UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF: **Ohio Department of Transportation** **1980 West Broad Street** **Columbus, Ohio 43223,** **Respondent.**	**DOCKET NO. V-404-AO-14-01** **ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT** **PROCEEDINGS UNDER SECTION 309(a) OF THE CLEAN WATER ACT, 33 U.S.C. § 1319(a)**

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

The United States Environmental Protection Agency (EPA) is issuing this Administrative Compliance Order on Consent (Order) to the Ohio Department of Transportation ("Respondent") under the authority of Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, EPA, Region 5.

REGULATORY BASIS

1. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that: "Whenever, on the basis of any information available . . . the Administrator finds that any person is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Administrator shall issue an order requiring such person to comply with such section . . . ."

2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states: "Except as in compliance with Section 404 of the CWA the discharge of any pollutant by any person shall be unlawful."

3. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), states: "The Secretary [of the Army] may issue permits, . . . for the discharge of dredged or fill material into the navigable waters at specified disposal sites."

4. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source . . ."

5. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines a "pollutant" as "dredged spoil, solid waste, . . . biological materials, . . . rock, sand, cellar dirt, . . . and agricultural waste discharged into water."

6. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as "the waters of the United States . . . ."

7. The term "waters of the United States" means "... waters such as . . . streams . . ., wetlands . . . " and "wetlands adjacent to waters [such as lakes, rivers and streams]." 40 C.F.R. § 230.3(s).

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, [or] discrete fissure . . . from which pollutants are or may be discharged."

9. "Wetlands" are defined as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 230.3(t).

GENERAL FINDINGS

10. Respondent in this matter is:

Ohio Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

11. At all times relevant to this Order, Respondent has been considered an organization of state government under the laws of the State of Ohio.

12. At all times relevant to this Order Respondent has been a "person" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The first property subject to this Order is located in the NE ¼ of Section 14, and SE ¼ of Section 11, Township 09 North, Range 17 West, Jackson County, Ohio (Site 1, See Figure 1). The current owners of record for Site 1 are Mr. Robert A. Stevens and Mrs. Elizabeth A. Stevens. The site is also within the Ohio State Route 124 right-of-way, which is under the ownership of Respondent. Respondent did not own all of the property at the time of the discharges described in paragraph 18 but Respondent caused those discharges to occur. An unnamed tributary to Rich Run flows through the site.

14. The second property subject to this Order is located in the NE ¼ of Section 14 and in Section 08, Township 09 North, Range 02 West, Jefferson County, Ohio (Site 2, See Figure 2). The current owner of record for Site 2 is Respondent. Respondent purchased the property from Ms. Joyce Abdalla on July 28, 2011. Respondent acquired ownership of the site during the time of the discharges described in paragraph 25, and Respondent caused those discharges to occur. State Route 7 is adjacent to the site. Unnamed tributaries to the Ohio River flow through the site.

15. The third property subject to this Order is located in the NE ¼ SE ¼ of Section 16 and SW ¼ of Section 10, Township 09 North, Range 02 West, Columbiana County, Ohio (Site 3, See Figure 3). The site is within the Ohio State Route 39 right-of-way and was under ownership of Respondent at the time of the fill. McQueen Run flows through the site.

16. The unnamed tributary to Rich Run identified at Site 1 and the wetlands adjacent and directly abutting that tributary flow to Rich Run, which flows to Little Raccoon Creek, which flows to Raccoon Creek, a traditional navigable water. The streams identified at Site 2 flow to the Ohio River, a traditional navigable water. McQueen Run identified at Site 3 flows to the Ohio River, a traditional navigable water. Traditional navigable waters are those waters which are subject to Section 9 or 10 of the Rivers and Harbors Act, or are determined to be navigable-in-fact under federal law, or are currently being used for commercial navigation, including commercial waterborne recreation (*e .g.*, boat rentals, guided fishing trips, water ski tournaments, *etc.*), or have historically been used for commercial navigation, including commercial water-borne recreation, or are susceptible to being used in the future for commercial navigation, including commercial water-borne recreation.

17. The streams and wetlands filled and/or disturbed by the activities referenced in paragraphs 18, 25, and 32 are "waters of the United States" as defined at 40 C.F.R. § 230.3(s) and "navigable waters," as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

FINDINGS – Site 1

18. Between July 13, 2010 and July 28, 2010, using an excavator, Respondent excavated sediment from 705 linear feet of an unnamed tributary to Rich Run at Site 1 and sidecast dredged material into the stream and adjacent wetlands in an effort to relocate and channelize the stream. The purpose of the project was to facilitate drainage of the stream channel away from State Route 124. The activities by Respondent resulted in the discharge of dredged material into 0.48 acres of wetlands adjacent to Rich Run and an unnamed tributary to Rich Run. See Figure 4.

19. The machinery referenced in paragraph 18 constitutes a "point source" within the

meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. The dredged material referenced in paragraph 18 constitutes "pollutants" within the meaning of the definition set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The placement of the dredged material in the stream and adjacent wetland referenced in paragraph 18 constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. At no time from the first date of the activities described in paragraph 18 until the date of this Order did Respondent have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 18.

23. Each discharge of pollutants into navigable waters without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

24. Each day the discharged material remains in the wetland and streams without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301 of the CWA, 33 U.S.C. § 1311.

FINDINGS – Site 2

25. Between June 13, 2011 and January 23, 2012, contractors, Vermilion Tree and Land Clearing Service and The Beaver Excavating Company, acting as an agent under contract with Respondent, discharged soil, dirt and rock into unnamed tributaries of the Ohio River using bulldozers, backhoes and excavators in order to clear trees, excavate the hill slope, install sediment basins and place rip rap at Site 2. The purpose of the project was to stabilize a hill slope along State Route 7. The activities by Respondent resulted in the discharge of fill material

that impacted 1,217 linear feet of stream. See Figure 5.

26. The machinery referenced in paragraph 25 constitutes "point sources" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

27. The soil, dirt and rock referenced in paragraph 25 constitutes "pollutants" within the meaning of the definition set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

28. The placement of the soil, dirt and rocks in the streams referenced in paragraph 25 constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

29. At no time from the first date of the activities described in paragraph 25 until the date of this Order did Respondent have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 25.

30. Each discharge of pollutants into navigable waters without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

31. Each day the discharged material remains in the stream without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301 of the CWA, 33 U.S.C. § 1311.

FINDINGS – Site 3

32. On September 21 and 30, and October 3 and 4, 2011, Respondent discharged dirt and rock into McQueen Run using a trackhoe. The purpose of the project was to address washouts, berm buildup and guardrail repair along an embankment adjacent to State Route 39. Respondent's activities resulted in the discharge of fill material intermittently along a 2,200

linear foot stretch of McQueen Run. See Figure 6.

33. The machinery referenced in paragraph 32 constitutes a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

34. The dirt and rock referenced in paragraph 32 constitutes "pollutants" within the meaning of the definition set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

35. The placement of the material in McQueen Run referenced in paragraph 32 constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

36. At no time from the first date of the activities described in paragraph 32 until the date of this Order did Respondent have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 32.

37. Each discharge of pollutants into navigable waters without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301(a) of the CWA; 33 U.S.C. § 1311(a).

38. Each day the discharged material remains in the stream without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301 of the CWA, 33 U.S.C. § 1311.

COMPLIANCE REQUIREMENTS

BASED UPON THE FOREGOING FINDINGS, and pursuant to the authority under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), duly delegated to the undersigned, **IT IS HEREBY ORDERED THAT**:

39. Respondent must refrain from further discharges of dredged or fill material into the

wetlands or waterways on Sites 1, 2 and 3, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. §§ 1251 - 1387.

40. This Order shall become effective on the date it is executed by the Director, Water Division, Region 5, EPA.

COMPLIANCE - SITE 1

41. Respondent submitted a Memorandum of Understanding (MOU) which is incorporated by reference to this Order (Exhibit 1). The MOU between Respondent and the Ohio Department of Natural Resources Division of Mineral Resources Management (ODNR-DMRM) requires that Respondent provide $310,200 to support the reclamation of acid mine drainage in the Little Raccoon Creek Watershed, known as the Middleton Run Site, to compensate for the stream impacts described in paragraph 18. Respondent must abide by the terms and timelines specified in the MOU with ODNR-DMRM.

42. Within 30 days of the effective date of this Order, Respondent must submit to EPA for approval a Restoration Plan (the plan) to provide restoration for impacts to the wetlands identified in paragraph 18. The plan must be consistent with the general guidelines attached as Exhibit 2 (*General Guidelines for Removal and Restoration Plans: Wetlands*).

43. If EPA finds the submitted plan acceptable, EPA will notify Respondent of its approval, and Respondent must commence site restoration and/or mitigation activities according to the approved plan or portion thereof. If EPA determines that the proposed plan or its included implementation schedule is unacceptable in whole or in part, EPA will notify Respondent and provide corrective comments as appropriate within 30 days of submission. Respondent must revise the plan, incorporating EPA's comments within 15 calendar days of the date of its receipt

of EPA's notification and comments.

44. Any structure, work or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration or environmental benefit must be identified in the plan. Respondent must implement any structure, work or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration or environmental benefit in accordance with the terms and conditions of the appropriate Section 404 Permit and with the provisions of this Order. Respondent shall contact the United States Army Corps of Engineers (USACE) for the appropriate CWA 404 authorization (Exhibit 3 – Nationwide Permit 32) ("the Section 404 Permit") within 30 calendar days of approval of the plan by EPA and prior to commencing any work.

45. Respondent must commence implementation of the plan no later than four months after receipt of written approval of the plan from EPA and issuance of the Section 404 Permit from the USACE.

46. Prior to commencing restoration activities on Site 1, Respondent must obtain written consent from the current landowner referenced in paragraph 13.

47. The requirements of the approved or modified plan and will be incorporated into the requirements of this Order and the Section 404 Permit.

48. Within 30 days of completing wetland restoration activities, Respondent must submit to EPA written certification that the wetlands at Site 1 have been restored as nearly as possible to their original condition in accordance with the approved plan. Such certification must include photographs and a summary of all work performed to include an as-built drawing, a timeline of the activities, description of the activities, and identification of any problems encountered during

implementation.

49. Within 15 days of transferring all funds to ODNR-DMRM, Respondent shall provide EPA with a copy of the Intra-State Transfer Voucher in the amount specified in paragraph 41.

50. Within 30 days of completion of reclamation activities, Respondent shall provide EPA with documentation from the ODNR-DMRM indicating completion of the project activities. Such documentation from ODNR-DMRM should include post reclamation photographs, as-built drawings of the reclamation area, and copies of all correspondence between Respondent and ODNR-DMRM regarding compliance with the MOU.

51. Within 15 days of receipt, Respondent shall provide EPA with all monitoring reports from ODNR-DMRM detailing post reclamation results (*i.e.* observable or measurable physical, chemical or biological attributes that are used to determine if a reclamation project meets its objectives). All written certifications, documentation, and monitoring reports shall be submitted to EPA at the addresses specified in paragraph 64.

COMPLIANCE – SITE 2

52. Within 180 days of the effective date of this Order, Respondent must submit to EPA for approval an MOU for the impacts to 1,217 linear feet of stream identified in paragraph 25.

53. The MOU shall require Respondent to provide $396,040 to the ODNR-DMRM to support the reclamation of acid mine drainage in the Yellow Creek Watershed, known as the Jensie Site. Respondent must abide by the terms and timelines specified in the MOU once it is finalized.

54. Any structure, work or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration or environmental benefit requires an appropriate Section

404 Permit. Respondent shall contact the USACE for the Section 404 Permit within 30 calendar days of the effective date of this Order.

55. The requirements of the approved signed MOU will be incorporated into the Section 404 Permit and the requirements of this Order.

