Public Notice

US Army Corps of Engineers
Great Lakes and Ohio River Division ®

Public Notice No. 2016-03-LRD
Issuance Date: 16 June 2016
Closing Date: 15 July 2016

Please address all comments and inquiries to:
U.S. Army Corps of Engineers
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PROPOSED MODIFICATION OF CORPS REGIONAL GENERAL CONDITIONS TO THE 2012 NATIONWIDE PERMITS IN THE STATE OF OHIO REQUEST FOR COMMENTS

On November 16, 2015, the Ohio Environmental Protection Agency (Ohio EPA) advertised proposed modifications to the issued Clean Water Act section 401 water quality certification for the Department of the Army 2012 Nationwide Permits (NWPs) described in the February 21, 2012, Federal Register (77 FR 10184). The U.S. Army Corps of Engineers (Corps) Great Lakes and Ohio River Division, representing the Huntington, Louisville, Buffalo, and Pittsburgh Districts, is considering this request and providing an opportunity for the public to express their views on proposed changes to the Corps 2012 Regional General Conditions 4, 4(3), 5(e), 5(f), 6(b), 6(e) and 6(f) for the State of Ohio (see enclosure). These changes are under consideration in order to achieve consistency with the proposed Ohio EPA 401 water quality certification modifications.

For your convenience, an electronic copy of the current 2012 NWPs and regional conditions may be referenced online at the following address:
http://www.lrh.usace.army.mil/Portals/38/docs/regulatory/nationwide/2012%20Nationwide%20Permits%20for%20the%20State%20of%20Ohio%20(with%20OEPA%20401%20Water%20Quality%20Certifications).pdf

The proposed 401 water quality certification modification and supporting materials, including a fact sheet highlighting the changes, are available on the Ohio EPA 401 website at:
http://www.epa.ohio.gov/dsw/401/permitting.aspx

Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal.

All comments regarding this proposal should be addressed to Ms. Suzanne Chubb at the address noted above. Please refer to Public Notice Number 2016-03-LRD and ensure your comments reach the Division Office by the closing date. If you desire to submit your comments by email, please send to: Suzanne.L.Chubb@usace.army.mil. Please note that the names and addresses of those who submit comments in response to this Public Notice become part of the administrative record and, as such, are available to the public under provisions of the Freedom of Information Act.

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Benjamin J. Bigelow
Colonel, EN
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Enclosure

Regional General Condition No. 4. [reference page 87 of the current NWPs]: The proposed modification includes revising the current text, as follows: "**4. *ODNR In-Water Work Exclusion Dates***: "Any work associated with a nationwide permit cannot take place during the restricted period of the following ODNR, Division of Wildlife Statewide In-Water Work Restrictions, unless the applicant notifies the district engineer (DE) in accordance with Nationwide Permit Regional Condition 31, obtains ODNR approval to conduct work within the excluded period, and subsequently receives a nationwide permit verification to conduct the work:" No other changes are proposed to the current text within this section.

Regional General Condition No. 4.(3.) [reference page 88 of the current NWPs]: The proposed modification would involve deleting the following text from the first line "Class 3 primary headwater streams (watershed >1 mi2),". No other changes are proposed to the current text within this section.

Regional General Condition 5.(e.) [reference pages 92-95 of current NWPs]: The proposed modification to **5. Waters of Special Concern** includes revising the text of this section in its entirety, as follows: "**(e) *Endangered Species***: Due to the potential presence of federally threatened or endangered species or their habitats, notification is required for any regulated activity in jurisdictional waters in Ohio that includes tree clearing or work in the waterway or township of the corresponding counties listed in Appendix 1.

***Note 1**: Applicants should ensure they are referencing the latest version of Appendix A by contacting their nearest Corps district office and visiting the online resources identified in General Condition 18(f) of these NWPs, since federally-listed species are continuously listed, proposed for listing, and/or de-listed.

***Note 2:** As mentioned in General Condition 18-Endangered Species, Federal Agencies should follow their own procedures for complying with the requirements of the ESA. Federal applicants must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements."

