



State of Ohio Environmental Protection Agency

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ENTERED DIRECTOR'S JOURNAL

July 6, 2007

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 Water Quality Certification
Authorization of discharges of dredged or fill material to various waters of the state
for the following Nationwide Permits as detailed in the March 12, 2007 *Federal Register* (Volume 72, Number 47):

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 Associated Intake Structures
8. Oil and Gas Structures on the Continental Shelf
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. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature] Date: 7-6-07

Nationwide Permits –
State Water Quality Certification

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Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
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. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges into Ditches
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
48. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

To Whom It May Concern:

Pursuant to Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1341; Ohio Revised Code Chapters 119 and 6111; Ohio Administrative Code (OAC) Chapters 3745-1, 3745-32, and 3745-47; and, Corps regional conditions public noticed on October 20, 2006, the director of the Ohio Environmental Protection Agency hereby certifies that the above referenced replacement Nationwide Permits (NWP) 1 - as proposed in the March 12, 2007, *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 state and federal laws and/or local ordinances. Corps of Engineers Civil Works Projects in the State of Ohio are subject to the general and special limitations and conditions of this certification.

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 NWP's 1 - 50 provided the following conditions are satisfied:

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

A. STREAMS

1. Temporary or permanent impacts to streams are limited to 500 linear feet, of which no more than 200 linear feet can be impacts to intermittent or perennial streams [except for NWP's 3, 12, 13, 20, 21, 27, 32, 37, 38, 41, 45 and 47]. Impacts shall be measured linearly from upstream to downstream, including the length of permanent or temporary stream impoundments, when calculating the total length of stream impacts [except for NWP 12, for which impacts shall be measured bank-to-bank];
2. Temporary or permanent impacts to water bodies meeting any of the criteria set forth in a through d below, are prohibited [except for NWP 3, 20, 27, 32, 37, 38, 45, and 47 or maintenance activities covered under NWP 7 and 12]:
 - a. Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation;
 - b. Waters bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Waters or Outstanding High Quality Waters; and,
 - c. General high quality water bodies, such as Killbuck Creek in Coshocton County and Pymatuning Creek in Ashtabula County, which harbor federally listed threatened and/or endangered species.

For an alphabetical listing of the Superior High Quality Waters, go to

http://www.epa.state.oh.us/dsw/rules/antidegHQlist_july03.pdf

3. Stream reconstruction activities shall maintain or enhance the habitat values of the stream as determined by an appropriate habitat assessment method and adhere to "natural channel design" principles. Natural channel design means a technique that integrates knowledge of natural stream processes to create a stable stream that maintains its form and function over time and achieves a targeted habitat or biological endpoint.

4. Stream or buffer improvements and/or mitigative measures required by the Corps shall address the following:

a. In order of priority, these measures shall focus on the following:

- i. the stream segment being impacted;
- ii. upstream segments and tributaries;
- iii. the receiving stream.

The measures should, to the extent practicable, consider the causes and sources of impairment of the stream where the measures would be undertaken if the stream is listed as impaired in the most recent final report submitted to the United States Environmental Protection Agency by the director of Ohio EPA to fulfill the requirements of Section 303(d) of the Clean Water Act. The current list of impaired streams, as of the date of this certification, can be found at on Ohio EPA's web site at:

http://www.epa.state.oh.us/dsw/tmdl/2004IntReport/final_2004IR_a ppB_2.pdf

b. If the applicant cannot find appropriate mitigation on streams listed in Section "a" above, mitigation shall be in the Ohio EPA 8-digit watershed.

c. Vegetative buffers on both stream banks shall be of an appropriate length (at least the length of the impacted stream segment), and, if practicable,

- i. Provide a minimum width of 25 feet for preservation of existing vegetative buffers; or,
- ii. Provide a minimum width of 50 feet for re-vegetating buffers cleared during construction.
- iii. Buffer width is measured from the top of bank or level of bankfull discharge.

d. Vegetated buffers shall be planted, or restored, as soon as practicable after in-stream work is complete and shall extend to the top of both stream banks, or beyond as stipulated by the Corps or Ohio EPA, using native tree and shrub species with rapid growth characteristics,