56. Within 15 days of transferring funds to ODNR-DMRM, Respondent shall provide a copy of the Intra-State Transfer Voucher in the amount specified in paragraph 53.

57. Within 30 days of completion of reclamation activities at the Jensie Site, Respondent shall provide EPA with documentation from the ODNR-DMRM indicating completion of project activities. Such documentation from ODNR-DMRM shall include post reclamation photographs, as-built drawings of the reclamation area, and copies of all correspondence between Respondent and ODNR-DMRM regarding compliance with the MOU.

58. Within 15 days of receipt, Respondent shall provide EPA with all monitoring reports from ODNR-DMRM detailing post reclamation results *(i.e.* observable or measurable physical, chemical or biological attributes that are used to determine if a reclamation project meets its objectives). All documentation and monitoring reports shall be submitted to EPA at the addresses specified in paragraph 64.

COMPLIANCE – SITE 3

59. Within 30 days of the effective date of this Order, Respondent must submit to EPA for approval a Restoration Plan (the plan) for the impacts to the stream identified in paragraph 32.

60. The plan must be consistent with the general guidelines attached as Exhibit 4 (*General Guidelines for Removal and Restoration Plans: Streams*). EPA will approve the plan or provide

comments as provided in paragraph 43. Respondent must commence implementation of the plan no later than four months after receipt of written approval of the plan from EPA.

61. Any structure, work or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration or environmental benefit must be identified in the plan. Respondent must implement any structure, work or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration or environmental benefit in accordance with the terms and conditions of the Section 404 Permit and with the provisions of this Order. Respondent shall contact the USACE for the Section 404 Permit within 30 calendar days of approval of the restoration plan by EPA and prior to commencing any work.

62. The requirements of the approved or modified the plan will be incorporated into the requirements of this Order. Respondent must commence implementation of the plan no later than four months after receipt of written approval of the plan from EPA and issuance of the Section 404 Permit by the USACE.

63. Within 30 days of completing stream restoration activities, Respondent must submit to EPA written certification that the stream at Site 3 has been restored as nearly as possible to its original condition in accordance with the approved plan. Such certification must include photographs and a summary of all work performed to include an as-built drawing, a timeline of the activities, description of the activities, and identification of any problems encountered during implementation. All written certifications shall be submitted to EPA at the addresses specified in paragraph 64.

64. Submittals provided under this Order must be accompanied by a signed statement with a signature authorized by Respondent that the information submitted is true and accurate.

Submittals must be mailed via USPS to Kerryann Weaver the following address:

Watersheds & Wetlands Branch
U.S. Environmental Protection Agency (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604

GENERAL PROVISIONS

65. EPA does not waive any rights to use the information requested herein in an administrative, civil, or criminal action.

66. Neither the issuance of this Order by EPA nor compliance with its terms affects Respondent's ongoing obligation to comply with the CWA or any other federal, state, or local law or regulation, nor does it preclude further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein.

67. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither the issuance of this Order by EPA, nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violators cited herein, for any other violation of the CWA or to enforce this Order.

68. Violation of the terms of this Order may subject Respondent to administrative penalties of up to $16,000 per day of violation, up to a maximum of $177,500 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or to civil judicial penalties of $37,500 per day of violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and civil injunctive relief for violations of the CWA under Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the

CWA under Section 309(c) of the CWA, 33 U.S.C. § 1319(c).

69. Respondent admits the jurisdictional allegations in this Order.

70. Respondent waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. § 701-706.

71. Respondent agrees to the terms of this Order.

72. The terms of this Order bind Respondent, its successor and assigns.

73. This Order is effective on the date of signature by the Director of the Water Division and will terminate two years from the effective date provided that Respondent has complied with all terms of the Order through its duration.

Dated: 7-14-2014

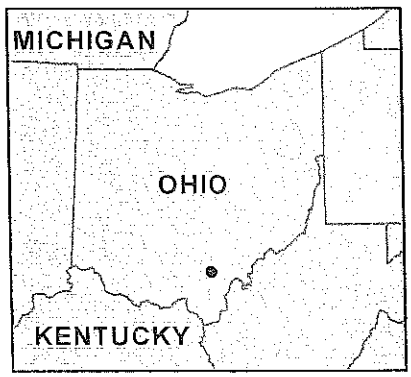
Jerry Wray
Director
Ohio Department of Transportation

Dated: 9/23/14

Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection Agency, Region 5

Reviewed as to Form
Office of Chief Legal Counsel
Ohio Department of Transportation
7/11/14

Figure 1: Site 1 Overview



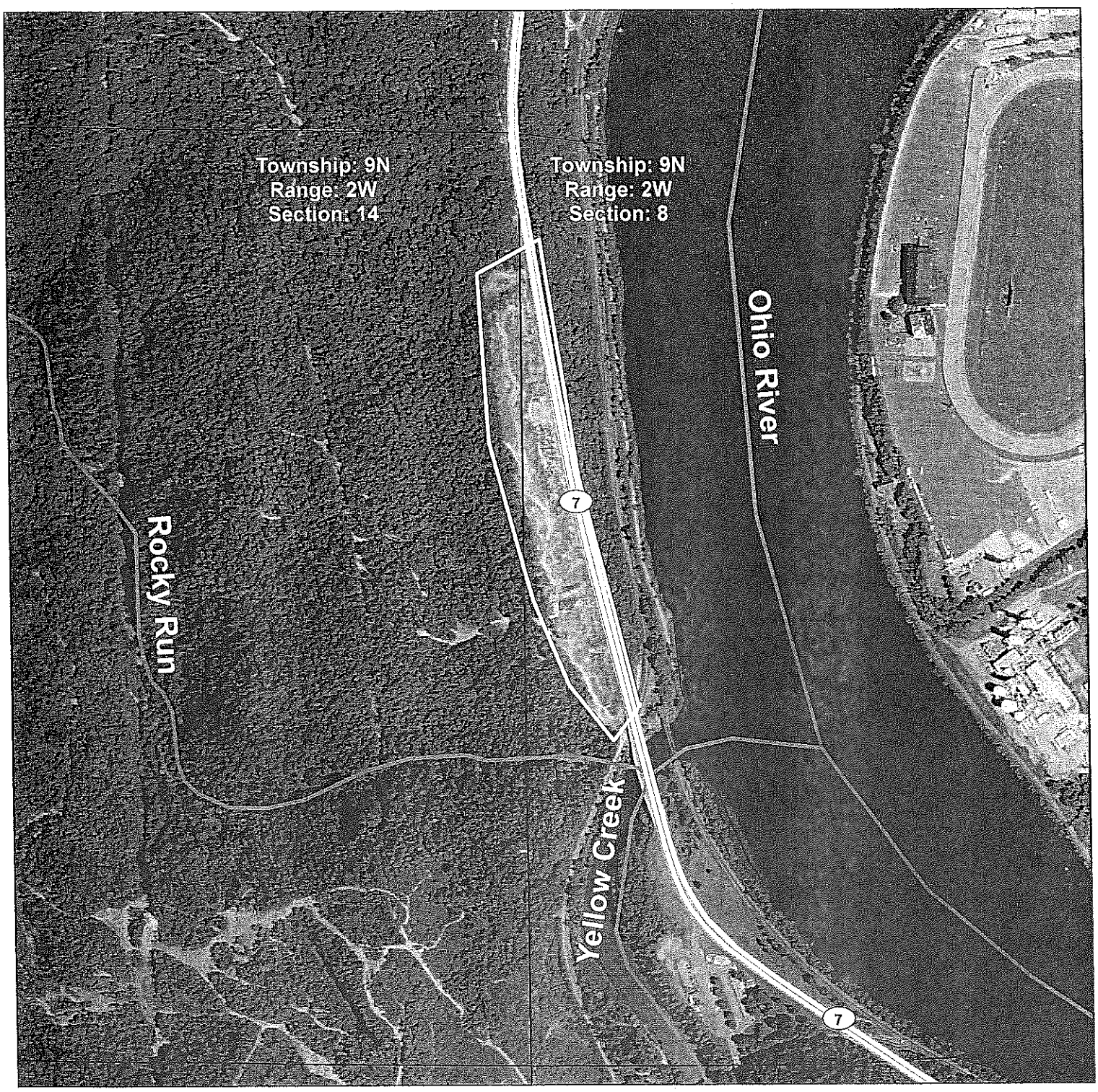
N

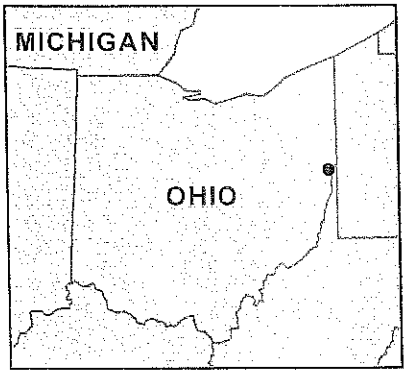
0 60 120 180 240
Meters

Jackson County, Ohio
Projection: NAD 1983 UTM Zone 17N
Imagery Date: 2011 NAIP Ortho Imagery

Legend
- Impact Area
- Streams
- U.S. Route
- PLSS

Figure 2: Site 2 Overview





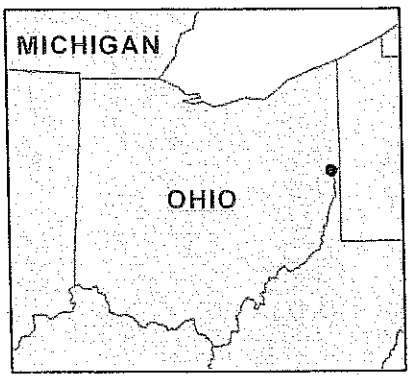
N

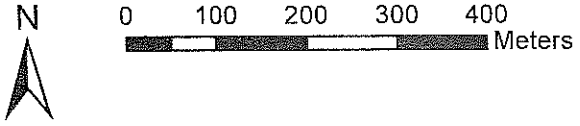
0 100 200 300 400
Meters

Jefferson County, Ohio
Projection: NAD 1983 UTM Zone 17N
Imagery Date: 2011 NAIP Ortho Imagery

Legend
- ImpactArea_SR_7
- U.S. Route
- Streams (NHD)
- PLSS

Figure 3: Site 3 Overview





Columbiana County, Ohio
Projection: NAD 1983 UTM Zone 17N
Imagery Date: 2011 NAIP Ortho Imagery

