



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

OHIO E.P.A.

JUN 27 2014

REGISTERED DIRECTOR'S JOURNAL

## Certified Mail

June 27, 2014

Jerry Wray, Director  
Ohio Department of Transportation  
Office of Environmental Services  
Mailstop #4170, 3<sup>rd</sup> Floor  
1980 West Broad St  
Columbus, OH 43223

**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: Jona K. Clements Date: June 27, 2014

Attn: Tim Hill, Administrator

Re: Montgomery County / Butler Township / City of Englewood  
Grant of Section 401 Water Quality Certification; Minimal Degradation Alternative  
MOT-70-10.79 PID 76667  
USACE Permit No. 2012-00035-GMR-Stillwater River  
Ohio EPA ID No. 134313

Dear Stakeholders:

I hereby authorize the above referenced project under the following authorities and it is subject to the following modifications and/or conditions:

### Section 401 Water Quality Certification

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, I hereby certify that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

This authorization is specifically limited to a Section 401 Water Quality Certification (here after referred to as "permit") with respect to water pollution and does not relieve the applicant of further Certifications or Permits as may be necessary under the law. I have determined that a lowering of water quality in the Upper Great Miami River Watershed (HUC 05080001) as authorized by this permit is necessary. I have made this determination based upon the consideration of all public comments, if submitted, and the technical, social, and economic considerations concerning this application and its impact on waters of the state.

## **PART I ON-SITE WATER RESOURCES AND IMPACTS**

### A. Watershed Setting

The watershed in which this project is located, Town of Irvington-Stillwater River (HUC 05080001-14-06), has an area of 26.2 square miles of which 67.3 percent is developed, 17.5 percent is forest, 8.4 percent is grass/pasture, 6.0 percent is row crop agriculture, and 0.8 percent is other. The Stillwater River is an exceptional warmwater habitat (EWH) stream and primary contact recreation class A water with an antidegradation category of superior high quality water.

**B. Project Description**

The proposed project will re-construct and widen approximately four miles of I-70 and improve the I-70/SR 48 interchange. Construction activities will include major rehabilitation of several bridges within the project area, including the bridges that carry I-70 over the Stillwater River.

**C. Impacts**

Under the Minimal Degradation Alternative, impacts to waters of the state are as follows:

**1. Streams**

The Stillwater River will be impacted by the placement of fill for the construction of two temporary in-stream work pads. The pads will be constructed in two phases in order to reduce the duration and volume of temporary fill. Phase 1 will include the placement of 3,115 cubic yards of clean, non-erodible granular material on the west side of the river. Phase 2 will include the placement of 584 cubic yards of clean, non-erodible granular material on the east side of the river. The Stillwater River will also be impacted by the placement of 85 cubic yards of permanent concrete fill for pier expansion.

| Stream ID        | Designated Use | Type* E, I, or P | Impact Type                           | Total Length on Site (LF) | Total Length Impacted (LF) | Percent Avoided |
|------------------|----------------|------------------|---------------------------------------|---------------------------|----------------------------|-----------------|
| Stillwater River | EWH            | P                | Temporary Access Fill, Pier Expansion | 220                       | 220                        | 0.0%            |
| <b>Totals</b>    |                |                  |                                       | <b>220</b>                | <b>220</b>                 | <b>0.0%</b>     |

\* As provided by applicant

2. Jurisdictional Ditches  
 Impacts to ditches are not authorized under this permit.

3. Wetlands

Wetlands 1, 2, and 3 will be temporarily impacted by the placement of fill for phase 1 of the temporary in-stream work pad. Wetland 3 will also be permanently impacted by the placement of concrete for pier expansion. Wetlands 4, 5, and 6 will be temporarily impacted by the placement of fill for phase 2 of the temporary in-stream work pad. Wetland 5 will also be permanently impacted by the placement of concrete for pier expansion.

