



State of Ohio Environmental Protection Agency

Isolated Wetland Permitting in Ohio State Fiscal Year 2002



Prepared by:
Division of Surface Water
401/Wetland Section

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Ohio Environmental Protection Agency
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This report describes isolated wetland impacts and resulting mitigation for projects acted upon by Ohio EPA during the period beginning on July 17, 2001 (the date the Isolated Wetland Permit Program was created) and ending June 30, 2002 (end of the state fiscal year). This report is intended to satisfy the reporting requirements specified in Ohio Revised Code Section 6111.025 (C).

Program Background

The Ohio EPA Isolated Wetland Permitting program was created as a result of a United States Supreme Court Decision in the case of Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers (Corps) 531 U.S. 159 (January 9, 2001). In its decision, the U.S. Supreme Court ruled that the Corps did not have authority to regulate isolated wetlands under Section 404 of the Clean Water Act. Prior to that ruling the Corps regulated activities in all streams and wetlands through the issuance of 404 Permits.

Section 401 of the Clean Water Act requires applicants to obtain a 401 Water Quality Certification from the state in question, in order to obtain a 404 Permit. As a result of the January 9, 2001 decision, activities in isolated wetlands could not be permitted in the State of Ohio because there would be no 404 Permit to trigger a 401 Water Quality Certification and because there was no independent state permitting program to take its place. Emergency rules adopted in April 2001 established a state permitting mechanism, but these rules were effective for only ninety days.

On July 17, 2001, House Bill 231 was signed into law by Governor Bob Taft. The bill establishes a permanent permitting process for isolated wetlands. The provisions of this bill were incorporated in Ohio Revised Code Chapter 6111, more specifically, Sections 6111.021 through 6111.029.

Program Description

Reviewers in the 401 Certification Unit are responsible for both the 401 Water Quality Certifications that are required by the Clean Water Act and the Isolated Wetland Permits that are required by State law. The creation of the Isolated Wetland Permitting system did

not substantially alter the staffing needs of the Agency to implement both programs because the isolated wetlands had been regulated under the 401 Certification program prior to January 9, 2001. A slight increase in resource needs was experienced since a number of applications required both a 401 Certification and an Isolated Wetland Permit.

Program Staffing

During state fiscal year 2002, the Division of Surface Water 401 Certification Unit was intended to be staffed with seven full time equivalents (FTEs). The classification of the seven positions contained in the table of organization was Environmental Specialist 2. The positions included five general project reviewers and two reviewers funded by the Ohio Department of Transportation (ODOT), whose duties were limited to ODOT highway projects.

Current staff in the Division of Surface Water 401 Certification Unit includes three general project reviewers and one reviewer funded by ODOT. There are currently three reviewer vacancies in the unit that have not been filled. With only four FTEs available to conduct reviews, work efforts within the program are being hampered and review times for projects are increasing.

Program Fees

Fees for 401 Water Quality Certifications are established in Ohio Administrative Code Section 3745-45-02. Fees range from a minimum of \$15.00 to a maximum of \$200.00 per 401 Certification. Some of the fees are fixed amounts based on the type of project while others are on a sliding scale based on the magnitude of the potential impact.

Fees for the Isolated Wetland Permitting program are contained in Ohio Revised Code Section 3745.113. These fees include an application fee of \$200.00 per application as well as a review fee of \$500.00 per acre of wetland impacted. The maximum review fee allowed by the code is \$5,000.00 per application. If the application is for activities that have previously taken place without first obtaining an Isolated Wetland Permit, the review fee is doubled, up to \$10,000.00.

Program Budget

Funds for issuing 401 Water Quality Certifications and Isolated Wetland Permits in SFY 2002 came from a number of different sources. They include:

SOURCE OF FUNDING	AMOUNT	% of Total
ODOT	\$131,637.00	14%
U.S. EPA Grant (106 funds)	\$67,503.00	7%
Isolated Wetland Permit Fees	\$32,086.00	3%
401 Certification Fees	\$4,035.00	<1%
Enforcement Action Reimbursement	\$136,825.00	15%
General Revenue Fund	\$564,992.00	60%
TOTAL	\$937,078.00	100%

It is very important to note that the costs in the above table include all of the costs involved in the wetland permitting processes. In addition to the program staff discussed in a previous section, the 401/Wetland Section also includes two management positions. Other program costs included in this analysis of the total program budget include legal support, enforcement staff support, administrative staff support, and data management support.

This analysis highlights the fact that current permitting fees cover only a small portion of the costs associated with this program.

Applicants and Stakeholders

Applicants seeking 401 certifications and/or isolated wetland permits from Ohio EPA include, but are not limited to: residential, commercial, and industrial developers; mining companies; county, state and federal agencies; utility companies; marina owners; and individual citizens. Stakeholders include the above applicants, as well as local, statewide and national citizen groups and environmental organizations.

Illegal Fills

The program received thirty-eight illegal fill complaints during SFY 02. However, due to staffing levels, budget constraints and statutory review time requirements, the program was unable to follow up on the majority of these complaints. A limited number of complaints regarding isolated wetlands were investigated. However, no jurisdictional wetland complaints were investigated, and instead were passed on to the appropriate Corps district for follow-up.