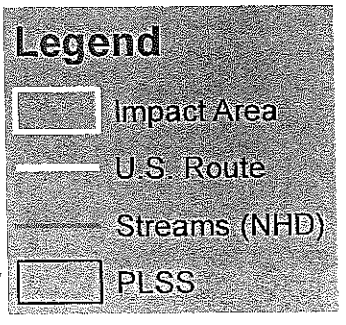


Figure 4: Site 1 Impacts

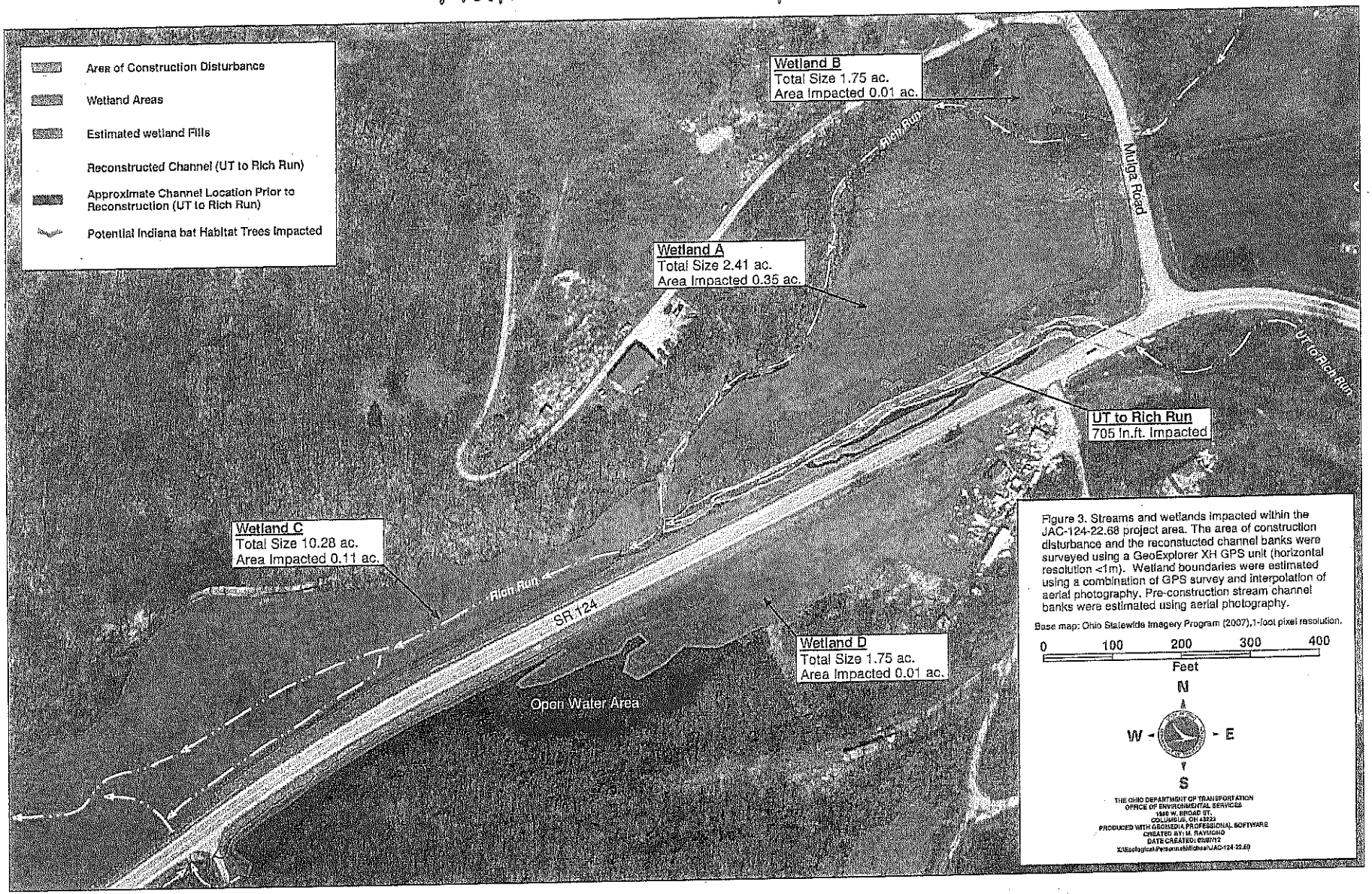
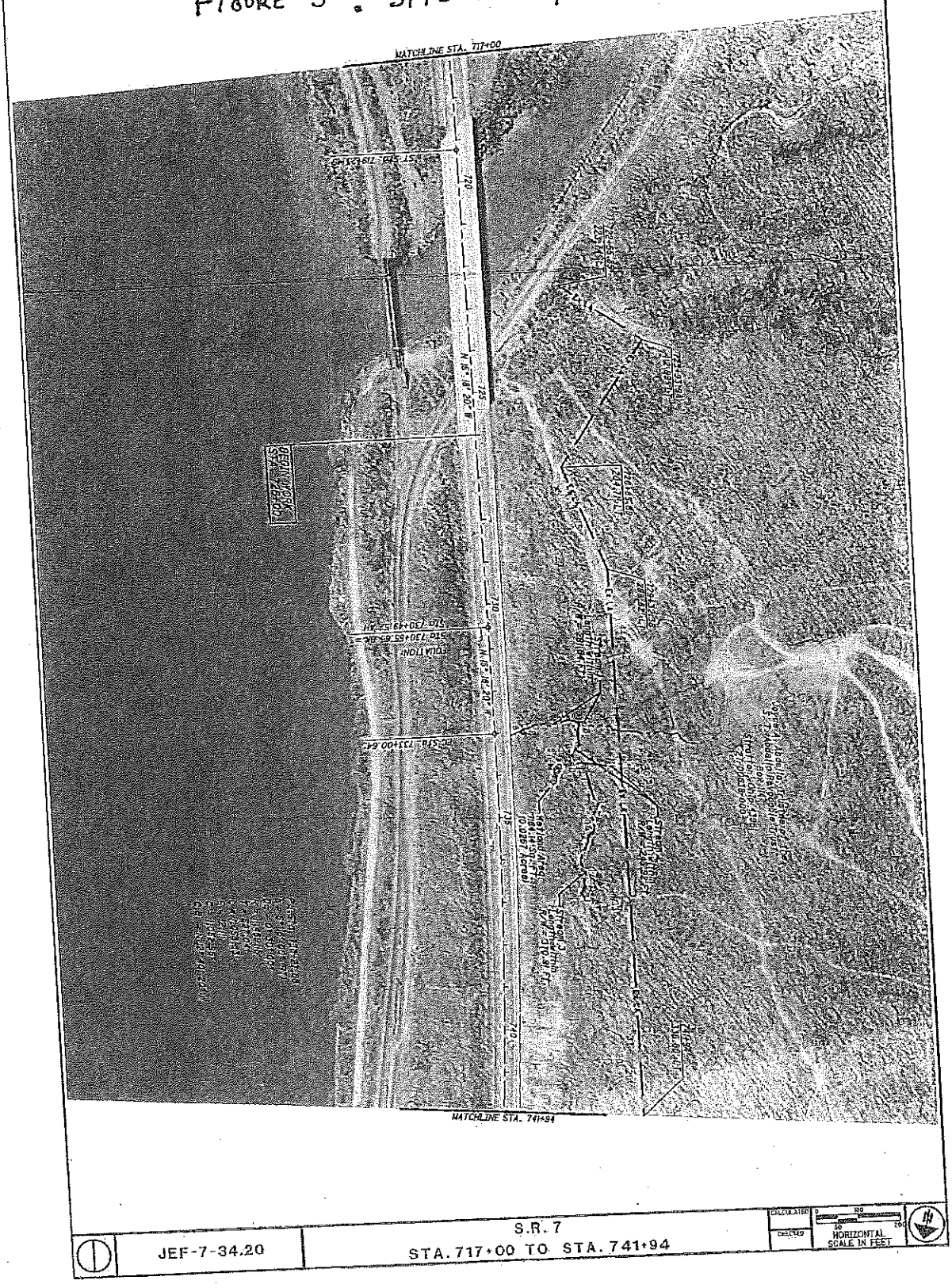
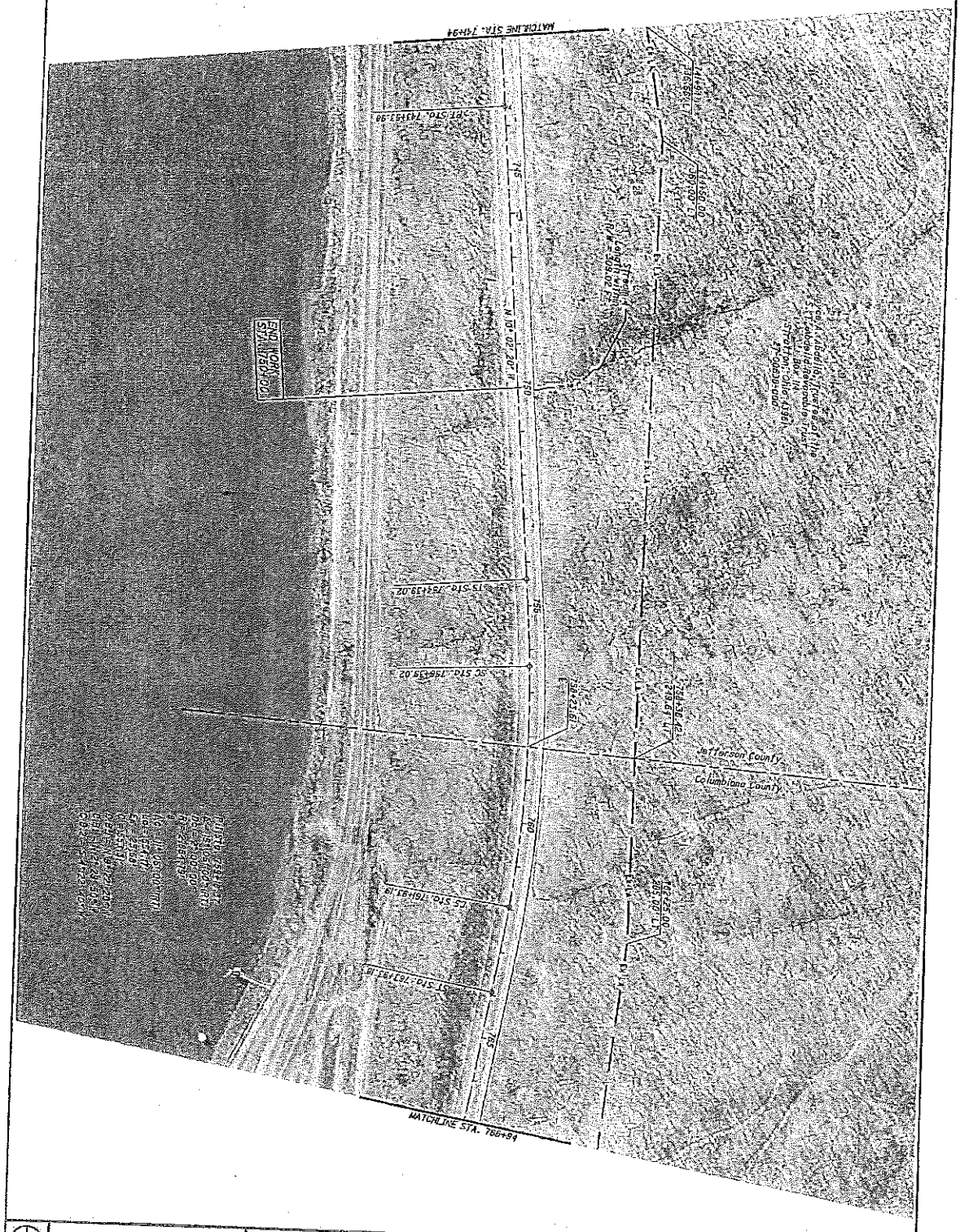