| Wetland ID    | Isolated or Non-isolated | Forested or Non-forested | Category | Total Acreage on Site | Total Acreage Impacted | Percent Avoided |
|---------------|--------------------------|--------------------------|----------|-----------------------|------------------------|-----------------|
| 1             | Non-isolated             | Non-forested             | 2        | 0.04                  | 0.02                   | 46.8%           |
| 2             | Non-isolated             | Non-forested             | 2        | 0.01                  | 0.01                   | 0.0%            |
| 3             | Non-isolated             | Non-forested             | 2        | 0.02                  | 0.01                   | 28.0%           |
| 4             | Non-isolated             | Non-forested             | 2        | 0.05                  | 0.01                   | 70.2%           |
| 5             | Non-isolated             | Non-forested             | 2        | 0.01                  | 0.01                   | 0.0%            |
| 6             | Non-isolated             | Non-forested             | 2        | 0.01                  | 0.01                   | 0.0%            |
| <b>Totals</b> |                          |                          |          | <b>0.13</b>           | <b>0.07</b>            | <b>44.6%</b>    |

4. Lakes  
 Impacts to lakes are not authorized under this permit.

**PART II TERMS & CONDITIONS**

- A. Terms and conditions outlined in this section apply to project and mitigation construction as described in this permit.
- B. This permit is valid until it is modified, reissued or revoked. All of the NWP's and the state certification to the NWP's are scheduled to be modified, reissued or revoked prior to March 18, 2017. If you commence or are under contract to commence this project before the date that the relevant NWP to which this certification applies is modified or revoked, you will have twelve months from the date of the modification or revocation

of the NWP to complete the activity under the present terms and conditions of this permit.

- C. The Permittee shall notify Ohio EPA, in writing, and in accordance with *Part IV (NOTIFICATIONS TO OHIO EPA)* of this permit, upon the start and completion of site development and mitigation construction.
- D. A copy of this permit shall remain on-site for the duration of the project and mitigation construction activities.
- E. 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/IWP Manager (614-644-2872).
- F. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401/IWP Manager (614-644-2872), for further evaluation.
- G. This project may affect the drinking water supply wells for the city of Englewood and the Second Covenant Apostolic Church. Precautions must be taken to limit any effect on the water supply. Officials at the City of Englewood and Second Covenant Apostolic Church should be notified before beginning the project and activities shall be coordinated with them.
- H. Pesticide application(s) for the control of plants and animals shall be applied in accordance with rule 3745-1-01 of the Ohio Administrative Code, and may require a site specific application permit from Ohio EPA. Such a permit may be obtained by calling 614-644-2001 and speaking with the Toxicology Specialist.
- I. Blasting shall not be done within or near waters of the state (including wetlands) without prior consultation with the Ohio Department of Natural Resources, Division of Wildlife, to determine what protective measures should be taken to minimize damage to wildlife.
- J. 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.
- K. In the event that there is a conflict between the permit application, including the mitigation plan, and the conditions within this permit, the condition shall prevail unless Ohio EPA agrees, in writing, that the permit application or other provision prevails.

- L. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office as follows:

Ohio Environmental Protection Agency  
Southwest District Office  
401 East Fifth Street  
Dayton, Ohio 45402  
937-285-6357

**Additional information regarding environmental permitting assistance at Ohio EPA can be found at [http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](http://www.epa.ohio.gov/dir/permit_assistance.aspx)**

M. Best Management Practices (BMPs)

1. All water resources and their buffers, 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.
2. All BMPs for storm water management shall be designed and implemented in accordance with the most current edition of the Ohio Department of Natural Resources Rainwater and Land Development Manual, unless otherwise required by the National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with construction activities (construction general permit), if required.

A copy of the Rainwater and Land Development Manual is available at:  
<http://soilwater.ohiodnr.gov/water-conservation/stormwater-management>

A copy of the NPDES construction general permit is available at:  
[http://www.epa.ohio.gov/dsw/storm/construction\\_index.aspx#Construction%20General%20Permit](http://www.epa.ohio.gov/dsw/storm/construction_index.aspx#Construction%20General%20Permit)

3. Straw bales shall not be used as a form of erosion/sediment control.
4. Temporary fill shall consist of suitable non-erodible material and shall be stabilized to prevent erosion.
5. Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as fill or bank protection.

6. Concrete rubble used for fill or bank stabilization shall be in accordance with ODOT specifications; free of exposed re-bar; and, free of all debris, soil and fines.
7. Chemically treated lumber which may include, but is not limited to, cadmium chromium arsenate (CCA) and creosote treated lumber shall not be used in structures that come into contact with waters of the state.
8. Trees removed from temporary impact areas to facilitate construction shall be replaced with appropriate tree species native to Ohio.
9. Culverts
  - a. Stream culverts shall be installed and designed at the streambed slope to allow for the natural movement of aquatic organisms and bedload to form a stable bed inside the culvert.
  - b. The culvert base or invert with the substrate shall be installed below the sediment to allow natural channel bottom to develop and to be retained.
  - c. 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.
  - 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.

