



State of Ohio Environmental Protection Agency

Isolated Wetland Permits and 401 Water Quality Certifications in Ohio

State Fiscal Year 2003



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 permitting and 401 water quality certification activities and resulting mitigation for projects acted upon by Ohio EPA during the period beginning on July 1, 2002 and ending June 30, 2003 (end of the State Fiscal Year). This report is intended to satisfy the reporting requirements specified in Ohio Revised Code (ORC) 6111.025(C), which applies to the isolated wetlands only. In order to provide a more complete picture of the impacts generated by permitting activities in the state, information regarding 401 water quality certifications, that address impacts to non-isolated wetlands, streams and lakes, has been included.

Program Background

The Ohio EPA isolated wetland permitting program was legislatively created in response to a U.S. 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 (CWA). Prior to that ruling, the Corps regulated activities in all streams and wetlands through the issuance of 404 permits.

Section 401 of the CWA requires applicants to obtain a 401 water quality certification from the State having jurisdiction over the water body in order to obtain a 404 permit. As a result of the SWANCC 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; however, these rules were effective for only 90 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 ORC 6111, more specifically, Sections 6111.021 through 6111.029.

The Corps retained all of its original authority to issue 404 permits for wetlands that are not considered isolated (jurisdictional wetlands), as well as other waters of the U.S.

Program Description

Reviewers in the 401 Water Quality Certification Section are responsible for the 401 water quality certifications that are required by the CWA and for 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 isolated wetlands had been regulated under the 401 water quality 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 (SFY) 2003, the Division of Surface Water's 401 Water Quality Certification Section table of organization contained six full time equivalents (FTEs), classified as Environmental Specialists 2. The positions included five general 401 project reviewers and one reviewer funded by the Ohio Department of Transportation (ODOT) whose duties were limited to ODOT highway projects. This staffing level represents a decline in one FTE from the previous SFY since, in SFY 2002, ODOT elected to fund a single position in SFY 2003 as opposed to the two positions anticipated. Currently, all staff positions in the 401 Water Quality Certification Section are filled.

Program Fees

Fees for 401 water quality certifications are established in Ohio Administrative Code (OAC) 3745-45-02. Fees range from a minimum of \$15 to a maximum of \$200 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 ORC 3745.113. These fees include an application fee of \$200 per application as well as a review fee of \$500 per acre of wetland impacted. The maximum review fee allowed by the code is \$5,000 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).

Program Budget

Funds for issuing 401 water quality certifications and isolated wetland permits in SFY 2003 came from a number of different sources. They include:

SOURCE OF FUNDING	AMOUNT	% of Total
401 Certification Fees	\$3,502.00	0.4%
Isolated Wetland Permit Fees	\$25,166.00	3.1%
Civil Penalties & Reimbursement	\$33,723.00	4.2%
ODOT	\$70,066.00	8.6%
U.S. EPA Grant (106 funds)	\$110,317.00	13.6%
General Revenue Fund	\$568,037.00	70.1%
TOTAL	\$810,811.00	100%

This expenditure level represents a 13+% reduction than that observed in SFY 2002 (\$937,078). This reduction is due primarily to the loss of one ODOT-funded position and two staff positions that were vacant for part of the fiscal year.

Please note that the costs in the above table include all of the costs involved in the isolated wetland permit and 401 water quality certification processes. In addition to the program staff discussed in a previous section, the 401 Water Quality Certification Section was, until recently, combined with the Wetlands Ecology Section (formerly known as the 401/Wetlands Section), and includes two management positions. Other ancillary program costs included in this analysis of the total program budget include support from legal staff, enforcement staff, administrative staff and data management staff.

This analysis highlights that current permitting fees continue to cover only a small portion of the cost 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 40 illegal fill complaints during SFY 2003, two more complaints than it received in SFY 2002. Staffing levels, budget constraints and statutory review time requirements make it difficult for the program to follow-up on the majority of these complaints in a timely manner. Complaints regarding isolated wetlands are given top priority for investigation since these wetlands are regulated only through State statute. Jurisdictional wetland complaints are investigated by Ohio EPA staff only as circumstances dictate, and are most often referred to the appropriate Corps district for follow-up.