- e. Impacts to existing vegetative buffers shall be minimized to the maximum extent practicable. Entry to surface waters shall be through a single point of access on each side of the stream whenever practicable to minimize disturbance to buffer vegetation;
- 5. In-stream activities shall not result in the permanent destabilization of the stream banks or stream bed. The stream bed and substrates shall be restored to conditions that existed prior to work.
 - 6. 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 emergency situations that threaten human life or property.
 - 7. Culverts
 - a. For an individual stream, the combined length of an existing culvert and culvert extension shall not exceed 500 linear feet, and the individual culvert extension shall not exceed 200 linear feet if installed on an intermittent or perennial stream, or 500 linear feet if installed on an ephemeral stream.
 - b. For new road construction, 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).
 - c. New Culverts on Low Gradient Streams (<3% slope)
 - i. Culverts shall be installed at the existing streambed slope, not exceeding three percent, to allow for the natural movement of bedload and aquatic organisms.
 - ii. The culvert base or invert for intermittent and perennial streams with bottom substrate shall be installed below the sediment to allow natural channel bottom to develop and to be retained. The channel bottom substrate shall be similar to and contiguous with the immediate upstream and downstream reaches of the stream. 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.
 - iii. For perennial and intermittent streams, culverts with less than three percent grade or not installed on bedrock shall have the

lower 10 percent of all culvert bottoms buried below the existing stream grade. Hydraulic design shall be based upon the remaining open portion of the culvert.

8. Compensatory mitigation for linear projects (e.g., highways) in streams may be mitigated for by the following, in descending order of practicability:
 - a. Stream impacts associated with a linear project may be mitigated on-site, defined as within one mile of the linear project, and within the same 14-digit watershed as shown in OAC 3745-1-54(F)(2); or,
 - b. Stream impacts associated with a linear project may be mitigated at a single stream mitigation location or stream mitigation bank acceptable to the director, within each Ohio EPA 8-digit watershed in which such impacts occur; or,
 - c. If no stream mitigation bank, acceptable to the director, is located within one or more of the Ohio EPA 8-digit watersheds in which the impact occurs, then mitigation may occur in another Ohio EPA 8-digit watershed impacted by the linear project; at a single stream mitigation location, or a stream mitigation bank, acceptable to the director; or,
 - d. If no stream mitigation bank exists within any of the watersheds connected with the linear project, then mitigation should occur within the watershed in which the largest impacts (in terms of area) occur.

B. WETLANDS

1. Temporary or permanent impacts to Category 3 wetlands are prohibited [except for NWP 27].
2. Temporary or permanent impacts to Category 1 and 2 wetlands are limited to a maximum total of one-half acre [except for NWP 20, 21, 27, 32, 37, 38, 45, and 47].
3. Wetland Mitigation
 - a. Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWPs for approved activities.

- b. Wetland mitigation shall adhere to the requirements set forth in Ohio EPA's Wetland Water Quality Standards [OAC Chapter 3745-1].
 - c. When it is determined that use of a mitigation bank is the best option, mitigation shall only be authorized at those mitigation banks having an active instrument signed by the director of Ohio EPA.
4. Discharges or diversions of storm water into wetlands shall not negatively alter the wetland's natural hydrologic regime as required by OAC Rule 3745-1-51 (Wetland Narrative Criteria) and shall meet warmwater habitat chemical criteria as required by OAC Rule 3745-1-52 (Numeric Chemical Criteria for Waste Water Discharges to Wetlands) unless the applicant has obtained alternate criteria from the director.

C. LAKE ERIE

- 1. No nationwide permit may be used to divert water from outside of the Lake Erie drainage basin.
- 2. Temporary or permanent impacts to Lake Erie coastal wetlands, including coastal wetlands located on Lake Erie Islands and Sandusky Bay are prohibited [except for NWP 3 and 27].
- 3. Disposal of Dredge Material from Lake Erie, Lake Erie Islands, and Sandusky Bay.
 - a. Dredged material that is greater than 60 percent sand (0.063 mm grain size), as determined by grain size analysis, shall be disposed of in the littoral drift, downdrift of the project site.
 - b. Dredged material that is less than 60 percent sand and is below the 75th percentile of the surficial background sediment contamination concentrations of the basin proposed for disposal (as identified in "Surficial Sediment Contamination in Lakes Erie and Ontario, (Table 1) 2002, Journal of Great Lakes Research Volume 28(3) pages 437-450 by Christopher H. Marvin et al) may be disposed of in the open lake.
 - c. Sand and gravel suitable for nearshore disposal shall not be entombed by any structure, but should be removed prior to construction, and placed in the littoral system, downdrift of the project site.