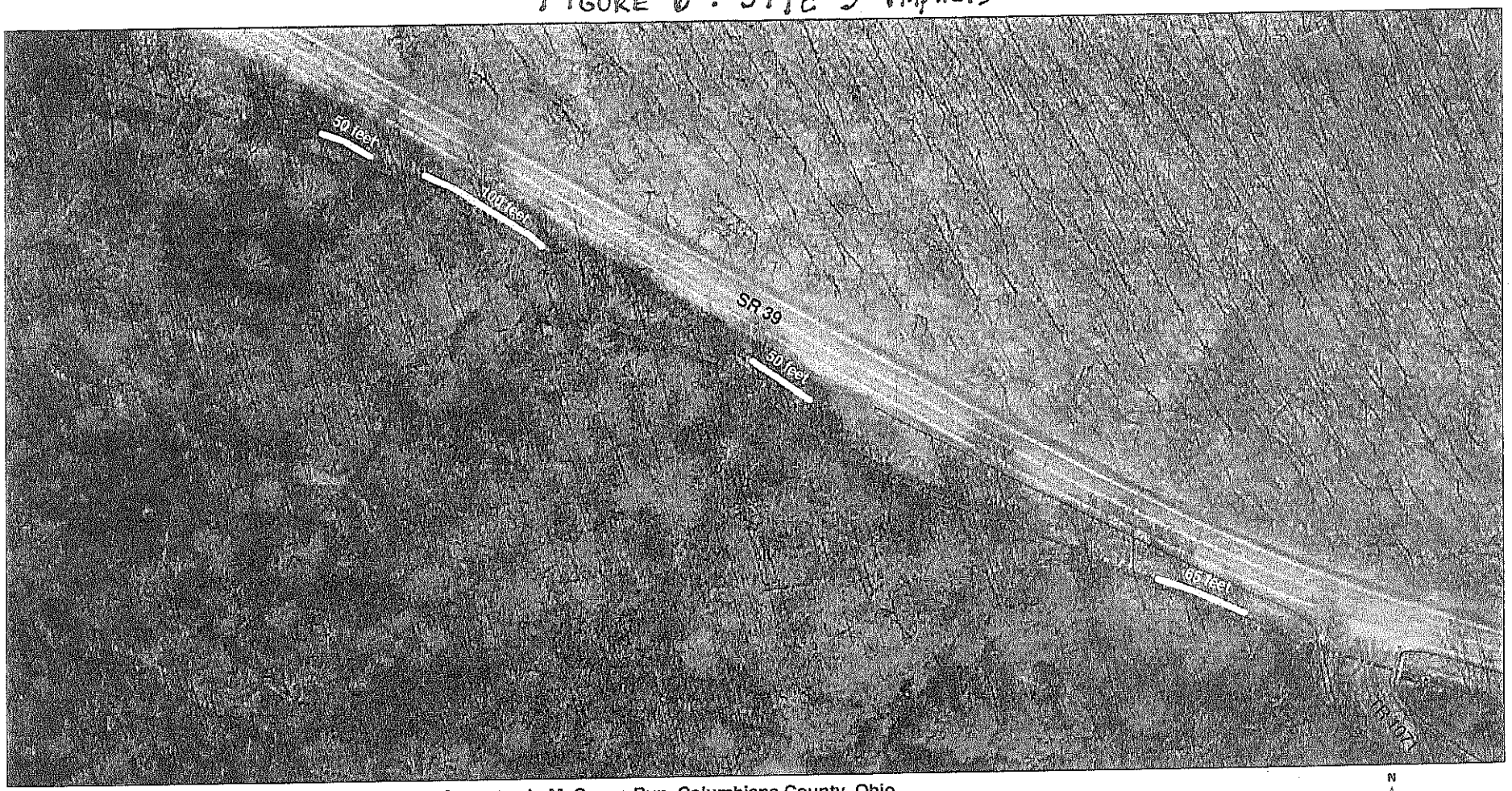
Figure 5 : Site 2 Impacts





	JEF-7-34.20	S.R. 7 STA. 741+94 TO STA. 766+94	CALCULATED CHECKED HORIZONTAL SCALE IN FEET

Figure 6 : Site 3 Impacts



COL-39-12.65: Locations of fill material and restoration areas in McQueen Run, Columbiana County, Ohio.

0 40 80 120 160
Feet

Approximate Centerline of McQueen Run

Location of Fills

N
W E
S

THE OHIO DEPARTMENT OF TRANSPORTATION
OFFICE OF ENVIRONMENTAL SERVICES
1980 W. BROAD ST.
COLUMBUS, OH 43223
PRODUCED WITH GEOMEDIA PROFESSIONAL SOFTWARE
CREATED BY: K. DUNLAP
DATE CREATED: 07/31/13

EXHIBIT 1

OHIO DEPARTMENT OF TRANSPORTATION
CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

April 8, 2014

Ms. Melissa Olszewski
Ohio Department of Natural Resources
Division of Mineral Resources Management
2045 Morse Road, Building H-2
Columbus, OH 43229-6693

RE: MOU – Agreement Number 18217

Dear Ms. Olszewski:

Enclosed please find an executed copy of the MOU between the Ohio Department of Natural Resources and the Ohio Department of Transportation. Please let us know if you need anything additional.

Respectfully,

Jacque Annarino for

Timothy M. Hill
Administrator
Office of Environmental Services

Enclosure

Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR — JAMES ZEHRINGER, DIRECTOR

Division of Mineral Resources Management
2045 Morse Road, Building H-2
Columbus, OH 43229-6693
Phone: (614) 265-6893; Fax: (614) 265-7999

March 20, 2014

Tim Hill
Ohio Department of Transportation
Office of Environmental Services
1980 West Broad Street
Columbus, Ohio 43223

RE: MOU, Agreement Number 18217

Dear Mr. Hill:

Enclosed are 2 copies of an MOU between the Ohio Department of Transportation and the Ohio Department of Natural Resources – Division of Mineral Resources Management. Please have the Director, Jerry Wray, sign both agreements. Please return one fully executed agreement to the address below:

ODNR, DMRM
ATTN: Melissa Olszewski
2045 Morse Road, Building H-2
Columbus, Ohio 43229-6693

If you should have any questions please contact Benny McCament at 740/592-3748.

Sincerely,

Melissa Olszewski

Melissa Olszewski
Contract Officer
Abandoned Mine Land Program

Enclosures

Melissa Olszewski
Contract Officer
Division of Mineral Resources Management
OHIO DEPARTMENT OF NATURAL RESOURCES

2045 Morse Road, Bldg. H-2
Columbus, Ohio 43229-6693
RECYCLED PAPER

Phone: 614-265-6369
Fax: 614-265-7999
melissa.olszewski@dnr.state.oh.us
ohiodnr.gov

MEMORANDUM OF UNDERSTANDING

Agreement Number 18217
Reclamation of Acid Mine Drainage (AMD) in the
Little Raccoon Creek Watershed – Middleton Run AMD Project

Between

The Ohio Department of Transportation

And

The Ohio Department of Natural Resources-
Division of Mineral Resources Management

1. INTRODUCTION:

1.1 The Ohio Department of Transportation (hereinafter referred to as "ODOT") placed fill into 705 feet of an unnamed tributary to Rich Run in July 2010 at section number 22.68 on State Route 124 in Jackson County, Ohio. This activity was completed without required authorizations from the United States Army Corps of Engineers (USACE) and Ohio Environmental Protection Agency (OEPA), and subsequently, ODOT received a violation notice from the United States Environmental Protection Agency (US EPA) on March 19, 2013. To compensate for the stream impacts associated with this project, ODOT proposes to provide funding to the Ohio Department of Natural Resources, Division of Mineral Resource Management (hereinafter referred to as "ODNR-DMRM"), for the implementation of Acid Mine Drainage (AMD) remediation projects within the Little Raccoon Creek Watershed.

1.2 The ODNR-DMRM has a reclamation program authorized under Ohio Revised Code Section 1513.37, which establishes the Acid Mine Drainage Abatement and Treatment (AMDAT) fund.

1.3 Pursuant to ORC 121.17; directors of state departments are required to cooperate and coordinate their operational needs with each other. ODOT and ODNR-DMRM are willing to cooperate for the mutual benefit of both agencies. This Memorandum of Understanding is intended to facilitate and enhance coordination of this effort between ODOT-Office of Environmental Services (OES) and ODNR-DMRM and to establish policy and procedures to support interdepartmental cooperation.

2. PURPOSE:

2.1 Pursuant to Section 404 of the Clean Water Act, ODOT is required to appropriately compensate for unauthorized stream impacts associated with the JAC-

124-22.68 (PID 82586) maintenance project. This requirement is under the direct authority of the US EPA through the Federal Clean Water Act, the OEPA and ODNR through Chapter 6111 of the Ohio Revised Code.

The Middleton Run AMD Project (hereinafter referred to as PROJECT) will act as a component of ODOT's Final Mitigation Plan to appropriately compensate for unavoidable stream impacts associated with the aforementioned transportation project per all federal, state and local requirements.

2.2 The PROJECT drainage is acidic with a range of 2.0 to 4.3 pH, aluminum concentrations between 10 and 65 mg/L, and iron concentrations between 1 and 16 mg/L. AMD conditions are negatively impacting the Middleton Run subwatershed and larger Little Raccoon Creek Watershed.

2.3 The PROJECT involves standard reclamation and treatment via open limestone channels to reduce the downstream impacts of AMD problems that have developed due to unregulated past coal mining activities. Eleven strip pits will be treated, drained and filled. Suitable resoil material has been identified within a clay seam, situated directly below the spoil and strip pits. This clay layer ranges in thickness between 2-12 feet and is typically located at depths of 2-15 feet below the spoil and/or strip pits. Additionally, there is resoil material available on site, adjacent to the spoil piles and pits, which were cast aside during the coal mining process. Both of these materials will be utilized as a resoil medium to reclaim the spoil and strip pits, thus preventing the formation of AMD. Five open limestone channels will be installed to treat and convey water off the steep side slopes and into the receiving tributaries.

All disturbed areas will subsequently be limed, fertilized, mulched and seeded utilizing a standard seed mix of grasses and legumes. Sediment and erosion controls will be in place throughout the duration of the PROJECT to prevent offsite sediment deposition. Treatment systems are expected to eliminate 60% of AMD at the site, which discharges into Middleton Run and the Little Raccoon Creek watershed.

The PROJECT is more fully described in Exhibit 1 and Exhibit 2, attached as if fully rewritten herein.

3. **FUNDING:**

3.1 The total cost for reclamation and monitoring of this PROJECT is $1,237,820.

3.2 ODOT agrees to pay the ODNR-DMRM $310,200 towards construction of the PROJECT, which was based off linear feet of stream impacted at the JAC-124-22.68 site, a set mitigation ratio and price per linear foot, as follows:

Stream Length Impacted	705 feet
Mitigation Ratio	2 feet mitigation: 1 foot impact
Cost per linear foot for Class 2 stream	$ 220.00
Total ODOT Contribution	**$ $310,200.00**

3.3 Within thirty (30) days of the receipt of an invoice from ODNR-DMRM, ODOT shall transfer funds through an Intra-State Transfer Voucher (ISTV), in the amount of $310,200.00.

3.4 The total costs to ODOT for services rendered by ODNR-DMRM under this agreement shall not exceed the above referenced amount. In the event that the actual cost of the PROJECT is less than the amount identified in 3.2 above, ODNR-DMRM agrees that it will refund the difference to ODOT by ISTV.

4. ODNR-DMRM OBLIGATIONS:

4.1 ODNR-DMRM agrees to complete all necessary engineering design work.

4.2 ODNR-DMRM agrees to obtain all necessary Environmental Assessments/ National Environmental Policy Act (EA/NEPA) documentation for the PROJECT, conduct all necessary EA/NEPA assessments as required for Surface Mining Control Reclamation Act projects, and provide copies of such documents to U.S. Department Of Interior Office of Surface Mining in order to obtain an Authorization to Proceed.

4.3 ODNR-DMRM agrees to secure right-of-entry (ROE) from private landowners on any project property.

4.4 ODNR-DMRM agrees to provide ODOT with annual monitoring reports, containing data discussed below, for each of three consecutive years following completion of the PROJECT. The first annual monitoring report is due to ODOT by November 1 of the first full year following completion of the PROJECT. All monitoring data will be post-reclamation and will be collected at already established monitoring locations. Data collected will conist DMRM's typical suite of AMD parameters (pH, acidity, alkalinity, iron, aluminum, manganese, sulfate, etc.) and will include flow measurements to calculate load reductions as a result of the project. Failure to do so may result in ODOT requesting reimbursement of its share of the PROJECT.

4.5 ODNR-DMRM agrees to administer the construction contract for the reclamation of the PROJECT. Such administration shall include advertisement for bid, selection of the lowest responsible bidder, contract award, and contractor payment in accordance with State law.

4.6 ODNR-DMRM agrees to provide construction inspection services as needed to implement the construction contract for the PROJECT.