Summary of Outputs

Isolated Wetland Permits

	Number permits issued	Acres of isolated wetlands filled	Acres of mitigation provided
General Permits	34	7.57	16.53
Individual Permits	15	21.93	149.98
Total	49	29.5	166.5

The information presented above shows a significant amount of mitigation over what is required by statute. This is due, in large part, to one applicant agreeing to preserve a large parcel of wetlands located on the development site.

Figure 1 contains a map of Ohio showing the spacial distribution of the isolated wetland permits issued during SFY 2003. Due to the map scale, multiple projects may show as a single marker on the map.

Table A lists each project acted upon with columns indicating the corresponding applicant name, date action was taken, acres filled, acres mitigated, permit type (general or individual), and the number of days to process each application.

401 Water Quality Certifications

401s issued	Acres of Jurisdictional Wetlands		Stream Impacts (linear feet)	Lake Fills (cubic yards)
	filled	mitigation		
104	44.21	157.8	95,931	1,167,480

Figure 2 contains a map of Ohio showing the spacial distribution of the 401 Water Quality Certifications issued during SFY 2003. Due to the map scale, multiple projects may show as a single marker on the map.

401 water quality certifications can be issued to address impacts to streams and lakes as well as those jurisdictional wetlands that fall under the authority of the CWA.

Table B lists each project with wetland impacts and includes columns indicating the corresponding applicant name, date action was taken, acres filled, acres mitigated, and the number of days required to process each application.

Table C lists each project with stream impacts and includes columns indicating the corresponding applicant name, date action was taken, linear feet of stream impacts certified, and the number of days required to process each application.

Table D lists each project with lake impacts and includes columns indicating the corresponding applicant name, date action was taken, cubic yards of dredge materials allowed under the certification, and the number of days required to process each application.

In reviewing the information contained in the tables, please note the following:

1. Tables B, C and D provide lists of individual certifications issued by Ohio EPA. The tables do not include impacts authorized under Ohio EPA's certification of the Corps' Nationwide Permits (NWP), issued on May 22, 2002.