D. GENERAL

1. NWP's cannot be combined to increase any of the aforementioned limitations.
2. Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks that do not possess a mitigation banking agreement signed by the director of Ohio EPA is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWP's for approved activities.
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 including general or individual stormwater permits, or Permits to Install (PTIs).
4. In nationwide permits where the district engineer has been granted authority to waive certain requirements, the corresponding limitations and conditions of this certification shall apply unless written authorization from the director of Ohio EPA is obtained to authorize additional impacts.
5. To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, peak rates of runoff from an area after development may be no greater than the peak rates of runoff from the same area before development for all twenty-four-hour storms from one to one-hundred-year frequency.
6. To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, locally required post development stormwater ponds shall incorporate specific design features for water quality such as those listed in Ohio's Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection, 3rd Edition (2006), available at <http://www.dnr.state.oh.us/soilandwater/Rainwater.htm>, to the extent allowed by local stormwater requirements. These features include, but are not limited to, infiltration trenches, extended detention, wet pools, forebays, aquatic benches and vegetated shallows, optimum flow length, reverse flow pipe, optimum pool depth, shading and buffer plants, and runoff reuse.
7. To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, the Best Management Practices (BMPs) listed below shall be utilized with all NWP's

when applicable.

- a. Only suitable material, free of toxic contaminants in other than trace quantities, shall be used as fill material;
 - b. The use of asphalt and rubber tires as fill is prohibited under this permit;
 - c. Upon the cessation of temporary impacts authorized under a NWP, any hydric topsoil removed from a trench shall be separated and saved for later placement as the topmost back fill layer when the trench is refilled;
 - d. The stockpiling of side-cast dredged material in wetlands in excess of three months is not authorized;
 - e. The applicant shall comply with all final stabilization requirements contained in applicable NPDES construction stormwater permits for the site;
 - f. Construction equipment shall not be placed below the Ordinary High Water Mark (OHWM) of any surface water, except when no other alternative is practicable;
 - g. All dredged material placed at an upland site shall be controlled so that sediment runoff to adjacent surface waters is minimized to the maximum extent practicable; and,
 - h. BMPs shall be installed and maintained to minimize sediment runoff to adjacent surface waters.
8. Representatives from Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions of this water quality certification. This includes, but is not limited to, access to and copies of any records any records that must be kept under the conditions of this certification; and, authorization to sample and/or monitor any discharge activity or mitigation site. Ohio EPA will make a reasonable attempt to notify the applicant of its intention to inspect the site in advance of that inspection.

PART 2: NATIONWIDE PERMITS (NWPs) - 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 except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. 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.
2. Maintenance or repair of existing fills (stabilization projects):
 - a. Minor Deviations from the original filled area are authorized provided these minor deviations are necessary to accommodate safety standards and/or new construction practices/methods/techniques and/or new materials available which are necessary for the rehabilitation/replacement/repair; and,
 - b. This nationwide shall not authorize the replacement of existing structures that are open to the flow of water with structures that are not open to the flow of water.
3. 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, 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 replacement 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 an average of 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 replacement vertical bulkheads except in areas where the original shoreline is composed of bedrock and slopes are predominately greater than 75 percent or where the placement of toe stone would interfere with shipping activity. 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.
4. Removal of accumulated sediment:
- a. Removal of accumulated sediment shall occur only once per year, except in cases of emergency situations that threaten life or property.
 - b. Removal of accumulated sediments shall be limited to low-flow conditions whenever practicable, except in cases of emergency situations that 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 except as modified below:

Ohio State Certification Special Limitations and Conditions: 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 except as modified below:

Ohio State Certification Special Limitations and Conditions: 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 Associated Intake Structures):

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

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 and outfall structures from stormwater ponds that do not require an NPDES permit.

Nationwide Permit 8 (Oil and Gas Structures on the Outer Continental Shelf)

Ohio State Certification for this nationwide permit has been denied.