Regional General Condition 5.(f.) [reference page 96 of current NWPs]: The proposed modification includes adding the following text to "***(f) Critical Resource Waters***:

- In Ohio three areas have been designated critical habitat for the rabbitsfoot mussel (*Quadrula cylindrica cylindrica*). Unit RF26 includes 17.5 rkm (10.9 rmi) of the Walhonding River from the convergence of the Kokosing and Mohican Rivers downstream to Ohio Highway 60 near Warsaw, Coshocton County, Ohio. Unit RF27 includes 33.3 rkm (20.7 rmi) of Little Darby Creek from Ohio Highway 161 near Chuckery, Union County, Ohio, downstream to U.S. Highway 40 near West Jefferson, Madison County, Ohio. Unit RF29 includes 7.7 rkm (4.8 rmi) of Fish Creek from the Indiana and Ohio State line northwest of Edgerton, Ohio, downstream to its confluence with the St. Joseph's River north of Edgerton, Williams County, Ohio.

- Old Woman Creek National Estuarine Research Preserve."

No other changes are proposed to the current text within this section.

Regional General Condition No. 6.(b.) [reference pages 96-97 of the current NWPs]: The proposed modification includes replacing the current text of this section in its entirety, as follows: "**(b) United States Fish & Wildlife Service (USFWS):** Prior to submitting notifications, it is recommended that the applicant contact the USFWS, Ohio Ecological Services Field Office by phone at (614) 416-8993, by e-mail at ohio@fws.gov, or by writing to 4625 Morse Road, Suite 104, Columbus, Ohio 43230. The USFWS can provide information to assist in complying with Nationwide Permit General Condition 18 pertaining to endangered species and Nationwide Permit General Condition 19 pertaining to migratory birds and bald and golden eagles. The USFWS can also provide project recommendations specific to Federal Candidate species. Federal Candidate species are those for which the USFWS has sufficient information to propose them as endangered or threatened under the Endangered Species Act, but for which a listing proposal is precluded by other higher priority listing activities. All relevant information obtained from the USFWS should be submitted with the Notification."

Regional General Condition No. 6.(e.) [reference page 99 of the current NWPs]: The proposed modification includes replacing the current text of this section in its entirety, as follows: "**(e) 401 Water Quality Certification**: For activities involving discharges of dredged and/or fill material into waters of the U.S. and requiring Pre-Construction Notification to the Corps, an applicant shall coordinate the wetland characterization and stream assessment with the Ohio EPA in accordance with each section below:

Wetlands
The applicant shall perform a wetland characterization analysis consistent with the Ohio Rapid Assessment Method (ORAM) to demonstrate eligibility for coverage under the specific Ohio certification requested. The ORAM results and information outlined in Appendix B (ORAM Verification Process) of the modified 401 water quality certification shall be coordinated with the Ohio EPA.

Streams
The applicant shall determine if their project is eligible for coverage under the 401 WQC for the nationwide permits as outlined in Appendix C (Stream Eligibility Determination Process) of the modified 401 water quality certification. The stream eligibility results and information outlined in Appendix C of the modified 401 water quality certification shall be coordinated with the Ohio EPA.

The Ohio EPA, Division of Surface Water, may be contacted at (614) 644-2001 or by writing to P.O. Box 1049, Columbus, Ohio 43216-1049. All relevant information provided to and obtained from the Ohio EPA must be submitted with the Notification to the Corps."

Regional General Condition 6.(f.) [reference page 99 of current NWPs]: The proposed modification includes revising the current text in its entirety, as follows: "**(f) Agency Coordination**: To assist in agency coordination, a complete compact disc (CD) copy shall be submitted for any Notification Package greater than 15 pages and/or includes maps, drawings, spreadsheets or other similar materials which are larger than 8.5 inches by 11 inches. All files saved on CDs shall be in .pdf format. A hard copy of any oversized maps, drawings, spreadsheets etc. in the Notification package shall be submitted and accompany the complete CD. An index or table of contents shall be provided and correspond with each file saved on the CD and/or within the Notification hard copy. The applicant shall submit five (5) hard copies or CDs of the Notification package when the Notification requires full agency coordination in accordance with Nationwide Permit General Condition 31(d)(2)."