5. MUTUAL OBLIGATIONS BY BOTH ODOT AND ODNR-DMRM:

5.1 This agreement in no way restricts the parties from participating in similar activities with other public or private agencies, organizations or individuals.

5.2 All obligations of the parties set forth in this MOU shall be effective as of the date of signing by both parties and shall expire on June 30, 2017.

5.3 Nothing herein shall be considered as obligating the ODOT or the ODNR-DMRM to expend or as involving the State in any contract or other obligations for the future payment of money in excess of funding approved and made available for payment under this agreement and modifications thereto. Obligations of the State are subject to Section 126.07 of the Ohio Revised Code.

5.4 ODNR-DMRM agrees to provide ODOT, through any authorized representative, access to and the right to examine all books, paper or documents related to this agreement, and further agrees to maintain records as necessary to establish costs associated with the completion of the tasks to be performed.

6. CONTRACTS:

The principle agency contacts for this agreement are:

Tim Hill
Ohio Department of Transportation
Office of Environmental Services
Mail Stop 4170, 3rd Floor
1980 West Broad Street
Columbus, Ohio 43223
Phone: (614) 644-0377

Benny McCament
Ohio Department of Natural Resources
Division of Mineral Resource Management
280 East State Street
Athens, OH 45701
Phone: (740) 592-3748

7. TERMINATION:

7.1 It is the intent of ODOT and ODNR-DMRM to fulfill their obligations under this agreement. If any party cannot fulfill its obligations because of the lack of appropriate funds, this agreement will automatically terminate.

7.2 Any party may terminate this agreement by written notice to the other party at least thirty (30) days in advance of the effective date of the termination. No party shall incur any new obligations to the agreement after the effective date and shall cancel as many outstanding obligations as possible. Full credit shall be allowed ODOT or ODNR-DMRM for expenses and all non-cancelled obligations properly incurred up to the effective date of termination.

8. MISCELLANEOUS PROVISIONS:

8.1 This MOU constitutes the entire agreement between the parties, and any changes or modifications to this MOU shall be made and agreed to by both ODNR and ODOT in writing.

8.2 Obligations of the State of Ohio are subject to ORC 126.07 and the appropriation of sufficient funds by the General Assembly of Ohio or the United States Congress. If at any time sufficient funds are not appropriated to continue funding the payments due under this agreement, this agreement will terminate on the date the available appropriation expires without any further obligation by the parties hereto.

8.3 In the event that any dispute arises between ODOT and ODNR concerning interpretation of, or performance pursuant to, this MOU, such dispute shall be resolved by the respective Directors in a mutually acceptable manner.

8.4 This agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.

8.5 Any person executing this MOU in a representative capacity hereby represents that he/she has been duly authorized by his/her director to execute this MOU on such director's behalf.

Ohio Department of Transportation

Jerry Wray,
Director

Date: 4/8/14

ODOT Legal Review

Reviewer

4/2/14
Date

Ohio Department of Natural Resources

James Zehringer,
Director

Date: 3.19.14

APPROVED AS TO FORM

By:

Name: DANIEL J. MARTIN

Title: Assistant Attorney General

Date: March 7, 2014

EXHIBIT 1

Middleton Run Reclamation II Project Description

Project Location

The Middleton Run Reclamation Acid Mine Drainage (AMD) Project is located in the north-eastern portion of Jackson County, within Little Raccoon Creek, approximately 1.0 mile east of Wellston, Ohio. Specifically, the project site is located southeast of Hiram Road West and north of State Route 124 within Section 16, Township 9 North, Range 17 West, in Milton Township of the Wellston USGS Quadrangle Map.

The project site is located approximately 1.5 miles southeast of Wellston, Ohio. From Wellston, take US50 east for approximately 1.2 miles to Hiram Road West. Turn right (south) onto Hiram Road West and continue for approximately 0.7 miles to the Middleton Run Reclamation Project Construction Entrance. Turn left (northeast) into the project site.

Nature of Activity

The Middleton Run Reclamation Project is being proposed to address abandoned surface coal mining of the Clarion Coal Seam – No. 4a, and the resulting AMD that has negatively impacted the entire Middleton Run Subwatershed. Reclamation of this site will be located within the historic coal mining footprint. All ground disturbing activity will relate to reclaiming the 40 acres of spoil and 11 strip pits that make up the project site. The strip pits contain millions of gallons of AMD that seep through the spoil and then discharge as seepage from the hillside along the coal pit floor. Typical water quality in the pits and subsequent tributary drainage is between 2.0 – 4.3 pH, and aluminum concentrations between 10 and 65 mg/l. Aluminum is the dominant AMD metal present, likely due to the large presence of shales and clays in the spoil. Iron concentrations typically range between 1 and 16 mg/l.

Specifically, the 11 strip pits will be treated, drained and filled. Suitable resoil material has been identified within a clay seam, situated directly below the spoil and strip pits. This clay layer ranges in thickness between 2-12 feet and is typically located at depths of 2-15 feet below the spoil and/or strip pits. Additionally, there is resoil material available on site, adjacent to the spoil piles and pits, which were cast aside during the mining process. Both of these materials will be utilized as a resoil medium to reclaim the spoil and strip pits, thus preventing the formation of Acid Mine Drainage (AMD). Five open limestone channels will be installed to treat and convey water off the steep side slopes and into the receiving tributaries.

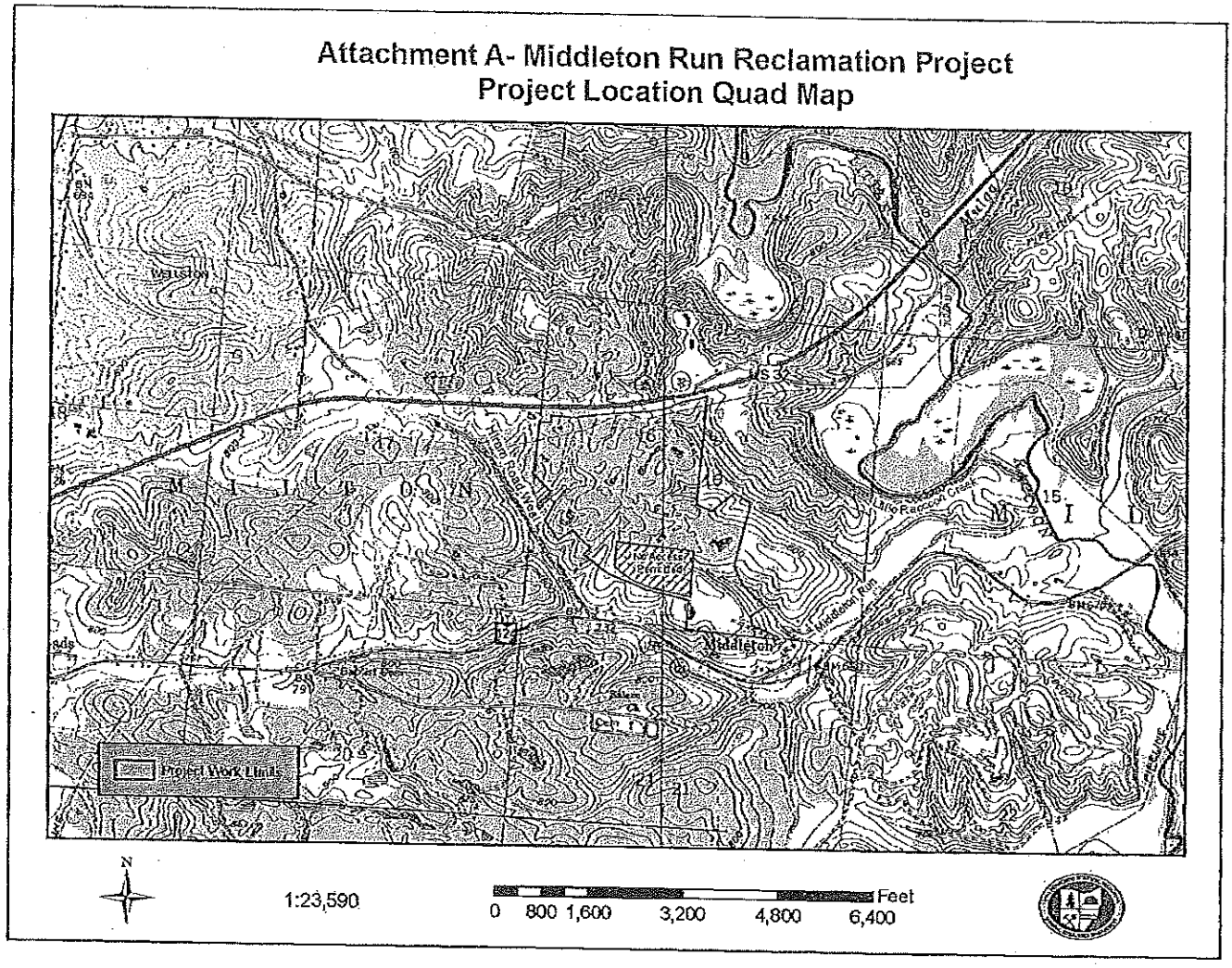
Access to the site will occur off of Hiram Road West via an existing logging road located on Mrs. Pittenger's property. This will act as a construction entrance providing access to spoil piles and strip pits that sit upon the ridge. One permanent stream crossing will be required along the construction entrance to allow for access to the ridge top reclamation site.

All disturbed areas will subsequently be limed, fertilized, mulched and seeded utilizing a standard seed mix of grasses and legumes. Sediment and erosion controls will be in place throughout the duration of the project to prevent offsite sediment deposition.

The Middleton Run Reclamation AMD Project involves standard reclamation and treatment via open limestone channels to reduce the downstream impacts of AMD problems that have developed due to unregulated past mining activities.

EXHIBIT 2

Middleton Run Reclamation Project Map



OHIO DEPARTMENT OF TRANSPORTATION
CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

April 8, 2014

Ms. Melissa Olszewski
Ohio Department of Natural Resources
Division of Mineral Resources Management
2045 Morse Road, Building H-2
Columbus, OH 43229-6693

RE: MOU – Agreement Number 18217

Dear Ms. Olszewski:

Enclosed please find an executed copy of the MOU between the Ohio Department of Natural Resources and the Ohio Department of Transportation. Please let us know if you need anything additional.

Respectfully,

Timothy M. Hill
Administrator
Office of Environmental Services

Enclosure

Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR — JAMES ZEHRINGER, DIRECTOR

Division of Mineral Resources Management
2045 Morse Road, Building H-2
Columbus, OH 43229-6693
Phone: (614) 265-6893; Fax: (614) 265-7999

March 20, 2014

Tim Hill
Ohio Department of Transportation
Office of Environmental Services
1980 West Broad Street
Columbus, Ohio 43223

RE: MOU, Agreement Number 18217

Dear Mr. Hill:

Enclosed are 2 copies of an MOU between the Ohio Department of Transportation and the Ohio Department of Natural Resources – Division of Mineral Resources Management. Please have the Director, Jerry Wray, sign both agreements. Please return one fully executed agreement to the address below:

ODNR, DMRM
ATTN: Melissa Olszewski
2045 Morse Road, Building H-2
Columbus, Ohio 43229-6693

If you should have any questions please contact Benny McCament at 740/592-3748.