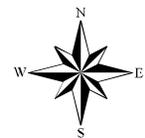
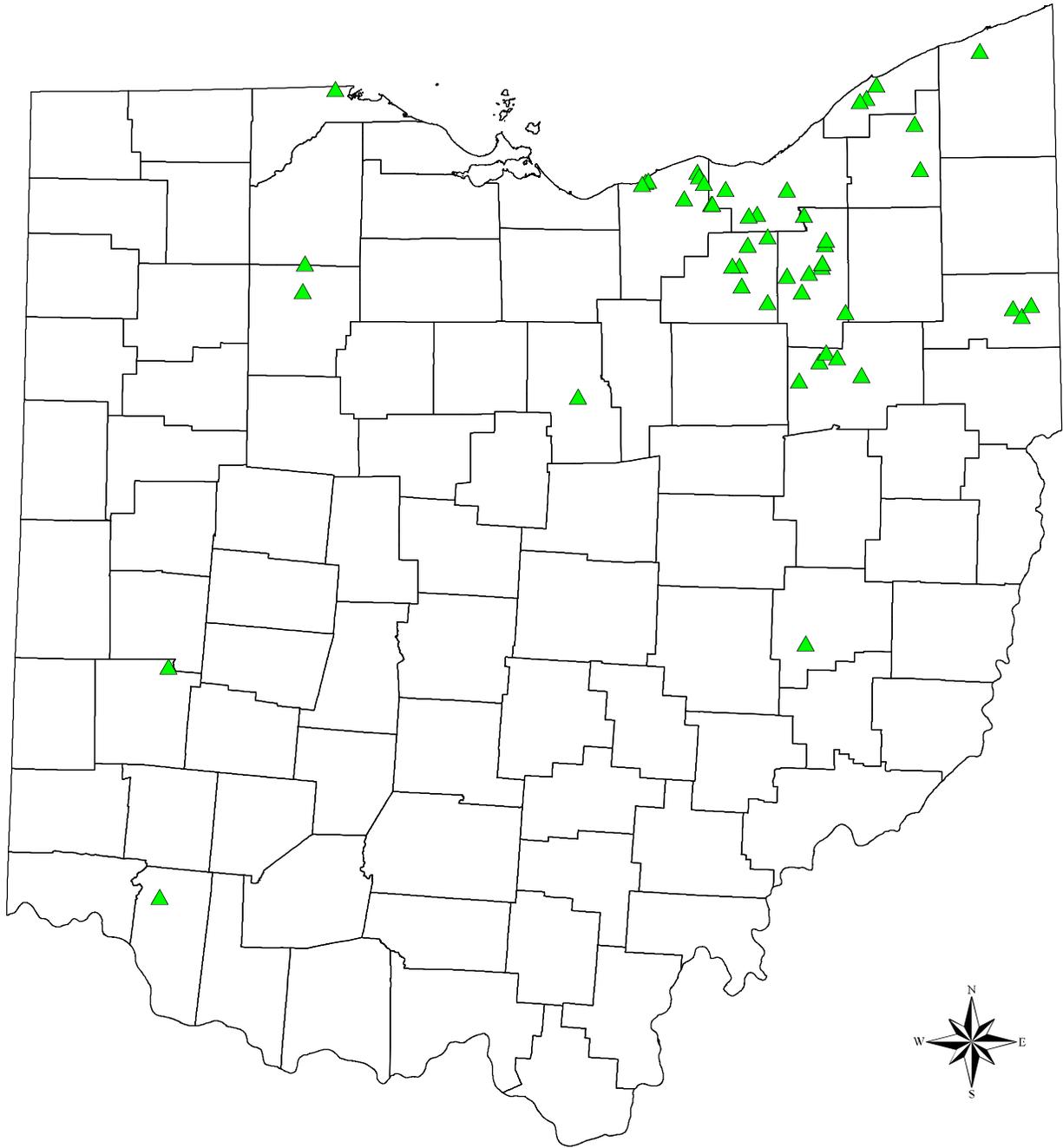
The NWP's issued by the Corps address 43 types of activities that range from boat ramp construction to surface coal mining activities. Ohio EPA certified, with conditions, 40 of those activities. Ohio EPA requires individual certification on all hydropower projects (NWP 17). NWP 24 is not applicable in Ohio since it addresses State-administered 404 programs. The Corps has revoked NWP 44 (non-coal mining activities) for use in Ohio. Since the NWP program is administered by the Corps, Ohio EPA does not have a complete record of the impacts and mitigation authorized under these permits.

2. Adding the projects listed in Tables A, B, C and D will over-estimate the number of actions taken by Ohio EPA, since a single application may have impacts in more than one type of waterbody. For example, all but three of the projects with wetland impacts also had impacts in either streams or lakes. The tables were generated to show the various types of impacts certified by Ohio EPA.
3. Tables C and D do not contain a summary of mitigation resulting from the certifications issued. Current tracking of stream and lake mitigation does not allow electronic manipulation of that data. Rules to address stream mitigation requirements and to provide more structure to that aspect of 401 water quality certification program are under development to be proposed this fiscal year.

Questions regarding this report should be directed to Randy Bournique, Manager of the 401 Water Quality Certification Section, at (614) 644-2013 or via e-mail at randy.bournique@epa.state.oh.us.

