



**Environmental
Protection Agency**

John R. Kasich, **Governor**
Mary Taylor, **Lt. Governor**
Scott J. Nelly, **Director**

OHIO E.P.A.

APR 19 2012

April 19, 2012

The Chief of Engineers
HQUSACE
Attn: CECW-OR
Washington, D.C. 20314-1000

ENTERED DIRECTOR'S JOURNAL
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: Don Lassiter Date: 4-19-12

Re: All Counties, Cities and Townships in Ohio
Grant of Clean Water Act section 401 water quality certification
Authorization of discharge of dredged or fill material to various waters of the
State for the following nationwide permits as published in the March 19, 2012,
Federal Register (Volume 77, Number 53)
Ohio EPA ID Number 123911

Dear Stakeholder:

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 chapters 3745-1, 3745-32 and 3745-47; and, the United States Army Corps of Engineers regional conditions issued final on March 19, 2012, I hereby certify that the nationwide permits as issued final in the March 19, 2012, *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 section 401 water quality 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 the nationwide permits, as listed below, provided the specified certification conditions are satisfied.

Nationwide Permits

- 21. Surface Coal Mining Activities
- 49. Coal Remining Activities
- 50. Underground Coal Mining Activities

**PART ONE: GENERAL LIMITATIONS AND CONDITIONS FOR ALL OHIO EPA
CERTIFIED NATIONWIDE PERMITS**

A. CULVERTS

For intermittent and perennial streams:

1. Bottomless or buried culverts are required when culvert size is greater than 36" diameter. This condition does not apply if the culverts will have a gradient of greater than 1% grade or is installed on bedrock. A buried culvert means that the bottom 10% by dimension shall be buried below the existing stream bed elevation.
2. 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.
3. When practicable, culverts shall be installed at the existing streambed slope, to allow for the natural movement of bedload and aquatic organisms.
4. The conditions in this section apply only to the installation of new culverts regardless of which NWP is used to authorize the activity.

B. BEST MANAGEMENT PRACTICES

1. All best management practices for storm water management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available at: http://www.epa.ohio.gov/dsw/storm/construction_index.aspx#Construction%20General%20Permit, or any watershed specific construction general permit.
2. All avoided water resources and associated buffers/riparian areas shall be demarcated in the field and protected with suitable materials (e.g., silt fencing, snow fencing, signage, etc.) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
3. Disturbance and removal of vegetation from the project construction area is to be avoided where possible and minimized when necessary. Entry to surface waters shall be through a single point of access whenever practicable to minimize disturbance to riparian habitat. Unavoidable temporary impacts to forested riparian habitat shall be restored as soon as practicable after in-water work is complete using tree and shrub species native to the specific ecoregion where the project is located.

4. 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.
5. Straw bales shall not be used as a form of erosion/sediment control unless used in conjunction with another structural control such as silt fencing.
6. Heavy equipment shall not be placed below the ordinary high water mark of any surface water, except when no other alternative is practicable.
7. Temporary fill shall consist of suitable non-erodible material and shall be stabilized to prevent erosion.
8. Cadmium chromium arsenate (CCA) and creosote treated lumber shall not be used in structures that come into contact with waters of the state.

C. MITIGATION

1. Compensatory mitigation is required for the discharge of dredged or fill material into wetlands, whether temporary or permanent, exceed one-tenth acre.
2. When required, compensatory mitigation shall be provided in accordance with chapters 3745-1 and 3745-32 of the Ohio Administrative Code.
3. When compensatory mitigation will be provided wholly or in part at a mitigation bank, credit purchase shall only be authorized at those banks approved by the interagency review team and having an active instrument signed by the director of Ohio EPA.
4. Compensatory mitigation projects for stream impacts shall result in the preservation, restoration, or enhancement of stream habitat and/or biological functions.
5. Stream restoration 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 end point.

D. MISCELLANEOUS

1. Nationwide permits cannot be combined to increase any of the special or general limitations and conditions of this certification.
2. Authorization under this certification does not relieve the permittee from the responsibility of obtaining any other federal, state or local permits, approvals or authorizations.
3. In the event that the issuance of a nationwide permit by the Corps requires individual state water quality certification for an activity that constitutes an emergency as defined in 33 CFR 325.2(e)(4), the limitation and/or condition requiring the individual water quality certification is not applicable and the project may proceed upon approval by the Corps provided all other terms of this certification, including mitigation, have been met.
4. In nationwide permits where the district engineer has been granted authority to waive certain requirements, the corresponding general limitations and conditions of this certification as well as specific nationwide permit conditions shall apply unless written authorization from the director of Ohio EPA is obtained to authorize additional impacts.
5. For any project that does not meet one or more of the terms and conditions of this certification as they pertain to stream and lake shoreline length limitations, stream designated/existing aquatic life uses and stream antidegradation categories, Ohio EPA may determine, on a case-by-case basis, that a project will have such a minimal impact on water quality that individual state water quality certification is not necessary provided all other terms and conditions of this certification, including mitigation, have been met.

To qualify for consideration, the applicant must provide to Ohio EPA the following information:

- a. a copy of the pre-construction notification submitted to the Army Corps of Engineers including all attachments;
- b. a copy of the provisional nationwide permit issued by the Army Corps of Engineers including all attachments and special conditions, if any;
- c. a detailed description of the proposed mitigation or a copy of the mitigation plan as approved by the Army Corps of Engineers;

- d. a rationale of how the applicant believes the project will minimally impact water quality; and
- e. any other documentation as may be required under this certification.

Pending such a determination, all of the limitations and conditions of this certification shall apply unless written authorization from the director of Ohio EPA, stating otherwise, is obtained.