Sincerely,

Melissa Olszewski

Melissa Olszewski
Contract Officer
Abandoned Mine Land Program

Enclosures

Melissa Olszewski
Contract Officer
Division of Mineral Resources Management
OHIO DEPARTMENT OF NATURAL RESOURCES

2045 Morse Road, Bldg. H-2
Columbus, Ohio 43229-6693
RECYCLED PAPER

Phone: 614-265-6369
Fax: 614-265-7999
melissa.olszewski@dnr.state.oh.us
ohiodnr.gov

MEMORANDUM OF UNDERSTANDING

Agreement Number 18217
Reclamation of Acid Mine Drainage (AMD) in the
Little Raccoon Creek Watershed – Middleton Run AMD Project

Between

The Ohio Department of Transportation

And

The Ohio Department of Natural Resources-
Division of Mineral Resources Management

1. INTRODUCTION:

1.1 The Ohio Department of Transportation (hereinafter referred to as "ODOT") placed fill into 705 feet of an unnamed tributary to Rich Run in July 2010 at section number 22.68 on State Route 124 in Jackson County, Ohio. This activity was completed without required authorizations from the United States Army Corps of Engineers (USACE) and Ohio Environmental Protection Agency (OEPA), and subsequently, ODOT received a violation notice from the United States Environmental Protection Agency (US EPA) on March 19, 2013. To compensate for the stream impacts associated with this project, ODOT proposes to provide funding to the Ohio Department of Natural Resources, Division of Mineral Resource Management (hereinafter referred to as "ODNR-DMRM"), for the implementation of Acid Mine Drainage (AMD) remediation projects within the Little Raccoon Creek Watershed.

1.2 The ODNR-DMRM has a reclamation program authorized under Ohio Revised Code Section 1513.37, which establishes the Acid Mine Drainage Abatement and Treatment (AMDAT) fund.

1.3 Pursuant to ORC 121.17; directors of state departments are required to cooperate and coordinate their operational needs with each other. ODOT and ODNR-DMRM are willing to cooperate for the mutual benefit of both agencies. This Memorandum of Understanding is intended to facilitate and enhance coordination of this effort between ODOT-Office of Environmental Services (OES) and ODNR-DMRM and to establish policy and procedures to support interdepartmental cooperation.

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2.1 Pursuant to Section 404 of the Clean Water Act, ODOT is required to appropriately compensate for unauthorized stream impacts associated with the JAC-

124-22.68 (PID 82586) maintenance project. This requirement is under the direct authority of the US EPA through the Federal Clean Water Act, the OEPA and ODNR through Chapter 6111 of the Ohio Revised Code.

The Middleton Run AMD Project (hereinafter referred to as PROJECT) will act as a component of ODOT's Final Mitigation Plan to appropriately compensate for unavoidable stream impacts associated with the aforementioned transportation project per all federal, state and local requirements.

2.2 The PROJECT drainage is acidic with a range of 2.0 to 4.3 pH, aluminum concentrations between 10 and 65 mg/L, and iron concentrations between 1 and 16 mg/L. AMD conditions are negatively impacting the Middleton Run subwatershed and larger Little Raccoon Creek Watershed.

2.3 The PROJECT involves standard reclamation and treatment via open limestone channels to reduce the downstream impacts of AMD problems that have developed due to unregulated past coal mining activities. Eleven strip pits will be treated, drained and filled. Suitable resoil material has been identified within a clay seam, situated directly below the spoil and strip pits. This clay layer ranges in thickness between 2-12 feet and is typically located at depths of 2-15 feet below the spoil and/or strip pits. Additionally, there is resoil material available on site, adjacent to the spoil piles and pits, which were cast aside during the coal mining process. Both of these materials will be utilized as a resoil medium to reclaim the spoil and strip pits, thus preventing the formation of AMD. Five open limestone channels will be installed to treat and convey water off the steep side slopes and into the receiving tributaries.

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The PROJECT is more fully described in Exhibit 1 and Exhibit 2, attached as if fully rewritten herein.

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Phone: (614) 644-0377

Benny McCament
Ohio Department of Natural Resources
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Phone: (740) 592-3748

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8. MISCELLANEOUS PROVISIONS:

8.1 This MOU constitutes the entire agreement between the parties, and any changes or modifications to this MOU shall be made and agreed to by both ODNR and ODOT in writing.

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Ohio Department of Transportation

Jerry Wray,
Director

Date: 4/8/14

ODOT Legal Review

Reviewer

4/2/14
Date

Ohio Department of Natural Resources

James Zehringer,
Director

Date: 3.19.14

APPROVED AS TO FORM

By:

Name: DANIEL J. MARTIN

Title: Assistant Attorney General

Date: March 7, 2014

EXHIBIT 1

Middleton Run Reclamation II Project Description

Project Location

The Middleton Run Reclamation Acid Mine Drainage (AMD) Project is located in the north-eastern portion of Jackson County, within Little Raccoon Creek, approximately 1.0 mile east of Wellston, Ohio. Specifically, the project site is located southeast of Hiram Road West and north of State Route 124 within Section 16, Township 9 North, Range 17 West, in Milton Township of the Wellston USGS Quadrangle Map.

The project site is located approximately 1.5 miles southeast of Wellston, Ohio. From Wellston, take US50 east for approximately 1.2 miles to Hiram Road West. Turn right (south) onto Hiram Road West and continue for approximately 0.7 miles to the Middleton Run Reclamation Project Construction Entrance. Turn left (northeast) into the project site.

Nature of Activity

The Middleton Run Reclamation Project is being proposed to address abandoned surface coal mining of the Clarion Coal Seam – No. 4a, and the resulting AMD that has negatively impacted the entire Middleton Run Subwatershed. Reclamation of this site will be located within the historic coal mining footprint. All ground disturbing activity will relate to reclaiming the 40 acres of spoil and 11 strip pits that make up the project site. The strip pits contain millions of gallons of AMD that seep through the spoil and then discharge as seepage from the hillside along the coal pit floor. Typical water quality in the pits and subsequent tributary drainage is between 2.0 – 4.3 pH, and aluminum concentrations between 10 and 65 mg/l. Aluminum is the dominant AMD metal present, likely due to the large presence of shales and clays in the spoil. Iron concentrations typically range between 1 and 16 mg/l.

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All disturbed areas will subsequently be limed, fertilized, mulched and seeded utilizing a standard seed mix of grasses and legumes. Sediment and erosion controls will be in place throughout the duration of the project to prevent offsite sediment deposition.

The Middleton Run Reclamation AMD Project involves standard reclamation and treatment via open limestone channels to reduce the downstream impacts of AMD problems that have developed due to unregulated past mining activities.

EXHIBIT 2

Middleton Run Reclamation Project Map

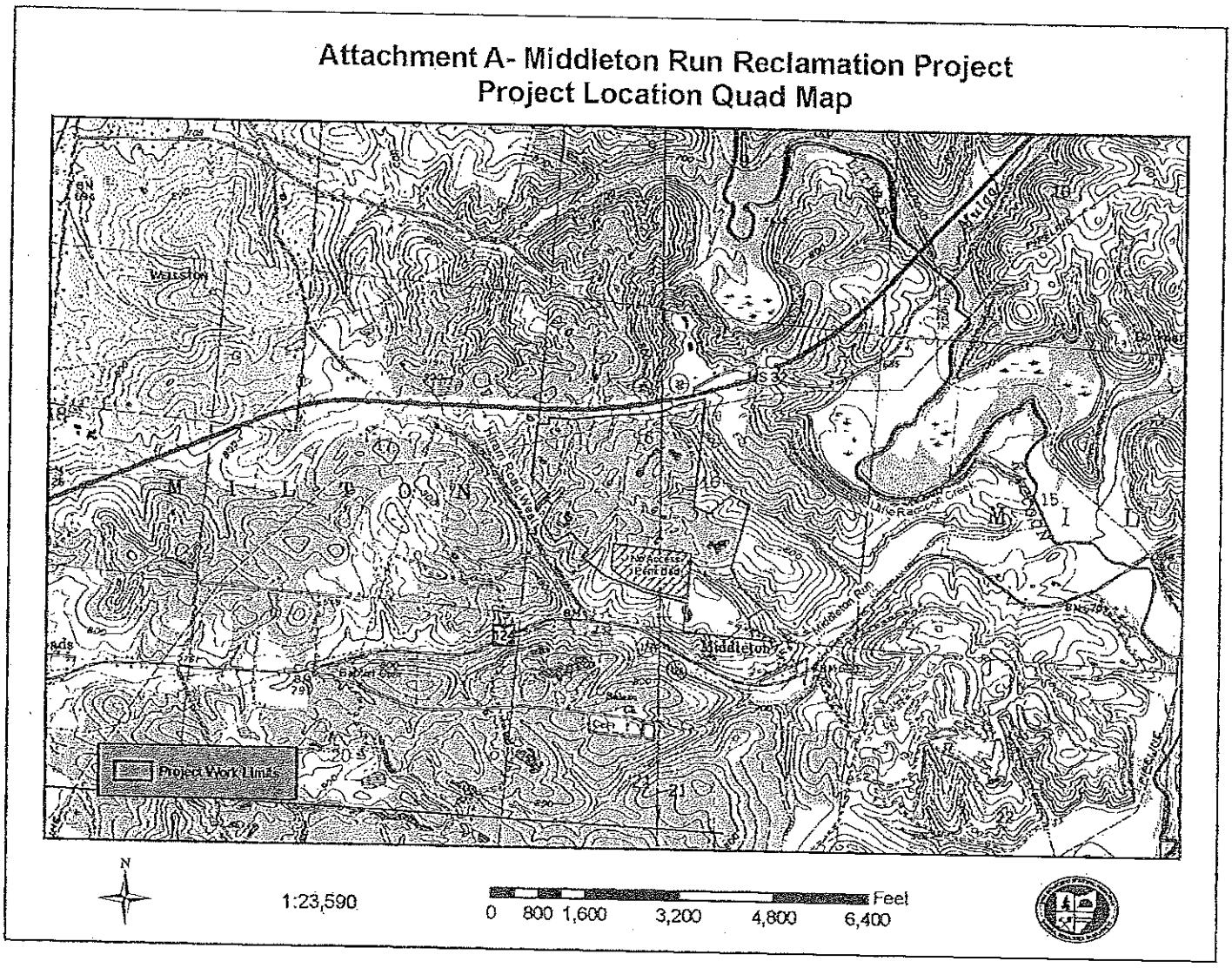

EXHIBIT 2

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS: WETLANDS

The following guidelines serve as general specification for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications defining the scope and complexity of the restoration plan will depend upon the size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced among others. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan.

I. Existing Physical Conditions

A. A surveyed site plan depicting property boundaries, and site features, including roads, ditches, culverts, tile systems, waterbodies (including wetlands) and areas of unpermitted fill. Spot elevations are required at representative locations to discern normal undisturbed grades from fill elevations. The plan scale should be no greater than 1 inch = 40 feet.

II. Proposed Physical Conditions

A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replace dredge material into ditches, etc.). Indicate proposed finished grades, and the location of all erosion control features (e.g., silt fence).

B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; routes for equipment access; the location of the disposal site for any removed fill; how the work will progress across the site; and planting specifications (i.e., temporary stockpiling of fill removed, erosion control phasing, revegetation). Generally, we require that tracked equipment be used in wetland areas.

C. Prior to the commencement of removal work, the construction work area must be defined. Delineate the site restoration areas by installation of flagging, erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that **no** work shall occur beyond these boundaries.

III. As-Built Physical Conditions

A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of grading activities (i.e., an "as-built" plan), including finished grades and all pertinent ground surface and subsurface features (e.g., stratigraphy of restored soil profiles). This as-built plan shall be prepared and submitted prior to planting/seeding activities.

EXHIBIT 3

Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No.	Issuance Date:
LRH-201100098-5	August 29, 2012
Stream:	Closing Date:
N/A	March 18, 2017

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-RD-N
502 8th Street
Huntington, WV 25701-2070 Phone: (304) 399-5210

NATIONWIDE PERMITS FOR THE STATE OF OHIO

CORPS OF ENGINEERS REGULATORY PROGRAM
REISSUANCE OF NATIONWIDE PERMITS

WITH OHIO ENVIRONMENTAL PROTECTION AGENCY
401 WATER QUALITY CERTIFICATION

WITH OHIO DEPARTMENT OF NATURAL RESOURCES CONSISTENCY
DETERMINATION UNDER THE COASTAL ZONE MANAGEMENT ACT

On February 21, 2012, the Corps of Engineers (the Corps) published, in the Federal Register, the final rule for the administration of its nationwide permit program regulations under the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act. The rule became effective on March 19, 2012.