FIGURE 1

Isolated Wetland Permits Issued in State Fiscal Year 2003



- County Boundaries
- Isolated Wetland Permits



TABLE A

**Isolated Wetland Permits
Issued Between July 1, 2002 and June 30, 2003**

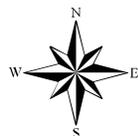
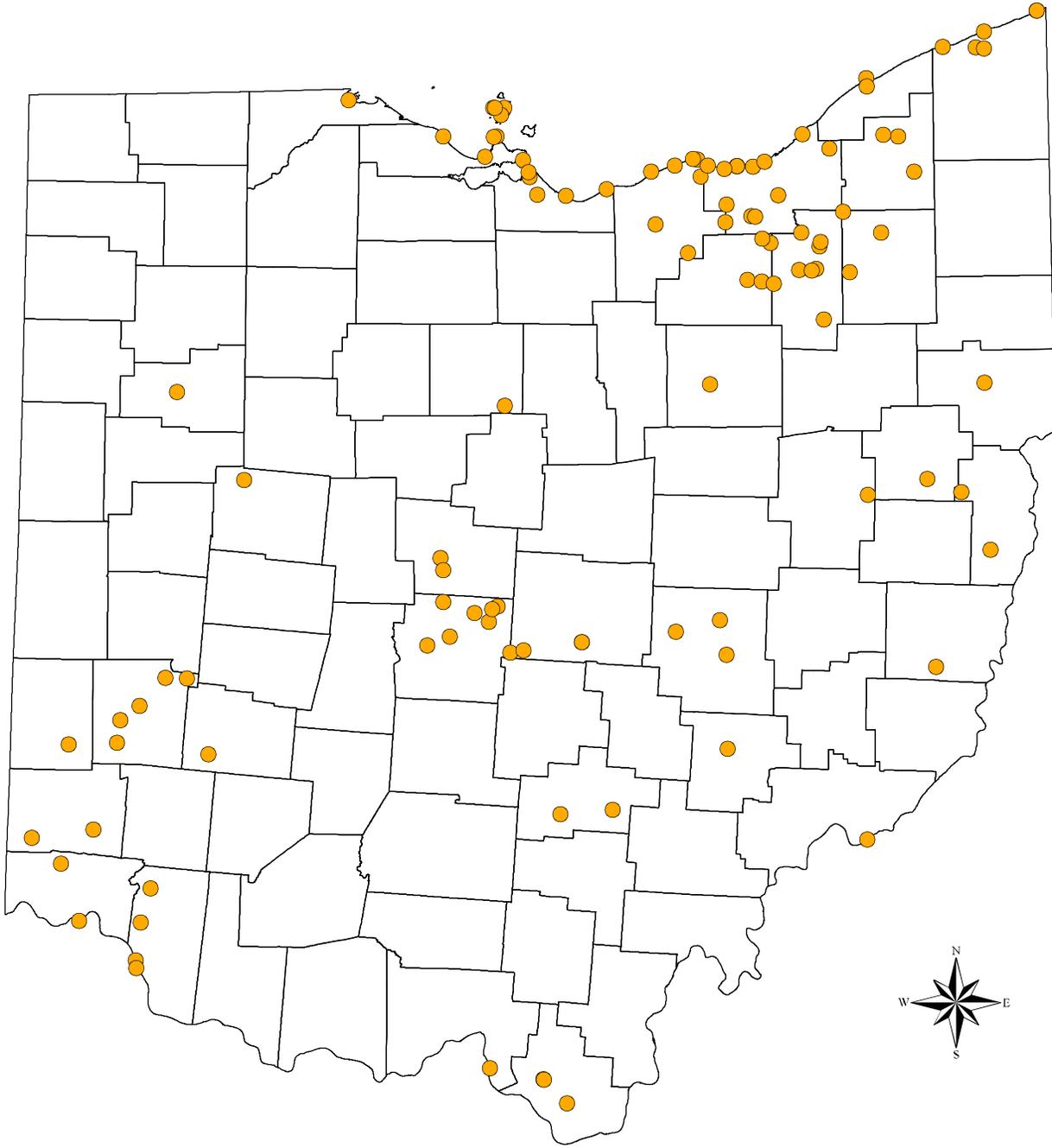
Applicant	Action Taken	Acres		Permit Type	Processing Time (days)
		Impacted	Mitigation		
The NRP Group, LLC	07/10/02	0.04	0.10	General	7
Richfield Group, Inc	08/26/02	0.49	1.10	General	10
Lorain Land Development	08/26/02	0.01	0.01	General	4
Krivacic, Jim	09/09/02	0.07	0.14	General	18
Hampton Knolls Associates, LLC	09/09/02	0.03	0.10	General	14
Crile Gristmill Center	09/17/02	0.41	0.90	General	1
1203 West 65th Street LLC	09/27/02	0.41	0.80	General	9
Sanborn, Ltd.	09/27/02	0.33	0.90	General	42
Timber Ridge Estates, LLC	11/03/02	0.09	0.30	General	24
Coach Development, Inc.	11/03/02	0.03	0.05	General	46
Norris Builders	11/03/02	0.01	0.10	General	11
Neff & Associates	11/03/02	0.08	0.20	General	6
Rettig Properties, Inc	11/07/02	0.50	1.00	General	1
IBNI, LLC	11/08/02	0.30	0.60	General	30
Big Creek Dev., LLC	11/08/02	0.36	0.90	General	15
GOJO industries	11/08/02	0.06	0.12	General	23
River Oaks Investment Co.	11/08/02	0.23	0.60	General	11
Hawthorne Ridge, LCC	11/15/02	0.29	0.38	General	192
HM Health Partners	11/19/02	1.08	1.70	General	1
HGG Olmsted Sharp Dev.	12/30/02	0.02	0.03	General	21
Lucas County Asphalt Inc	12/31/02	0.17	0.24	General	145
Efficient Homes	01/02/03	0.31	0.54	General	15
GBC Design	01/27/03	0.04	0.10	General	3
Middlefield, Village of	02/26/03	0.05	0.10	General	236
Biltmore Estates	03/12/03	0.25	0.75	General	26
Springside Drive	03/20/03	0.25	0.50	General	27
Vagotis, George	03/26/03	0.44	1.20	General	6
Grand Terrace LLC	03/27/03	0.02	0.10	General	6
Bailey Development	04/02/03	0.12	0.30	General	105
Sam's Club, Boardman, OH	04/04/03	0.35	1.00	General	27
Fallen Timbers	04/15/03	0.06	0.15	General	25
Classic Auto Group	05/01/03	0.30	0.90	General	43
Deville Developments	05/29/03	0.09	0.20	General	1