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 except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. Buried utility lines shall be installed at a 90 degree angle to the stream bank to the maximum extent practicable. When a 90 degree angle is not possible, the length of any buried utility line within any single waterbody shall not exceed twice the width of that waterbody at the location of the crossing.
2. The Certification shall not authorize the physical disturbance of more than 500 linear feet of forested wetland soils (containing woody vegetation 6 meters or taller).
3. Buried utility line stream crossings shall not exceed a total of three per stream mile per stream.

4. The total width of any excavation, grading, or mechanized clearing of vegetation and soil shall not exceed 25 feet on either side of a utility line, or a total width of 50 feet on both sides of a utility line.
5. All hydric soils up to 12 inches in depth within wetlands shall be stockpiled and replaced as the topmost backfill layer.
6. This Certification shall not authorize the stockpiling of side cast dredged material in excess of 3 months. Dredged side cast material that will be stockpiled in excess of 45 days shall be stabilized in accordance with the conditions of the Construction General Storm Water Permit.
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 (cumulative for the entire project) of surface waters (wetlands, and ephemeral, intermittent, and perennial streams) or with impacts located in three or more Ohio EPA 8-digit hydrologic units as defined in Ohio Administrative Code 3745-1-54(F) are not authorized.

Nationwide Permit 13 (Bank Stabilization)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. For all bank stabilization projects, including those located on the shorelines of Lake Erie, Lake Erie Islands, or Sandusky Bay, the applicant must demonstrate that there is an erosion problem before the project can be authorized under this NWP.
2. For bank stabilization projects located on the shorelines of Lake Erie, Lake Erie Islands, or Sandusky Bay, the applicant must document that the project is in a known Coastal Erosion Areas established by the Ohio Department of Natural Resources.
3. The following conditions apply to all bank stabilization projects:
 - a. This nationwide permit shall only authorize bank stabilization projects up to 500 feet in length.
 - b. Material used for bank stabilization or fill shall consist of suitable material free from toxic contaminants in other than trace quantities. Suitable material shall consist of rock, stone, vegetative erosion control measures, broken

- concrete (without exposed reinforcing bar) and clean soil.
- c. No material shall be placed in such a manner so as to restrict surface water flow into or out of any tributary.
 - d. Any fill used for bank stabilization shall be limited to that amount necessary to provide erosion protection.
 - e. Vertical bulkheads, if used:
 - i. 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;
 - ii. minor dredging necessary for the installation of the vertical bulkhead is authorized; and,
 - iii. placement of fill between the vertical bulkhead and existing ordinary high water mark is authorized.

Nationwide Permit 14 (linear transportation projects):

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Stream crossings shall not exceed a total of three per stream mile per stream.

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 except as modified below:

Ohio State Certification Special Limitations and Conditions: 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 except as modified below:

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 three 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, Lake Erie Islands, or Sandusky Bay where that is the primary project purpose.

Nationwide Permit 19 (Minor Dredging)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

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 except as modified below:

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 impacts as qualified below, assuming the appropriate functional assessments are performed:

1. Unlimited impacts to Class I PHWH streams and streams with a QHEI score less than 45, and
2. For natural stream reaches, no more than an aggregate total of 1,500 linear feet of impacts to Class II PHWH streams or streams with a QHEI score of 45 - 60.
3. No impacts shall be authorized to streams designated as Warmwater Habitat or having an equivalent or higher designation, as set forth in OAC Chapter 3745-1, or to Class III PHWH streams or streams with a QHEI score greater than 60.
4. Impacts to an additional 1,500 linear feet of Class II PHWH streams or streams with a QHEI score of 45 - 60, impacted by previous mining, may be authorized by this certification.
5. Impacts to any waterways with a slope greater than 2% authorized under this nationwide permit 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. Reclamation of streams with less than 2% slope will be completed using natural channel design techniques.
6. A maximum of 3 acres of total wetland impacts is authorized under this nationwide permit, with:
 - a. No more than 3 acres of impacts to Category 1 wetlands permitted.
 - b. No more than ½ acre of impacts to Category 2 wetlands permitted.
 - c. No impacts to Category 3 wetlands permitted.
 - d. Wetland mitigation shall be provided in accordance with Ohio EPA's wetland water quality standards (OAC Chapter 3745-1).
7. The applicant shall provide to Ohio EPA, the following information:
 - a. Total stream length and wetland acreage impacted
 - b. Qualitative Habitat Evaluation Index (QHEI) or Headwater Habitat Evaluation Index (HHEI), or ORAM as appropriate
 - c. The mining permit map showing all water resources on the site.

