



OEPA Section 401 and USACE Section 404 Permit Compliance





Wetland Permitting Topics

- United States Army Corp of Engineers (USACE) Section 404 Permits
- Ohio Environmental Protection Agency (OEPA) 401 Water Quality Certification
- Ohio Isolated Wetland Permits
- Mitigation



USACE Section 404 Permits

Activities that include the discharge of dredged or fill material into “waters of the United States”, including wetlands.

Nationwide 404 Permits

- Authorize a group of similar activities with minimal impacts
- Streamlined process, less time for approval
- 401 WQC limitations and conditions





USACE Section 404 Permits

Individual 404 Permits

- Projects involving substantial impacts (> 0.5 acre of wetland or 300 linear feet of stream)
- Requires public notice
- Require individual 401 WQC from OEPA
- Longer time frame for approval



OEPA 401 Water Quality Certification

A Section 401 Water Quality Certification is required to obtain a permit from the USACE for Section 10 and/or Section 404 permits

- OEPA has pre-granted Section 401 WQC to most Nationwide permits, as long as OEPA's conditions are met.
- Some projects may meet the requirements for a Nationwide 404 permit but require an individual 401 Water Quality Certification





Individual 401 Schedule

Complete Application includes:

- USACE Jurisdictional Determination
- ORAM Assessment of wetlands and/or aquatic use designation for streams
- Mitigation proposal
- ODNR/USFWS agency coordination
- Discussion of preferred, non-degradation and minimum degradation alternatives
- Application Fee
- USACE public notice or NWP for project

Once application is complete OEPA has 180 days to issue permit.



Isolated Wetland Permits

- General State Isolated Wetlands Permit Level 1 Review
 - Category 1 or 2 wetlands, impacts less than ½ acre
 - Review Time = 30 days
- Individual State Isolated Wetlands Permit Level 2 Review
 - Category 1 impacts greater than ½ acre; Category 2 impacts greater than ½ acre but less than 3 acres
 - Public Notice in newspaper
 - Review Time = 90 days
- Individual State Isolated Wetlands Permit Level 3 Review
 - Category 2 impacts greater than 3 acres or Category 3
 - Review time = 180 days



Ohio Mitigation Hierarchy

as per ORC 6111.30(10)(I)

Sub S.B. 294 effective September 5, 2012 Mitigation Requirements

Mitigation required by a section 401 water quality certification may be accomplished by any of the following:

- Purchasing credits at a mitigation bank approved in accordance with 33 C.F.R. 332.8;
- Participating in an in-lieu fee mitigation program approved in accordance with 33 C.F.R. 332.8;
- Constructing individual mitigation projects.



Ohio Mitigation Requirements

as per ORC 6111.022

Sub S.B. 294 effective September 5, 2012

Mitigation required for Level 1 Isolated Wetlands Permit may be accomplished by:

(1) Applicant purchasing credits at a mitigation bank approved in accordance with 33 C.F.R. 332.8 located in the same Corps District; or complete mitigation off-site.

(2) In-lieu-fee mitigation approved in accordance with 33 C.F.R. 332.8



Ohio Mitigation Requirements

as per ORC 6111.022

Sub S.B. 294 effective September 5, 2012

Mitigation required for Level 2 Isolated Wetlands Permit for impacts to Category 1 wetlands may be accomplished by:

(1) Applicant may purchase credits at a mitigation bank approved in accordance with 33 C.F.R. 332.8 located within the same Corps District; or complete mitigation off-site.

(2) In-lieu-fee mitigation approved in accordance with 33 C.F.R. 332.8



Ohio Mitigation Requirements

as per ORC 6111.022

Sub S.B. 294 effective September 5, 2012

Mitigation required for Level 2 Isolated Wetlands Permit for impacts to Category 2 wetlands may be accomplished by:

- (1) Applicant may purchase credits at a mitigation bank that has a service area that includes the location of the proposed filling of the isolated wetland.
- (2) Mitigation at a wetland mitigation bank with a service area that is adjacent to the watershed in which the proposed filling of the isolated wetland is located and is located within the same Corps District. The applicable mitigation ratio shall be multiplied by one and one-half
- (3) In-lieu-fee mitigation approved in accordance with 33 C.F.R. 332.8
- (4) Off-site mitigation in same watershed.



Ohio Mitigation Requirements

as per ORC 6111.022

Sub S.B. 294 effective September 5, 2012

Mitigation required for Level 3 Isolated Wetlands Permit for impacts to Category 2 and 3 wetlands may be accomplished by:

- (1) Reasonably identifiable, available and practicable mitigation located within the same watershed as the impact;
- (2) Applicant may purchase credits at a mitigation bank approved in accordance with 33 C.F.R. 332.8 that has a service area that includes the location of the impact;
- (3) Applicant may purchase credits at a mitigation bank that has a service area adjacent to the watershed and the same Corps District where the impact is located; and required mitigation is multiplied by 1.5;
- (4) In-lieu-fee mitigation approved in accordance with 33 C.F.R. 332.8

3/12/2015



How Does In-Lieu-Fee Work?