N. Wildlife Protection

1. No in-water work shall take place during the environmental window from April 15 through June 30, unless specifically approved by the Ohio Department of Natural Resources, Division of Wildlife, in writing, with a copy provided to Ohio EPA prior to undertaking any in-water work during the environmental window.
2. All in-stream work shall be conducted during the low flow period from August 1 through October 31, unless specifically approved by the Ohio Department of Natural Resources, Division of Watercraft Scenic Rivers, in writing, with a copy provided to Ohio EPA prior to undertaking any in-water work outside of the low flow period.

3. A pre-construction mussel relocation shall be performed by a malacologist with a federal permit from the USFWS in coordination with the Ohio Department of Natural Resources, Division of Wildlife.

### **PART III MITIGATION**

#### **A. Description of Required Mitigation**

As mitigation for 220 linear feet of impacts to the Stillwater River, 440 linear feet of stream preservation credits shall be deducted from the Great Miami River/Lost Creek Pooled Mitigation Area located in Miami County. As mitigation for 0.074 acres of impacts to six wetlands, 0.15 acres shall be deducted from the Green Heron Wetland Pooled Mitigation Area located in Butler County. Both mitigation areas are located in the Lower Great Miami River Watershed (HUC 05080002).

#### **B. Timing of Mitigation Requirements**

1. The necessary compensatory mitigation shall be demonstrated prior to the impacts.
2. The permittee shall provide Ohio EPA updated balance sheets showing the deduction of 440 linear feet of stream mitigation credits from the Great Miami River/Lost Creek Pooled Mitigation Area and 0.074 acres of wetland mitigation credits from the Green Heron Wetland Pooled Mitigation Area.

#### **C. Protection in Perpetuity**

1. For the above described Great Miami River/Lost Creek Pooled Mitigation Area and Green Heron Wetland Pooled Mitigation Area, the Permittee has submitted proof of ownership of the mitigation area and copies of the conservation easements.

### **PART IV NOTIFICATIONS TO OHIO EPA**

All notifications, correspondence, and reports regarding this permit shall reference the following information:

|                  |   |
|------------------|---|
| Permittee Name:  | Jerry Wray, Ohio Department of Transportation |
| Project Name:    | MOT-70-10.78 PID 76667                        |
| Ohio EPA ID No.: | 134313  |

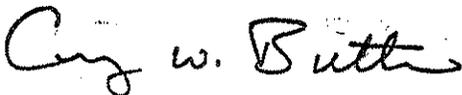
and shall be sent to:

Ohio Environmental Protection Agency  
Division of Surface Water, 401/IWP Unit  
Lazarus Government Center  
50 West Town Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049

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, made payable to "Ohio Treasurer Josh Mandel," 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  
77 South High Street, 17th Floor  
Columbus, Ohio 43215

Sincerely,



Craig W. Butler  
Director

cc: Brett Latta, Columbus Transportation Office, USACE Huntington  
Peter Swenson, U.S. EPA, Region 5  
Mary Knapp, U.S. Fish & Wildlife Service  
Brian Mitch, ODNR, Office of Real Estate  
Dave Snyder, Ohio Historical Preservation Office

Joni Lung, Ohio EPA, DSW, Section 401/IWP  
Jeff DeShon, Ohio EPA, DSW, EAS  
Joshua Jackson, Ohio EPA, SWDO  
Adrienne Earley, Supervisor, Waterway Permits Section, OES/ODOT  
Tara Tarlton, Coordinator, Waterway Permits Section, OES/ODOT

Attachments:            Site Location Map (project)  
                              Response to Comments

Ohio EPA has developed a customer service survey to get feedback from regulated entities that have contacted Ohio EPA for regulatory assistance, or worked with the Agency to obtain a permit, license or other authorization. Ohio EPA's goal is to provide our customers with the best possible customer service, and your feedback is important to us in meeting this goal.

Please take a few minutes to complete this survey and share your experience with us at <http://www.surveymonkey.com/s/ohioepacustomersurvey>.



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