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 except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall only authorize activities described in 23 CFR Part 771.117 of the Federal Highway regulations.

Nationwide Permit 24 (Indian Tribe or 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 (Aquatic Habitat Establishment, and Enhancement Activities):

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. 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.
2. Temporary and permanent impacts to Category 3 wetlands are prohibited except as authorized below:
 - a. Impacts resulting from activities listed in Condition 3 of this nationwide permit;
 - b. In accordance with the procedures in Condition 4 of this nationwide permit; and,
 - c. That are proposed for authorization using this nationwide permit in Category 3 Lake Erie coastal and tributary wetlands (i.e., wetlands located at an elevation less than 575 feet on a USGS map, adjacent to this elevation, or along a tributary to Lake Erie that is accessible to fish), and which are Category 3 wetlands for the following reasons:
 - i. The wetland scores less than 60 on the Quantitative Rating of the

Ohio Rapid Assessment Method for Wetlands (ORAM), and are "hydrologically unrestricted" (i.e., they are categorized as Category 3 wetlands using the Narrative Rating of ORAM), but the wetland has been drained, farmed, or degraded and is unvegetated or sparsely vegetated with wetland annuals or is vegetated with one or several of the following species: *Butomus umbellatus*, *Lythrum salicaria*, *Myriophyllum spicatum*, *Najas minor*, *Phalaris arundinacea*, *Phragmites australis*, *Potamogeton crispus*, or *Typha angustifolia*; or

- ii. The wetland is diked and managed ("hydrologically restricted"), scores less than 60 on the Quantitative Rating of ORAM, is categorized as a Category 3 wetland using the Narrative Rating of ORAM because of the presence of state or federally threatened or endangered species, and/or because of the documented presence of significant breeding or non-breeding bird concentration areas, and the proposed activities will not destroy, jeopardize or adversely affect, either directly or indirectly, the continued existence of the threatened or endangered species.

3. Activities in wetlands described in Condition 2 of this nationwide permit, which may be authorized under this nationwide permit, are as follows:

- a. *Tile alteration.* Removing, altering, disabling drain tile or replacing perforated drain tile with non-perforated drain tile.
- b. *De-leveling.* Regrading for the purposes of microtopography to enhance hydrologic diversity, including the creation of shallow scrapes, channels, submerged islands, and interconnected areas of deeper water. Final grade of any excavation, following topsoil replacement if applicable, shall not exceed 60cm (~2 feet). Replacement of the original excavated topsoil is required for all de-leveling activities except when the seed bank is dominated by invasive vegetation. In these cases the area must be seeded by using a seed mix of natural, non-invasive, species appropriate for the hydrological regime present in the area. Excess spoils that are not able to be incorporated into the regrading activities shall be deposited in adjacent non-wetland areas, used in other restoration activities listed in this paragraph, or trucked off-site;
- c. *Ditch plugs and ditch fills.* Ditch plugs and water control structures: Disabling surface drains by filling lengths, provided that the surface drains originate on the property of the project sponsors and have no base flow, or installing water control structures (e.g., riser structures, flap gates, fixed weirs, trickle tubes). Ditch plugs may include an emergency spillway to safely route flows back into the ditch below the plug;

- d. *Earthen embankments.* Earthen fill structures that do not exceed 1.8 m (6 feet) in height with side slopes of 3:1 or greater with less than 50 acre-feet of storage. The embankments may include rock or vegetated overflow structures to pass base-flow as needed;
 - e. *Interior dikes.* Earthen fill structures constructed within the interior of an existing diked and managed wetland for the purpose of improving management of hydrology in the diked wetland in order to facilitate control of invasive plant species, exclude or control invasive animal species, improve habitat features, etc.
4. The Applicant proposing activities listed in Condition 3 under this nationwide permit in wetlands listed in Condition 2 of this nationwide permit shall provide advance written notice and an opportunity to discuss the proposed activities with Ohio EPA prior to initiating any construction activities. Upon written notice from Ohio EPA that the proposed activity or the wetland in which the proposed activity is to occur does not meet the applicability requirements of this paragraph or might otherwise result in a degradation of waters of the state, the Applicant shall submit an individual Section 401 application.

