each stream proposed for impact. Photographs must accurately depict the quality of the stream and may not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow or ice.

5) Monitoring Requirements

a) At a minimum, the first, third and fifth year annual reports shall include longitudinal (profile view along the centerline) and cross-sectional plan view measurements of the mitigation stream and shall be taken to include those measurements necessary to determine sinuosity, meander wavelength, belt width, radius of curvature, and meander arc length for a minimum of two meander bends if applicable.

b) Observations of the stream mitigation channel and banks, including up and downstream, shall be made. Signs of negative effects from the stream mitigation such as excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation shall be noted in the annual report, and corrective actions shall be taken.

c) If applicable, for forested riparian buffers, the location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named. The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report.

d) If applicable, for forested riparian buffers, standard forestry measurements (e.g., frequency, density, and dominance) for all woody species shall be calculated. These data shall be graphed against time to demonstrate that each of these areas is developing into a functional forested ecosystem.

6) Performance standards. Within five years after completion of construction of the mitigation, the permittee shall have:

a) Provided the minimum number of linear feet of ephemeral stream mitigation required by Part V.C. above.

b) Demonstrated that the physical habitat assessment of the mitigation stream channel is equal to or greater than the physical habitat assessment of the originally impacted ephemeral stream.

c) Demonstrated that the stream mitigation channel and banks including up and downstream of the mitigation are stable and show no signs of excessive bank erosion, sedimentation, head cutting, aggradation, entrenchment, or degradation.

d) Demonstrated that a minimum of 400 native, live and healthy (disease and pest free) woody plants per acre (of which at least 200 are tree species) are present at the end of the monitoring period in the upland buffer, if applicable.

Part VI. MITIGATION FOR ISOLATED WETLAND IMPACTS

A) Mitigation, in accordance with ORC Sections 6111.022(D) and 6111.027, is required in order to qualify for coverage under this general permit for impacts to isolated wetlands.

B) Without the objection of the Director and at the discretion of the permittee,-permittee shall conduct either mitigation at a wetland mitigation bank within the same USACE district as the location of the proposed filling, permittee responsible mitigation, or at the director's discretion, the permittee may purchase credits from an approved In-lieu fee program that serves the impacted watershed.

C) Mitigation for the filling of, or the discharge of dredged material into, isolated wetlands covered under this permit shall be conducted in accordance with the following ratios:

1) For Category 1 and Category 2 isolated wetlands, other than forested Category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted, or mitigation shall be paid for under an in-lieu fee mitigation program, at a rate of two times the area of isolated wetland that is being impacted;

2) For forested Category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted, or mitigation shall be paid for under an in-lieu fee mitigation program at a rate of two and one-half times the area of isolated wetland that is being impacted;

3) All other mitigation shall be subject to mitigation ratios established in division (F) of rule 3745-1-54 of the OAC.

D) Mitigation that involves the enhancement or preservation of isolated wetlands shall be calculated and performed in accordance with rule 3745-1-54 of the OAC.

E) The mitigation site shall be protected long term, and appropriate practicable management measures, including reasonable vegetative buffers, shall be implemented to restrict harmful activities that jeopardize the mitigation.

F) When mitigation will occur at an approved wetland mitigation bank or In-lieu Fee program, mitigation credits must be acquired within 30 days after receipt of the written notice of approval authorizing impacts to isolated wetlands. Proof mitigation credits have been purchased shall be sent to Ohio EPA within 30 days after receipt of approval for coverage under this general permit.

G) Construction of permittee responsible mitigation not located at an approved bank, shall commence within 30 days after completion of fill activities authorized under this general permit, and shall be completed prior to termination of coverage of approval under this general permit specified in ORC 6111.022(E).

Part VII. LIMITATIONS

An applicant that qualifies for coverage under this general permit shall complete the filling of, and the discharge of dredged material within two (2) years after the end of the thirty-day period following the Director's receipt of a complete PAN. If the permittee does not complete the filling of, and the discharge of dredged material within that two-year period, the permittee shall submit a new PAN. This two-year, project-specific time limitation should not be confused with the five-year effective period of this general permit. If construction has started but is not complete, and the two-year time limitation has not expired, the permittee will be covered by the Isolated Wetland and Ephemeral Stream General Permit that was valid at the time Ohio EPA determined the project met the PAN requirements even if the five-year effective period has expired.

Part VIII. FURTHER INFORMATION

Coverage under this general permit does not relieve the permittee from the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.

Part IX. DEFINITIONS (For purposes of this permit)

"Ephemeral Stream" means a stream that meets all of the following conditions:

1) contains an ordinary high water mark;
2) flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice;
3) has a channel bottom that is always above the local water table; and
4) is determined to be excluded from jurisdiction under the federal water pollution control act.

Ephemeral streams do not include agricultural and roadside ditches, grass swales, erosional features, or other artificial channels constructed wholly in uplands that do not relocate an existing stream.

“Independent Utility” means a test to determine what constitutes a single and complete non-linear project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

“Ordinary High Water Mark” means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

“Single and Complete Nonlinear Project” means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in this permit.

“Single and Complete Linear Project” means that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single waterbody at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of the permit. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.