In-Lieu-Fee Basics

- Generally can be used by applicants if a mitigation bank option is not available.
- Program sponsor must be a natural resource based state or local agency or a natural resource based non-profit organization.
- Like banks, mitigation responsibility is transferred from applicant to sponsor once payment is complete.
- ILF Sponsor is awarded “advanced credits” by the IRT based on service area needs (“Compensation Planning Framework”).



Experience with Nationwide Permits

Bellevue Yard Expansion, Bellevue, Ohio

- *Expansion of the existing class yard with an additional 38 classification tracks and other infrastructure improvements.*
 - *Ecological Investigations*
 - *Completed in August 2010-April 2011*
 - *Jurisdictional Determination issued October 2011*
 - *17 Jurisdictional wetlands*
 - *8 Jurisdictional streams*
 - *Project Impacts*
 - *Seven Category 1 Wetlands - 0.18 acre impacts*
 - *Two stream impacts – 55 linear feet*
 - *Permit Application*
 - *Section 404 Permit submitted December 19, 2011*
 - *USACE Nationwide Permit #7, #12, #14 Permit issued February 29, 2012.*



Experience with Nationwide Permits

Northampton Road Bridge Replacement, Summit County, OH

- *Replaced a structurally deficient bridge over Mud Brook and complete associated stream bank stabilization.*
 - *Ecological Investigations*
 - *Completed in August 2008*
 - *1 jurisdictional stream identified*
 - *Project Impacts*
 - *0.014 acre of stream impact*
 - *Permit Application*
 - *Section 404 Permit submitted August 2009*
 - *Nationwide #3 USACE 404 Permit issued October 13, 2009.*





Experience with Individual Permits

Vrooman Road Bridge and Roadway Improvement Project

ODOT/FHWA NEPA Process

- *Initiated in 2004*
- *Detailed field studies completed 2008-2012*
- *Purpose and Need approved by FHWA – July 2011*
- *Alternatives Analysis Approved by FHWA – January 2012*
- *Environmental Assessment Approved by FHWA – September 2013*
- *Public Hearing – October 2013*
- *Finding of No significant Impacts (FONSI) – May 2014*



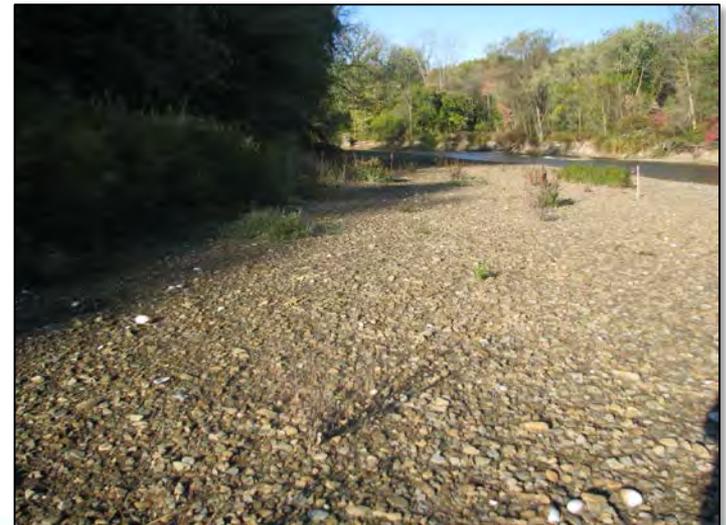
Vrooman Road Bridge and Roadway Improvement Project

Environmental Impacts

- *Section 4(f) – Net Benefit*
 - *Impacts to Mason’s Landing Park and Indian Point Park*
- *Cultural Resources*
 - *NRHP Eligible Archaeology Site*
- *Ecological*
 - *Streams – Grand River, Borden’s Ditch, Stream 3*
 - *271 Linear Feet of impacts*
 - *Wetlands – Category 3 Forested*
 - *0.86 acres of impacts*
- *Endangered Species*
 - *Indiana Bat*
 - *Snuffbox Mussel*
- *Wild and Scenic Rivers*
 - *Grand River*



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Vrooman Road Bridge and Roadway Improvement Project Regulatory Agency Coordination (during the EA)

- *ODNR Wild and Scenic Rivers*
- *ODNR Office of Coastal Management*
- *NOAA Great Lakes Coastal Grant Property Easement*
- *USFWS*
- *Lake Metroparks*
- *Ohio Historic Preservation Office*
- *Native American Tribal Coordination*
- *USACE*
- *OEPA*





Vrooman Road Bridge and Roadway Improvement Project

Where are we today???

- *Permit Applications*
 - *404 USACE Permit Application submitted June 9, 2014*
 - *USACE Public notice issued October 29, 2014.*
 - *401 Water Quality Certification submitted August 7, 2014*
 - *OEPA deemed permit complete on November 13, 2014*
- *Individual 401 Water Quality Certification*
 - *Public Hearing held January 8, 2015*
 - *Public Comment period ended January 15, 2015*
- *Individual USACE 404 Permit*
 - *Public Comment Period ended November 28, 2014*



Questions??





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