Nationwide Permit 28 (Modifications of Existing Marinas)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Non-floating boat docks shall be constructed in a manner which will minimize obstructions to flow.

Nationwide Permit 29 (Residential Developments)

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 except as modified below:

Ohio State Certification Special Limitations and Conditions: 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 except as modified below:

Ohio State Certification Special Limitations and Conditions:

This nationwide permit shall not authorize any project with greater than three 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.

Nationwide Permit 33 (Temporary Construction, Access and Dewatering)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

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 except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall not authorize boat ramps where dredging is required to establish and maintain 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 except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall only authorize projects that are performed, ordered, or sponsored by state or federal government agency with established legal or regulatory authority.

Nationwide Permit 39 (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 except as modified below:

Ohio State Certification Special Limitations and Conditions: 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 except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. This Certification only authorizes impacts to existing maintained and channelized ephemeral water conveyances.
2. Reshaping of existing 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 except as modified below:

Ohio State Certification Special Limitations and Conditions: 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 except as modified below:

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

Nationwide Permit 44 (Mining Activities)

Ohio State Certification for this nationwide permit has been denied.

Nationwide Permit 45 (Repair of Uplands Damaged by Discrete Events):

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

Nationwide Permit 46 (Discharges into Ditches):

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

Nationwide Permit 47 (Pipeline Safety Program Designated Time Sensitive Inspections and Repairs):

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Time sensitive pipeline repairs, pursuant to 49 CFR 192 and 195, which require applicant remediation within 180 days of the discovery of the condition, and which meet the criteria of this NWP shall be exempt from General Limitation Conditions A.2. and B.1. to the extent that those impacts are essential to maintaining the integrity of the pipeline.

Nationwide Permit 48 (Existing Commercial Shellfish Aquaculture Activities):
Ohio State Certification for this nationwide permit has been denied.

Nationwide Permit 49 (Coal Remining Activities):

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Water quality certification is provided for stream, wetland, and open water impacts to the following thresholds for surface coal 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 is limited only to those areas that have been previously mined or directly impacted by areas previously mined.

1. Using the appropriate functional assessment method as determined by Ohio EPA, this certification authorizes:
 - a. Unlimited impacts to Class I PHWH streams and streams with a QHEI score less than 45, and
 - b. No more than an aggregate total of 2,000 linear feet of impacts to Class II PHWH streams or streams with a QHEI score of 45 - 60.
 - c. No impacts shall be authorized by this certification to Class III PHWH streams or streams with a QHEI score greater than 60.
2. Using Ohio EPA's Ohio Rapid Assessment Method (ORAM), this certification authorizes:
 - a. No more than 6 acres of impact to Category 1 wetlands;
 - b. No more than 1 acre of impact to Category 2 wetlands; and
 - c. No impact to Category 3 wetlands.
3. This certification authorizes unlimited impacts to jurisdictional open waters resulting from previous mining.
4. This certification authorizes unlimited stream impacts on streams that meet at least two of the following conditions:

- a. pH less than 6.0 standard units
- b. Iron greater than 6.0 mg/l daily
- c. Manganese greater than 4.0 mg/l daily

These conditions must be measured during each of the low, intermediate and high seasonal variation background sampling at the downstream sampling point. Please refer to DMRM Policy and Procedure Directive Permitting and Hydrology 2000-5. Background sampling shall be obtained from a maximum three years prior to the date of submittal.

5. This certification authorizes unlimited stream impacts associated with activities that satisfy the requirements of Ohio Administrative Code section 1501:13-4-15 for pollution abatement and have an approved pollution abatement plan for coal mining operation.

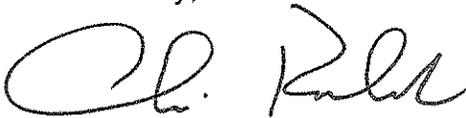
Nationwide Permit 50 (Underground Coal Mining Activities):

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

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215

Sincerely,



Chris Korleski
Director

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
Kevin Pierard, U.S. EPA, Region V
Mary Knapp, U.S. Fish & Wildlife Service
Vicki Deisner, ODNR, Office of Real Estate & Land Management
George Elmaraghy, Ohio EPA, DSW