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## REGULATORY GUIDANCE

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Division of Surface Water

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### **Section 1: Guidance for Ohio State Certification** **Special Limitations and Conditions regarding** **Nationwide Permit 12 for Utility Line Activities**

*On March 30, 2012, Ohio EPA Reauthorized the Ohio State Water Quality Certification for Nationwide Permits (NWP). The purpose of this Guidance is to clarify certain somewhat confusing conditions applied to NWP 12.*

➤ **Condition #2: Category 3 Wetlands**

This condition requires applicants that propose temporary or permanent impacts exceeding 0.1 cumulative acres to category 3 wetlands for activities involving the repair, maintenance, replacement or safety upgrades to existing infrastructure submit an individual 401 Water Quality Certification (WQC) application. Existing infrastructure is meant to include all existing infrastructure and is not limited to pipelines. Temporary or permanent impacts not exceeding 0.1 cumulative acres to category 3 wetlands involving the repair, maintenance, replacement or safety upgrades to existing infrastructure would not need to submit an individual 401 WQC application. This means cumulative over the entire project, not per wetland or crossing.

➤ **Condition #4: Wetland Impacts**

This condition requires applicants that propose temporary or permanent impacts exceeding one-half cumulative acres to category 1 and category 2 wetlands to submit an individual 401 WQC application. This means cumulative over the entire project, not per wetland.

➤ **Condition #5: Forested Wetlands**

This condition requires applicants that propose temporary or permanent impacts exceeding 500 cumulative linear feet (LF) of forested wetlands to submit an individual 401 WQC application. This means cumulative over the entire project, not per crossing.

➤ **Condition #7: Utility Lines**

This condition requires applicants that propose temporary or permanent impacts exceeding 1,500 cumulative LF of surface waters, including wetlands, to submit an individual 401 WQC application. This means cumulative over the entire project, not per crossing. Stream impacts are to be measured bank-to-bank.

➤ **Condition #8: Culverts**

This condition requires applicants that propose a culvert exceeding 500 **total** LF measured from up- to down-stream at any single stream impact location, or exceeding 300 LF of **new** culvert measured from up- to down-stream at any single stream impact location, to submit an individual 401 WQC application. This does not mean cumulative. Instead this is per each stream impact location.

*Examples: If there is already an existing 300 LF culvert in place at that location, the maximum additional LF that that culvert could be extended without the need for an individual 401 WQC application would be 200 LF. If there is no existing culvert in that location, a new culvert of up to 300 LF would be possible at that location without the need for an individual 401 WQC application.*

➤ **Condition #13: Clearing**

There is a grammatical error in this term. Total width of any clearing shall not exceed 50 feet, with a maximum width of 25 feet to either side of a utility line.

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## **Section 2: Specific 401 WQC Application Guidance and Submittal Requirements for Shale Pipeline Projects**

*Please refer to the Application Primer for a list of all requirements:*

<http://epa.ohio.gov/portals/35/401/401ApplicationPrimer.pdf>

1. The entire wetland must be considered when evaluating the ORAM, etc. Many times we get ORAM scoring sheets where the consultant only considered the wetlands within the utility corridor. If site access is a problem, the applicant should notify the Ohio EPA 401 coordinator assigned to the project prior to submitting the application.
2. The applicant must submit specific information for each and every proposed stream and wetland crossing. At a minimum, the following information must be included for each wetland or stream:

- i. Aerial mapping
- ii. NWI mapping
- iii. ORAM and/or HHEI/QHEI scoring sheet(s)
- iv. Photographs

Ohio EPA strongly encourages the applicant to contain all information for each crossing within the same location of the application (i.e., separate each crossing by tab). This allows a much quicker review for the 401 reviewer, which ultimately benefits the applicant as well.

3. There shall be an alternatives analysis for impacts to exceptional warmwater habitat, warmwater habitat, and/or cold-water habitat streams. The alternatives analysis shall consider options other than trenching. The goal is to provide Ohio EPA with the “decision tree” used to determine whether there will be less environmental impact by trenching than by employing a trenchless crossing method (e.g., directional drilling, pounding, etc.). Special care must be used to minimize hydraulic alterations (e.g., grouting). The applicant must submit an approvable plan for maintaining hydraulic continuity of the stream. For situations where horizontal boring is not practicable, Ohio EPA will handle those on a case-by-case situation.

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## **Section 3: Guidance for Compensatory Mitigation for Linear Utility Projects in Wetlands and Streams**

*Please refer to the Mitigation and Monitoring Plan Checklist for all requirements:  
[http://epa.ohio.gov/portals/35/401/mitigation\\_monitoring\\_plan\\_checklist.pdf](http://epa.ohio.gov/portals/35/401/mitigation_monitoring_plan_checklist.pdf)*

### **1. Streams**

- i. Pipes being placed in existing maintained Right-Of-Ways (ROWs):
  - LF of impacts, measured bank-to-bank, multiplied by 1.5:1
  - Credit given at 1:1 for on-site restoration
  - 0.5:1 off-site mitigation remaining
- ii. New pipeline/ROW construction:
  - LF of impacts, measured bank-to-bank, multiplied by 1.5:1
  - Credit given at 0.5:1 for on-site restoration if woody vegetated buffer is disturbed; credit given at 1:1 for on-site restoration if no woody vegetation is disturbed

- 1.5:1 of off-site mitigation remaining
- Depending on the quality of the resource proposed, mitigation may be required at a higher ratio. Ohio EPA will determine this on a case-by-case basis.

## 2. Wetlands

- i. Pipes being placed in existing maintained ROWs:
  - Acreage of impacts multiplied by correct category ratio from OAC rule 3745-1-54 (F) (based on entire wetland, not just what is in the ROW)
  - Credit given at 1:1 for on-site restoration
  - Balance of mitigation acreage off-site pursuant to OAC rule 3745-1-54
  
- ii. New pipeline/ROW construction:
  - Acreage of impacts multiplied by correct category ratio from OAC rule 3745-1-54 (F) (based on entire wetland, not just what is in the ROW)
  - *For PEM wetlands:*
    - Credit given at 1:1 for on-site restoration
    - Balance of mitigation acreage off-site pursuant to OAC rule 3745-1-54
  - *For PSS and PFOR wetlands:*
    - no credit given for restoration (conversion)
    - Entire mitigation acreage pursuant to OAC rule 3745-1-54

## 3. Monitoring On-Site Mitigation

- i. Stream Mitigation:
  - 5-year monitoring period following on-site stream restoration
  - Monitoring reports along with photo documentation must be submitted once pipeline construction has been completed and the stream has been restored
  
- ii. Wetland Mitigation:
  - 5-year monitoring period following on-site wetland restoration
  - Monitoring reports along with photo documentation must be submitted once pipeline construction has been completed and the wetland has been restored

## 4. Monitoring Off-Site Mitigation

- Five (5) year monitoring reports must be submitted for PES wetland and stream off-site mitigation
- Ten (10) year monitoring reports must be submitted for PSS and PFOR wetlands off-site mitigation

### **5. Developing Stream Mitigation Plans**

- Ohio EPA encourages applicants to contact local watershed groups for stream mitigation projects