**Isolated Wetland Permits (continued)
Issued Between July 1, 2002 and June 30, 2003**

Applicant	Action Taken	Acres		Permit Type	Processing Time (days)
		Impacted	Mitigation		
Morning Song Limited	06/13/03	0.28	0.42	General	11
Average Processing Time (days) =					34.1
Summer Hill Homes of Ohio	07/12/02	1.05	2.10	Level 2	170
Oberer Development Co.	07/23/02	0.57	0.86	Level 2	60
Design Construction Services Inc.	07/23/02	1.61	7.60	Level 2	89
ODOT	07/29/02	0.14	1.37	Level 2	173
Commercial Industrial Assoc.	08/21/02	0.79	1.60	Level 2	97
ODOT	08/22/02	1.22	2.98	Level 2	86
Prestige Homes	09/16/02	1.05	21.71	Level 2	269
First Tee of Canton	11/27/02	1.07	2.00	Level 2	63
Kimmelman and Associates	12/27/02	1.35	2.70	Level 2	93
Akron, City of	12/30/02	1.09	2.00	Level 2	131
Lorain Land Dev. Company	02/13/03	1.12	2.50	Level 2	166
Pulte Homes	04/10/03	1.75	3.75	Level 2	92
Garden Ridge Development	04/18/03	0.99	2.48	Level 2	120
Zaremba Group/City of Brunswick	05/07/03	1.13	6.91	Level 2	404
Average Processing Time (days) =					143.8
Duke-Weeks	09/16/02	7.00	89.42	Level 3	269
Average Processing Time (days) =					269
Total from Isolated Wetland Permit (acres)		29.50	166.51		