An integral part of the Corps' regulatory program is the concept of nationwide permits (NWPs) for minor activities. NWPs are activity specific, and are designed to relieve some of the administrative burdens associated with permit processing for both the applicant and the Federal government. The NWPs, published in the February 21, 2012, Federal Register, Reissuance of Nationwide Permits (77 FR 10184), are issued by the Chief of Engineers, and are intended to apply throughout the entire United States and its territories. The Corps Districts representing Ohio have imposed regional conditions on the NWPs that are applicable throughout the entire state. For convenience, all NWPs with the appropriate regional, general, and special conditions are attached.

The NWPs are not valid until the appropriate state agency certifies the discharge does not violate state water quality standards. In response to the February 21, 2012, Federal Register Notice (77 FR 10184), the State of Ohio Environmental Protection Agency (OEPA) granted water quality certification and imposed general conditions on NWP 19, and specific conditions on NWP nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 49, 50 and 51.

OEPA denied water quality certification for NWP 17-*Hydropower Projects*, NWP 44-*Mining Activities*, NWP 46-*Discharges in Ditches*, NWP 48-*Commercial Shellfish Aquaculture Activities*, and NWP 52-*Water-Based Renewable Energy Generation Pilot Projects*. Discharges that are NOT included in OEPA's certification of the NWPs must obtain either individual water quality certification or a waiver from:

Director
Ohio Environmental Protection Agency
Division of Surface Water
PO Box 1049
Columbus, Ohio 43216-1049
(614) 644-2001

In addition, any state with a federally-approved Coastal Zone Management Act (CZMA) plan must agree with the Corps determination that the activities authorized by NWPs which are within, or will affect any land or water uses or natural resources of the state's coastal zone, are consistent with the CZMA plan. In response to the February 21, 2012, Federal Register Notice (77 FR 10184), the Ohio Department of Natural Resources (ODNR), concurred with the U.S. Army Corps of Engineers Federal Consistency Determination on NWPs nos. 1, 2, 4, 5, 6, 8, 9, 10, 11, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 43, 45, 48, 49, and 50, and imposed specific conditions on NWP nos. 3,7, 12, 13, 14, 15, 17, 36, 38, and 51. Activities which are NOT included in ODNR's concurrence of the NWPs must obtain a project specific CZMA consistency determination from:

Ohio Department of Natural Resources
Office of Coastal Management
105 West Shoreline Drive
Sandusky, Ohio 44870
(419) 626-7980

Some NWPs require advance notification. The notification must be made in writing as early as possible prior to commencing the proposed activity. The notification procedures are located under General Condition 31. The notification to the Corps can be made concurrently with the request for individual state certification, if required. The district engineer may require an individual permit for any activity determined to have more than minimal adverse environmental effects, individually or cumulatively, or would be contrary to the public interest.

The NWPs provide a simplified, expeditious means of project authorization under the various authorities of the Corps. We encourage prospective permit applicants to consider the advantages of nationwide permit authorization during the preliminary design of their projects. Assistance and further information regarding all aspects of the Corps regulatory program may be obtained by contacting:

BUFFALO DISTRICT

Name: Diane Kozlowski, Chief Regulatory Branch
Address: U.S. Army Corps of Engineers, Buffalo District
1776 Niagara Street
Buffalo, New York 14207-3199
Phone: (716) 879-4330

HUNTINGTON DISTRICT

Name: Ginger Mullins, Chief, Regulatory Division
Address: U.S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070
Phone: (304) 399-5389

LOUISVILLE DISTRICT

Name: James Townsend, Chief, Regulatory Branch
Address: U.S. Army Corps of Engineers, Louisville District
Post Office Box 59
Louisville, Kentucky 40201-0059
Phone: (502) 582-6461

PITTSBURGH DISTRICT

Name: Scott Hans, Chief, Regulatory Branch
Address: U.S. Army Corps of Engineers, Pittsburgh District
William S. Moorhead Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4186
Phone: (412) 395-7155

Attached is a map showing the district boundaries for the State of Ohio.

Ginger Mullins, Chief
Regulatory Division

(O)

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

h. all other streams and lake shorelines when impacts exceed 300 linear feet.

32. **Completed Enforcement Actions**. Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The unauthorized activity affected no more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312

of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). **(Sections 10 and 404)**

Ohio State Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions apply to this nationwide permit.

2. This certification does not authorize any project with impacts to category 3 wetlands; impacts to category 1 and category 2 wetlands that exceed three acres; or impacts to any stream in excess of 500 linear feet unless Ohio EPA has been informed, in writing, of each specific project that exceeds these criteria and, based on this information, has chosen not to issue a State Administrative Order or Consent Order resulting from a State enforcement action.

33. Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. **(Sections 10 and 404)**

5. All hydric soils up to 12 inches in depth within wetlands shall be stockpiled and replaced as the topmost backfill layer. Best management practices, such as silt fencing and soil stabilization, shall be implemented to reduce erosion and sediment run-off into adjacent wetlands.

6. The stockpiling of side cast dredged material in excess of three months requires individual state water quality certification.

7. Buried utility lines shall be installed at a 90 degree angle to the stream bank to the maximum extent practicable. When a 90 degree angle is not possible, the length of any buried utility line within any single water body shall not exceed twice the width of that water body at the location of the crossing.

Ohio Department of Natural Resources CZMA Federal Consistency Determination Conditions:

(a) For all activities located in or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations must be obtained under Ohio Revised Code Chapter 1506 and all conditions of the Section 401 Water Quality Certification for Nationwide permits as issued by OEPA on March 30, 2012, must be met.

52. Water-Based Renewable Energy Generation Pilot Projects. Revoked from use in Ohio.

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements**. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. **Spawning Areas**. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas**. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds**. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. **Suitable Material**. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. **Water Supply Intakes**. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. **Adverse Effects From Impoundments**. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. **Management of Water Flows**. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course,

condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity

is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties.

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-

Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. **Safety of Impoundment Structures**. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. **Water Quality**. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. **Coastal Zone Management**. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. **Regional and Case-By-Case Conditions**. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. **Use of Multiple Nationwide Permits**. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. **Transfer of Nationwide Permit Verifications**. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including

any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____
(Transferee)

_____
(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) **Contents of Pre-Construction Notification:** The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps

does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) **Form of Pre-Construction Notification**: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) **Agency Coordination:**

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10

calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district

engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final

mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

F. Nationwide Permits Regional General Conditions

1. Nationwide Permits shall not authorize any activity which impacts bogs and/or fens.

2. No Nationwide permit may be used in Lake Erie for purposes of diverting water from the Great Lakes.

3. Nationwide Permits shall not authorize any activity which will trap littoral material and interrupt littoral transport within Lake Erie, Sandusky Bay, and Maumee Bay.

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 in accordance Nationwide Permit General Condition 31 and receives written approval from the Corps:

Location	Restricted Period
Salmonid streams[1]	9/15 – 6/30
Percid streams[2]	3/15 – 6/30
Other streams[3]	4/15 – 6/30

1. **Arcola Creek** (entire reach), **Ashtabula River** (Hadlock Rd. to mouth), **Ashtabula Harbor**, **Aurora** Branch of the Chagrin River (RM 0.38 to mouth), **Big Creek** ((Grand River drainage basin) Girdled Road to mouth), **Chagrin River** (Chagrin Falls to mouth), **Cold Creek** (entire reach), **Conneaut Creek** (entire reach), **Conneaut Harbor**, **Corporation Creek** ((Chagrin River RM 0.27) entire reach), **Cowles Creek** (entire reach), **Ellison** Creek ((Grand River drainage basis) entire reach), **Euclid Creek** (entire reach), **Grand River** (to dam at Harpersfield Covered Bridge Park just upstream of the

S.R. 534 bridge to mouth)/**Fairport Harbor**, **Gulley Brook** ((Chagrin River RM 5.54) entire reach), **Indian Creek** (entire reach), **Kellogg Creek** (Grand River drainage basin) entire reach), **Mill Creek** ((Grand River drainage basin) entire reach), **Paine Creek** ((Grand River drainage basin) from Paine Falls to mouth), **Rocky River** (Cedar Point Rd. (East Branch/West Branch confluence) to mouth), **Smokey Run** ((Conneaut Creek RM 3.5) entire reach), **Turkey Creek** (entire reach), **Vermilion River** (dam at Wakeman upstream of the S.R. 20/60 bridge to mouth), **Ward Creek** ((Chagrin River RM 1.0) entire reach), **Wheeler Creek** (entire reach), **Whitman Creek** (entire reach).

2. **Cuyahoga River** (dam below the S.R. 82 bridge east of Brecksville (Chippewa Rd.) to mouth), **Great Miami River** (dam south of New Baltimore to mouth), **Hocking River** (lower section), **Huron River** (from the East Branch/West Branch confluence to Lake Erie), **Little Miami River** (lower section), **Maumee River** (split dam at Mary Jane Thurston State Park and Providence Park in Grand Rapids to mouth), **Maumee Bay**, **Muskingum River** (to Devola Dam No. 2 off S.R. 60 north of Marietta to mouth), **Ohio River** (entire reach), **Portage River** (entire reach), **Sandusky River** (to Ballville Dam off River Road in Fremont to mouth), **Sandusky Bay**, **Scioto River** (lower section), **Toussaint River** (entire reach).

3. **Class 3 primary headwater streams** (watershed $\leq$1 mi^2), **EWH, CWH, WWH**, or streams **with T&E species**. Includes **Lake Erie & bays** not listed above. Special conditions (such as occurrence of T&E species) may mandate local variation of restrictions.

Note: This condition does not apply to Ohio Department of Transportation projects that are covered under the "Memorandum of Agreement between Ohio Department of Transportation, Federal Highway Administration, Ohio Department of Natural Resources, and United States Fish and Wildlife Service For Interagency Coordination For Highway Projects Which Involve Stream Crossings, Bank Stabilization, and/or Minor Wetland Fills.

5. *Waters of Special Concern*: The applicant must notify the district engineer in accordance with Nationwide Permit General Condition 31 and Regional General Condition 6 for activities in the following resources:

(a) *Category 3 Wetlands*: Notification is required for all temporary or permanent impacts to Category 3 wetlands as determined through use of the latest approved version of Ohio EPA's Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form.**

(b) *Ohio Stream Designations*: Notification is required for all temporary or permanent impacts to Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding State Waters as determined by Ohio EPA except for NWP 1, 2, 3, 9, 10, 11, 27, 28, 32, and 35 or maintenance activities covered under NWPs 7 and 12. The current list of these streams can be found on the Ohio EPA web-site at:

http://www.epa.ohio.gov/dsw/rules/3745_1.aspx. You should look for these designations under the aquatic life use of the stream within its basin and under the "Anti-deg Rule #05."