- 6. Representatives from Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this certification. This includes, but is not limited to, access to and copies of 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 TWO: SPECIAL LIMITATIONS AND CONDITIONS FOR OHIO EPA CERTIFIED NATIONWIDE PERMITS

Nationwide Permit 21 (Surface Coal Mining Activities)

- 1. Ohio state certification general limitations and conditions apply to this nationwide permit.
- 2. Individual State Certification is required for the use of this nationwide permit when temporary or permanent impacts are proposed on the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed one-half acre;
 - c. streams with an aquatic life use designation of warmwater habitat, exceptional warmwater habitat, coldwater habitat, seasonal salmonid or any equivalent designation and/or performance;
 - d. streams with an antidegradation category of superior high quality water, outstanding national resource water or outstanding state water;

- e. state wild and scenic rivers;
 - f. national wild and scenic rivers;
 - g. general high quality water bodies, which harbor Federally listed threatened and/or endangered mussel species, such as Killbuck Creek in Coshocton County and Pymatuning Creek in Ashtabula County; and
 - h. all other streams when cumulative impacts exceed 300 linear feet, unless written authorization is obtained from the director of Ohio EPA.
3. Impacts to any waterways with a slope greater than two percent as 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 two percent slope will be constructed using natural channel design techniques.
4. For every project which authorization under this nationwide permit is sought, the applicant shall provide to the Corps the following information:
- a. total stream length and wetland acreage proposed for impact;
 - b. if the project impacts a wetland, a wetland characterization analysis consistent with the Ohio Rapid Assessment Method (completed ten page form);
 - c. if the project impacts streams, a use attainability analysis (QHEI and/or HHEI), including results of appropriate biological sampling data; and
 - d. the Application and Hydrology mining map showing all water resources on the site.
5. This certification does not authorize the placement of any permanent in-stream sediment ponds or haul road crossings. All in-stream sediment ponds shall be removed in accordance with ODNR-DMRM regulations.
6. This certification does not authorize valley fills or hollow fills.

Nationwide Permit 49 (Coal Remining Activities)

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.

1. Ohio state certification general limitations and conditions apply to this nationwide permit.
2. Individual state water quality certification is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in the following waters:
 - a. category 3 wetlands;
 - b. streams with the aquatic life use designation of exceptional warmwater habitat, cold water habitat, seasonal salmonid or any equivalent designation and/or performance;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water or outstanding state water;
 - d. state wild and scenic rivers;
 - e. national wild and scenic rivers; and
 - f. general high quality water bodies which harbor Federally listed threatened and/or endangered mussel species, such as Killbuck Creek in Coshocton County and Pymatuning Creek in Ashtabula County.
 - g. all other streams when cumulative impacts exceed 300 linear feet of impact to perennial and intermittent streams in the previously unmined portions within the project area, unless written authorization is obtained from the director of Ohio EPA.
 - h. all other streams when cumulative impacts exceed 1000 linear feet of impact to perennial and intermittent streams in the previously mined portions within the project area, unless written authorization is obtained from the director of Ohio EPA.

3. This certification authorizes:
 - a. no more than six acres of impact to category 1 wetlands; and
 - b. no more than one acre of impact to category 2 wetlands.
4. This certification authorizes unlimited impacts to:
 - a. jurisdictional open water resulting from previous mining;
 - b. ephemeral streams;
 - c. those portions of streams that meet at least two of the following conditions; and
 - i. pH less than 6.0 standard units;
 - ii. iron greater than 3.0 mg/l/monthly; and
 - iii. manganese greater than 2.0 mg/l/monthly.
 - d. streams 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.
5. Impacts to any waterways with a slope greater than two percent 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 two percent slope will be completed using natural channel design techniques.
6. For every project to which authorization under this nationwide permit is sought, the applicant shall provide to the Corps the following information:
 - a. total stream length and wetland acreage proposed for impact;
 - b. if the project impacts a wetland, a wetland characterization analysis consistent with the Ohio Rapid Assessment Method (completed ten page form);

- c. if the project impacts streams, a use attainability analysis (QHEI and/or HHEI), including results of appropriate biological sampling data;
 - d. the Application and Hydrology mining map showing all water resources on the site; and
 - e. all background water quality sampling data discussed in 4.c. above.
7. This certification does not authorize the placement of any permanent in-stream sediment ponds or haul road crossings. All in-stream sediment ponds shall be removed in accordance with ODNR-DMRM regulations.
8. This certification does not authorize valley fills or hollow fills.

Nationwide Permit 50 (Underground Coal Mining Activities)

- 1. Ohio state certification general limitations and conditions apply to this nationwide permit.
- 2. Individual state water quality certification is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed one-half acre;
 - c. streams with the aquatic life use designation of exceptional warmwater habitat, cold water habitat, seasonal salmonid or any equivalent designation and/or performance;
 - d. streams with an antidegradation category of superior high quality water, outstanding national resource water or outstanding state water;
 - e. state wild and scenic rivers;
 - f. national wild and scenic rivers;
 - g. general high quality water bodies which harbor Federally listed threatened and/or endangered mussel species, such as Killbuck Creek in Coshocton County and Pymatuning Creek in Ashtabula County; and

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, OH 43215

Sincerely,



Scott J. Nally
Director

cc: Jean Siedel, Department of the Army, Huntington District, USACE
Mark Scalabrino, Department of the Army, Buffalo District, USACE
Keith Sendziak, Department of the Army, Buffalo District, USACE
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Mary Knapp, Department of the Interior, United States Fish & Wildlife Service
Brian Mitch, ODNR, Office of Real Estate & Land Management
Dave Snyder, Ohio Historical Preservation Office
George Elmaraghy, Ohio EPA, DSW