FIGURE 2

401 Water Quality Certifications Issued in State Fiscal Year 2003



- 401 Water Quality Certifications
- County Boundaries



TABLE B

**401 Water Quality Certifications - Wetlands
Issued Between July 1, 2002 and June 30, 2003**

Applicant	Action Taken	Acres		Processing Time (days)
		Impacted	Mitigated	
ODOT	7/19/02	1.82	2.77	170
Slane Company	7/23/02	0.36	0.70	223
Design Construction Services Inc	7/23/02	0.84	1.90	134
Akron, City of	7/26/02	8.75	23.00	365
Gateway Pointe LLC	7/29/02	0.31	0.80	299
Ohio River Pipeline LLC	8/2/02	2.89	5.80	315
Visconsi Companies	9/9/02	0.67	2.00	116
Duke-Weeks	9/16/02	2.50	31.89	350
Prestige Homes	9/16/02	1.80	23.61	320
ODOT	10/3/02	3.19	8.54	93
Texas Eastern Transmission, LP	11/14/02	4.15	7.93	69
Kohl's Department Stores, Inc.	11/27/02	0.05	0.08	225
King, John	12/16/02	0.80	2.66	368
Bear Creek Capital, LLC	12/31/02	0.01	1.70	137
ODOT	1/8/03	0.29	3.00	197
Browning Ferris Industries of Ohio	1/22/03	0.68	1.02	365
Middlefield, Village of	2/26/03	1.56	8.50	169
Rumpke Sanitary Landfill	3/13/03	0.46	0.92	308
Southgate Corporation	3/18/03	2.30	4.26	138
Bailey Development Company	4/2/03	4.07	9.90	190
RG Properties, Inc.	5/6/03	0.29	0.71	287
Zaremba Group/City of Brunswick	5/7/03	3.95	8.20	184
Columbus, City of	5/14/03	0.30	0.60	100
Wal-Mart	5/21/03	0.58	1.16	112
Kent, City of	5/30/03	0.03	0.23	74
Christ Church	6/4/03	0.72	3.62	377
The Kingswood Group	6/11/03	0.13	0.30	113
Heath, City of	6/26/03	0.71	2.00	120
Total Acres =		44.21	157.80	211
				Average

TABLE C

**401 Water Quality Certifications - Streams
Issued Between July 1, 2002 and June 30, 2003**

Applicant	Action Taken	Linear feet Impacted	Processing Time (days)
ODOT	7/19/02	623	170
Pingue, Joe	7/22/02	32	153
Slane Company	7/23/02	1882	223
Design Construction Services Inc	7/23/02	1140	134
Akron, City of	7/26/02	1755	365
Gateway Pointe LLC	7/29/02	660	299
Southeast Shore Properties Inc	7/29/02	617	265
Ohio River Pipeline LLC	8/2/02	17700	315
Ohio Department of Transportation	8/15/02	3404	60
Huntington COE	8/21/02	170	100
NRP Group	8/22/02	747	106
Hormel Foods Corporation	8/23/02	3006	470
Zanesville Municipal Airport	8/27/02	2110	126
Krivacic, Jim	9/9/02	1446	187
Visconsi Companies	9/9/02	570	116
American Energy Corporation	9/13/02	9163	228
Cuyahoga Valley National Park Service	9/13/02	150	224
Duke-Weeks	9/16/02	300	350
Christian Baptist Church of God	10/2/02	570	293
BNB Partners	10/3/02	217	244
Dresden Energy, LLC	10/7/02	1600	158
Buffalo COE	10/14/02	750	392
Myers Mining Co., Ltd	10/22/02	3114	174
Texas Eastern Transmission, LP	11/14/02	145	69
Wooster, City of	11/21/02	330	415
Kohl's Department Stores, Inc.	11/27/02	769	225
Ohio Department of Transportation	12/13/02	685	85
King, John	12/16/02	925	368
Kroger Company	12/17/02	810	215
Logan Hocking School District	12/24/02	370	230
Donald W. Kelley & Associates, Inc.	12/31/02	100	330
Bear Creek Capital, LLC	12/31/02	1974	137
ODOT	1/8/03	1120	197