APPENDIX 1 TO REGIONAL GENERAL CONDITION 5.(e.)

(e) Endangered Species: Due to the potential presence of federally threatened or endangered species or their habitats, notification is required for any regulated activity in jurisdictional waters in Ohio that includes tree clearing or work in the waterway or township of the corresponding counties:

County	Waterway	Township
Adams	Ohio River, Scioto Brush Creek, South Fork Scioto Brush Creek	Sprigg
Ashtabula	Grand River, Pymatuning Creek	All townships
Athens	Ohio River	Alexander, Ames, Athens, Bern, Dover, Lee, Trimble, Waterloo, York
Brown	East Fork Little Miami River, Ohio River	Huntington
Butler	Great Miami River	
Champaign		Mad River, Salem, Urbana
Clark	Little Miami River	All townships
Clermont	East Fork Little Miami River, Little Miami River, Ohio River	Miami, Pierce, Union
Clinton		Chester
Columbiana		Butler, Hanover
Coshocton	Killbuck Creek, Muskingum River, Walhonding River	
Crawford		Auburn, Bucyrus, Cranberry
Cuyahoga		Within 3 miles of the shore of Lake Erie in Brooklyn, Cleveland, Dover, East Cleveland, Euclid, Newburgh, Rockport, West Park
Darke	Stillwater River	
Defiance	St. Joseph River	Milford
Delaware	Mill Creek, Olentangy River	
Erie		Margaretta; within 3 miles of the shore of Lake Erie in Berlin, Huron, Perkins, Sandusky, and Vermillion
Fairfield		Walnut
Fayette		Concord, Green, Jasper, Jefferson

Franklin	Big Darby Creek, Little Darby Creek, Scioto River	
Fulton	Swan Creek	
Gallia	Ohio River	
Greene	Little Miami River	Bath, Spring Valley
Hamilton	Great Miami River, Little Miami River, Ohio River	Colerain, Columbia, Crosby, Miami, Spencer, Sycamore, Symmes, Whitewater
Hancock	Blanchard River	
Hardin	Blanchard River	Blanchard, Hale, Jackson, Roundhead
Hocking		Benton, Green, Laurel, Marion, Starr, Ward, Washington
Holmes		All townships
Huron		New Haven, Richmond
Jackson		Liberty
Lake	Grand River	Within 3 miles of the shore of Lake Erie in Madison, Mentor, Painesville, Willoughby
Lawrence	Ohio River	Decatur, Rome, Union
Licking		Union
Logan	Great Miami River	Perry, Stokes, Zane
Lorain		Within 3 miles of the shore of Lake Erie in Amherst, Avon, Black River, Brownhelm, and Sheffield
Lucas	Swan Creek	All townships
Madison	Big Darby Creek, Little Darby Creek	
Mahoning		All townships
Marion	Tymochtee Creek	Big Island, Bowling Green, Grand, Montgomery, Salt Rock
Meigs	Ohio River	
Miami	Great Miami River, Stillwater River	
Montgomery	Great Miami River, Stillwater River	Mad River
Morgan	Muskingum River	Deerfield, Homer, Malta, Marion, Penn, Union
Muskingum	Muskingum River	
Ottawa		All townships

Perry		Bearfield, Coal, Monroe, Pike, Pleasant, Salt Lick
Pickaway	Big Darby Creek, Scioto River	
Pike	Scioto River	
Portage		All townships
Preble		Gasper, Somers
Richland		Plymouth
Ross	Salt Creek, Scioto River	Colerain
Sandusky		All townships
Scioto	Ohio River, Scioto Brush Creek, Scioto River, South Fork Scioto Brush Creek	Nile, Rush, Union
Shelby	Great Miami River	
Summit		Tallmadge
Trumbull	Pymatuning Creek	All townships
Union	Big Darby Creek, Little Darby Creek, Mill Creek, Treacle Creek	
Vinton		Brown, Elk, Knox, Madison, Swan
Warren	Great Miami River, Little Miami River	Salem, Turtle Creek, Wayne
Washington	Muskingum River, Ohio River	
Wayne		All townships
Williams	Fish Creek, St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wyandot	Tymochtee Creek	Marseilles, Mifflin, Pitt