Summary of Outputs

Data requirements: The data required for this report consists of the total acreage for all isolated wetlands subject to filling, as well as the total acreage of mitigation provided (restored, created enhanced or preserved) to offset those impacts as of 6/30/02.

	Number permits issued	acres of isolated wetlands filled	acres of mitigation provided
General Permits	31	7.51	21.98
Individual Permits	8	19.85	43.02
Total	39	27.36	65.00

The attached table lists each project acted upon with columns indicating the corresponding applicant name, project name, permit type (general or individual), date received, date application was deemed complete, date action was taken, acres filled and acres mitigated.

Isolated Wetland Permits Issued Between July 17, 2001 and June 30, 2002.

Applicant	Permit Type	Application		Action Taken	Processing Time (days)	Acres	
		Received	Completed			Impacted	Mitigated
American Landmark Ltd.	General	08/24/01	08/24/01	08/24/01	0	0.26	0.8
Rural Lorain Co. Water Authority	General	08/09/01	08/09/01	08/30/01	21	0.14	0.14
MBNA	General	09/12/01	09/13/01	09/13/01	0	0.41	1.0
Akron General Health Systems	General	09/24/01	09/24/01	10/19/01	25	0.23	0.5
Fed Two Inc.	General	09/06/01	10/12/01	10/24/01	12	0.01	0.1
Quail Developers	General	09/25/01	11/09/01	11/09/01	0	0.22	0.5
Olmsted Technology	General	08/14/01	08/27/01	12/10/01	95	0.33	0.8
Rockford Homes	General	12/10/01	12/24/01	12/24/01	0	0.45	1.2
JDL Castle Corp Development	General	11/21/01	12/12/01	01/12/02	31	0.02	0.03
Parks, Robert	General	12/20/01	01/03/02	01/29/02	26	0.41	0.9
Pulte Homes of Ohio	General	01/28/02	02/01/02	02/01/02	0	0.1	0.23
Bucyrus Counseling Center	General	09/14/01	10/04/01	02/11/02	130	0.06	0.1
Corp. Land Development, Inc.	General	09/14/01	10/17/01	02/11/02	117	0.49	2.1
Cleveland Port Authority	General	08/31/01	08/31/01	02/13/02	166	0.56	1.1
Hyland Software, Inc.	General	07/16/01	09/21/01	02/20/02	152	0.32	1.6

Applicant	Permit Type	Application		Action Taken	Processing Time (days)	Acres	
		Received	Completed			Impacted	Mitigated
Beaver Valley Estates Corp.	General	01/28/02	02/21/02	03/21/02	28	0.41	0.86
Home Designs, Inc.	General	02/21/02	02/21/02	03/25/02	32	0.02	0.1
Burlington Group, Inc.	General	03/06/02	03/06/02	03/25/02	19	0.41	1.0
Landsong Limited	General	03/08/02	03/26/02	03/26/02	0	0.26	0.7
Millstream Development Co.	General	05/25/01	07/20/01	04/22/02	276	0.09	0.9
Laughlin & Scanlan Construction	General	04/01/02	04/01/02	04/22/02	21	0.03	1.87
King James Group	General	02/11/02	03/07/02	04/30/02	54	0.3	0.6
W.A.E. Corporation	General	09/06/01	04/22/02	05/02/02	10	0.05	0.12
Marietta Coal Company	General	03/12/02	04/15/02	05/15/02	30	0.15	0.3
Chandlers, Inc.	General	05/08/02	05/20/02	06/07/02	18	0.23	0.6
Noce Development, LLC	General	02/01/02	02/26/02	06/13/02	107	0.32	0.7
Kent, City of	General	02/11/02	05/14/02	06/14/02	31	0.17	0.75
Berea, City of	General	04/19/02	04/19/02	06/17/02	59	0.52	1.0
Cincinnati Specialty Center, LLC	General	05/01/02	05/01/02	06/17/02	47	0.06	0.2
Quail Hollow Development, Inc.	General	04/09/02	04/09/02	06/18/02	70	0.44	1.1
Pride One	General	03/14/02	05/13/02	06/18/02	36	0.04	0.08
Six Flags Amusement Park	Individual	03/09/00	11/08/00	08/15/01	280	2.02	2.98

Applicant	Permit Type	Application		Action Taken	Processing Time (days)	Acres	
		Received	Completed			Impacted	Mitigated
Forest City Land Group	Individual	07/27/00	05/26/01	08/23/01	89	6.11	17.46
Crossman Communities	Individual	10/05/01	10/26/01	12/05/01	40	1.58	2.1
Currie Hall Development Co	Individual	08/01/01	09/24/01	12/11/01	78	0.91	1.9
Wallick Companies	Individual	08/24/01	10/05/01	12/11/01	67	2.49	5.0
Humility of Mary Health Partners	Individual	08/28/01	09/12/01	03/07/02	176	1.14	2.28
Autumn Woods L.P.	Individual	09/12/01	12/10/01	04/30/02	141	1.81	3.7
Shorewest Construction Co	Individual	01/29/02	02/01/02	05/29/02	117	3.79	7.6