401 Water Quality Certifications - Streams (continued)
Issued Between July 1, 2002 and June 30, 2003

Applicant	Action Taken	Linear feet Impacted	Processing Time (days)
Ohio Department of Transportation	1/8/03	3606	69
Oxford Mining Company	1/17/03	10200	263
Independence, City of	1/21/03	320	60
Browning Ferris Industries of Ohio	1/22/03	3201	365
Akron, City of	2/18/03	600	162
Middlefield, Village of	2/26/03	84	169
Keller, Harrison	2/28/03	687	434
Buffalo COE	3/5/03	37640	134
Rumpke Sanitary Landfill	3/13/03	7350	308
Clermont County Public Library	3/13/03	360	163
Southgate Corporation	3/18/03	3532	138
Bailey Development Company	4/2/03	60	190
Evans, Blaine	4/10/03	880	85
Buffalo COE	4/10/03	5500	119
Columbus, City of	4/15/03	485	386
Galion, City of	4/18/03	1583	365
New Richmond, Village of	4/18/03	2300	135
Mantua, Village of	4/28/03	300	167
RG Properties, Inc.	5/6/03	1890	287
Zaremba Group/City of Brunswick	5/7/03	1135	184
Columbus, City of	5/14/03	1625	100
Woods of Logsdon's Ridge	5/19/03	80	277
Wal-Mart	5/21/03	1166	112
Mayfield, City of	5/21/03	453	78
Valley Mining, Inc.	5/22/03	2220	497
Christ Church	6/4/03	1190	377
Valley Mining	6/4/03	3500	385
Hilltop Basic Resources	6/4/03	300	56
The Kingswood Group	6/11/03	938	113
Buffalo COE	6/19/03	2000	212
Heath, City of	6/26/03	746	120
Total Linear Feet =		95931	210
			Average

TABLE D

**401 Water Quality Certifications - Lakes
Issued Between July 1, 2002 and June 30, 2003**

Applicant	Action Taken	Cubic Yards Dredge/Fill	Processing Time (days)
U.S. Erie Islands Development, Limited	7/3/02	16800	209
Dieken, Douglas	7/18/02	653	148
Tharp, Clay B. and Ann M.	7/19/02	205	149
Colombo, Charles	7/19/02	725	149
Glynias, Manual	7/19/02	355	106
Miller Boat Lines, Inc.	7/29/02	1090	154
Rattlesnake Island Club	7/30/02	156	88
Cultrona, Ned	8/2/02	805	277
Kolleda, James	9/9/02	60	293
Klug, Carey	9/13/02	3905	372
Wayne National Forest, USDA	9/13/02	2400	60
Buhl, Robert	10/3/02	670	367
Doane, Timothy	10/3/02	520	367
Gallagher, John	10/3/02	567	367
Zachary, John	10/3/02	267	367
Smuggler's Baypointe Development Corp	10/3/02	24654	352
Conneaut Port Authority	10/9/02	330	191
Middle Bass Dock Company	10/25/02	5425	364
Stover, Phillip	11/1/02	37	331
Ashtabula Township Park Commission	11/18/02	35188	364
Catawba Cliffs Association	12/3/02	1403	315
Buffalo, COE	1/9/03	100489	188
Rattlesnake Island Club	2/5/03	4260	357
Ohio Department of Natural Resources	2/7/03	20454	266
Island Services Company D.B.A.	2/26/03	229	364
Buffalo COE	2/26/03	100000	131
Buffalo COE	3/5/03	350000	134
Star Leasing	3/20/03	43000	343
Carroll Township Trustees	4/4/03	12000	21
Buffalo COE	4/10/03	250000	119
Buffalo COE	4/30/03	350000	145
Conneaut Port Authority, The	4/30/03	560	56
Zaremba Group/City of Brunswick	5/7/03	8200	184

**401 Water Quality Certifications - Lakes (continued)
 Issued Between July 1, 2002 and June 30, 2003**

Applicant	Action Taken	Cubic Yards Dredge/Fill	Processing Time (days)
Wayne National Forest	5/19/03	710	181
Buffalo COE	5/19/03	75000	167
Buffalo COE	5/28/03	800000	131
Buffalo COE	6/3/03	140000	146
Christ Church	6/4/03	133	377
Sandusky, City of	6/4/03	1637	355
Buffalo COE	6/19/03	150000	212
Total Cubic Yards =		1167480	224
			Average