(c) *State Wild and Scenic Rivers*: Notification is required for all activities in State Wild and Scenic Rivers. The following are **State Wild and Scenic Rivers**:

The Ashtabula River

- The Ashtabula River from the confluence of the East Branch and West Branch of the Ashtabula River at river mile 27.54, downstream to the East 24th Street bridge crossing at river mile 2.3.
- The East Branch of the Ashtabula River from Pennline Fen at river mile 12.0, downstream to the mouth of the East Branch at river mile 0.0.
- The West Branch of the Ashtabula River from the North Richmond Road (Co. Rd. 302) bridge crossing at river mile 9.05, downstream to the mouth of the West Branch at river mile 0.0.
- Miles designated (approximate): Scenic 46

Big and Little Darby Creeks

- Big Darby Creek from the Champaign/Union County line downstream to the U.S. Rt. 40 bridge, from the northern boundary of Battelle-Darby Creek Metro Park to the confluence with the Little Darby Creek downstream to the Scioto River.
- Little Darby Creek from the Lafayette-Plain City Road bridge downstream to the confluence with Big Darby Creek.
- Miles designated (approximate): 84

Chagrin River

- Aurora Branch from St. Rt. 82 bridge downstream to confluence with the Chagrin River.
- Chagrin River from confluence with Aurora Branch downstream to U.S. Rt. 6 bridge.
- Chagrin River from Woodiebrook Road bridge crossing downstream to the confluence with Aurora Branch of the Chagrin River in Bentleyville.
- East Branch from Heath Road bridge downstream to confluence with the Chagrin River.
- Miles designated (approximate): Scenic 71

Conneaut Creek

- *Scenic Segment:* Creek Road bridge crossing to the Penn Central Railroad bridge crossing at river mile 2.0 in Conneaut.
- *Wild Segment:* Ohio/Pennsylvania border at river mile 23.83 to the Creek Road bridge crossing at river mile 7.39.
- Miles designated (approximate): Scenic 5.39, Wild 16.44, Total 21.83

Grand River

- *Wild segment* - from Harpersfield covered bridge downstream to Norfolk and Western Railroad trestle south of Painesville.
- *Scenic segment* - from U.S. Rt. 322 bridge in Ashtabula County downstream to Harpersfield covered bridge.
- Miles designated (approximate): Scenic 33, Wild 23, Total 56

Kokosing River

- Kokosing River from Knox/Morrow County line to confluence with Mohican River.
- North Branch of Kokosing from confluence with East Branch downstream to confluence with main stem.
- Miles designated (approximate): 48

Little Beaver Creek

- *Wild segments* - **West Fork** from 1/4 mile downstream from Twp. Rd. 914 to confluence with Middle Fork. **North Fork** from Twp. Rd. 952 to confluence with Little Beaver Creek. **Little Beaver** Creek from confluence of West and Middle Forks downstream to 3/4 mile north of Grimm's Bridge.
- *Scenic segments* - **North Fork** from Ohio-Pennsylvania line downstream to Jackman Road. **Middle Fork** from Elkton Road. (Twp. Rd. 901) downstream to confluence with West Fork. **Little Beaver Creek** from 3/4 mile north of Grimm's Bridge downstream to the Ohio-Pennsylvania line.
- Miles designated (approximate): Wild 20, Scenic 16, Total 36

Little Miami River

- Clermont County line at Loveland to headwaters, including North Fork, Clermont County line at Loveland to confluence with East Fork and from the confluence with East Fork to Ohio River.
- Miles designated (approximate): 105

Maumee River

- *Scenic segment* - Ohio-Indiana line to St. Rt. 24 bridge west of Defiance.
- *Recreational segment* - St. Rt. 24 bridge west of Defiance to U.S. Rt. 25 bridge near Perrysburg.
- Miles designated (approximate): Scenic 43, Recreational 53

Mohican River

- The entire main stem of the Mohican River from the confluence of the Clear Fork to the confluence with the Kokosing State Scenic River.

- The Clear Fork of the Mohican River from the base of the Pleasant Hill Dam to the confluence with the Black Fork of the Mohican River.
- Miles designated (approximate): 32.3

Olentangy River
- Delaware Dam to Old Wilson Bridge Road in Worthington.
- Miles designated (approximate): 22

Sandusky River
- U.S. Rt. 30 in Upper Sandusky to Roger Young Memorial Park in Fremont.
- Miles designated (approximate): 65

Stillwater River System
- *Recreational segment* - Englewood dam to confluence with Great Miami River.
- *Scenic segments* - Stillwater River from Riffle Road bridge in Darke County to Englewood dam.
- Greenville Creek from the Ohio-Indiana state line to the confluence with the Stillwater.
- Miles designated (approximate): Scenic 83, Recreational 10

Upper Cuyahoga River
- Troy-Burton Township line in Geauga County to St. Rt. 14.
- Miles designated (approximate): Scenic 25

(d) ***National Wild and Scenic Rivers***: Notification is required for all work in components of the National Wild and Scenic River System. The following are components of the **National Wild and Scenic River System:**

Big and Little Darby Creeks (National Wild and Scenic River System):
- Big Darby Creek from Champaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River.
- Little Darby Creek from the Lafayette-Plain City Road bridge downstream to within 0.8 mile from the confluence with Big Darby Creek.
- Total designation is approximately 82 miles.

Little Beaver Creek (National Wild and Scenic River System):
- Little Beaver Creek main stem, from the confluence of West Fork with Middle Fork near Williamsport to mouth.
- North Fork from confluence of Brush Run and North Fork to confluence of North Fork with main stem at Fredericktown.
- Middle Fork from vicinity of Co. Rd. 901 (Elkton Road) bridge crossing

to confluence of Middle Fork with West Fork near Williamsport.
- West Fork from vicinity of Co. Rd. 914 (Y-Camp Road) bridge crossing east to confluence of West Fork with Middle Fork near Williamsport.
- Total designation is 33 miles.

Little Miami (National Wild and Scenic River System)
- Little Miami River - St. Rt. 72 at Clifton to the Ohio River
- Caesar Creek: lower two miles of Caesars Creek.
- Total designation is 94 miles.

(e) ***Endangered Species***: Due to the potential presence of Federally threatened or endangered species or their habitats, Notification is required for all work in the following waterway or township of the corresponding county:

County	Waterway	Township
Adams	Ohio Brush Creek, Ohio River, Scioto Brush Creek, South Fork Scioto Brush Creek, West Fork Ohio Brush Creek	
Allen	Auglaize River, Cranberry Creek, Ottawa River, Riley Creek, Sugar Creek	
Ashtabula	Grand River, Pymatuning Creek	
Athens	Ohio River	
Auglaize	Auglaize River, Pusheta Creek, St. Marys River	
Belmont	Ohio River	
Brown	Eagle Creek, East Fork Eagle Creek, East Fork Little Miami River, East Fork Whiteoak Creek, Ohio River, Straight Creek, West Fork Eagle Creek, Whiteoak Creek	
Butler	Dicks Creek, Dry Fork Whitewater River, Elk Creek, Four Mile Creek, Great Miami River, Indian Creek, Sevenmile Creek	
Champaign	Chapman Creek, Kings Creek, Mad River, Nettle Creek	
Clark	Beaver Creek, Chapman Creek, Honey Creek, Little Miami River, Mad River, Mud Run	Bethel
Clermont	East Fork Little Miami River, Indian Creek, Little Miami River, O'Bannon Creek, Ohio River, Stonelick Creek	
Clinton	Anderson Fork, Cowan Creek, Little East Fork, Rattlesnake Creek, Todd Fork Little Miami River	
Columbiana	Ohio River	
Coshocton	Doughty Creek, Killbuck Creek, Kokosing River, Mill Creek, Mohican River, Muskingum River, Tuscarawas River, Wakatomika Creek,	

	Walhonding River, White Eyes Creek, Wills Creek	
Crawford	Broken Sword Creek, Olentangy River, Sandusky River, Sycamore Creek	
Darke	Greenmile Creek, Painter Creek, Stillwater River, Swamp Creek, West Branch Greenmile Creek	
Defiance	Auglaize River, Gordon Creek, Lick Creek, Lost Creek, Maumee River, Mud Creek, North Powell Creek, South Powell Creek, St. Joseph River, Tiffin River	Milford
Delaware	Alum Creek, Big Walnut Creek, Bokes Creek, Mill Creek, Olentangy River, Scioto River, Whetstone Creek	
Fairfield	Clear Creek, Hocking River, Rush Creek, Salt Creek, Walnut Creek	
Fayette	Compton Creek, Deer Creek, East Fork Paint Creek, North Fork Compton Creek, Paint Creek, Rattlesnake Creek, Sugar Creek	
Franklin	Alum Creek, Big Darby Creek, Big Walnut Creek, Blacklick Creek, Hellbranch Run, Little Darby Creek, Olentangy River, Scioto River, Walnut Creek	
Fulton	Bad Creek, Brush Creek, Mill Creek, Swan Creek, Tenmile Creek, Tiffin River	
Gallia	Ohio River	
Greene	Caesar Creek, Little Miami River, Mad River, Massies Creek, Mud Run	
Hamilton	Dry Fork Whitewater River, Great Miami River, Mill Creek, Ohio River, West Fork Mill Creek, Whitewater River	
Hancock	Blanchard River, Eagle Creek, Ottawa Creek, Riley Creek	
Hardin	Blanchard River, Ottawa River, Panther Creek, Scioto River, Taylor Creek	Blanchard, Jackson
Henry	Bad Creek, Beaver Creek, Brush Creek, Lost Creek, Maumee River, South Turkeyfoot Creek, Turkeyfoot Creek	
Highland	Baker Fork, East Fork Little Miami River, East Fork Whiteoak Creek, Lees Creek, Paint Creek, Rattlesnake Creek, Rocky Fork, Whiteoak Creek	
Holmes		Prairie
Jefferson	Ohio River	
Lake	Grand River	

Lawrence	Ohio River	
Logan	Cherokee Mans Run, Great Miami River, Mad River, Mill Creek, Muchinippi Creek, Rush Creek, Stoney Creek	
Lucas	Maumee River, Swan Creek, Tenmile Creek	Jerusalem
Madison	Big Darby Creek, Bradford Creek, Deer Creek, Little Darby Creek, Paint Creek, Spring Fork, Walnut Run	
Marion	Little Scioto River, Mud Run, Olentangy River, Rush Creek, Scioto River, Tymochtee Creek	
Meigs	Ohio River	
Mercer	Beaver Creek, Black Creek, Burntwood Creek, Chickasaw Creek, Goldwater, Little Beaver Creek, Little Black Creek, Mile Creek, St. Marys River, Twelvemile Creek, Wabash River	
Miami	Great Miami River, Greenville Creek, Honey Creek, Lost Creek, Ludlow Creek, Painter Creek, Spring Creek, Stillwater River	
Monroe	Ohio River	
Montgomery	Great Miami River, Little Bear Creek, Mad River, Stillwater River, Twin Creek, Wolf Creek	
Morgan	Muskingum River	
Morrow	Alum Creek, Big Walnut Creek, Kokosing River, Olentangy River, Shaw Creek, Whetstone Creek	
Muskingum	Muskingum River	
Ottawa	Cedar Creek, Crane Creek, Muddy Creek, Nine Mile Creek, Packer Creek, Portage River, Sugar Creek, Terwilegars Pond, Toussaint Creek, Turtle Creek, Wolf Creek	
Paulding	Auglaize River, Blue Creek, Dog Creek, Flatrock Creek, Gordon Creek, Hagerman Creek, Hoaglin Creek, Little Auglaize River, Maddox Creek, Maumee River, Prairie Creek, Town Creek	
Pickaway	Big Darby Creek, Big Walnut Creek, Deer Creek, Scioto River, Scippo Creek, Walnut Creek	
Pike	Beaver Creek, Crooked Creek, Peepee Creek, Scioto River, Sunfish Creek	
Portage		Aurora
Preble	Bantas Fork, Four Mile Creek, Price Creek, Sevenmile Creek, Twin Creek	
Putnam	Auglaize River, Blanchard River, Cranberry	

	Creek, Little Auglaize River, North Powell Creek, Ottawa River, Plum Creek, Riley Creek, South Powell Creek, Sugar Creek	
Ross	Buckskin Creek, Deer Creek, Kinnikinnick Creek, Little Salt Creek, North Fork Paint Creek, Paint Creek, Pigeon Creek, Salt Creek, Scioto River, Walnut Creek	
Sandusky	East Branch Sandusky River, Green Creek, Little Muddy Creek, Muddy Creek, Muskellunge Creek, Nine Mile Creek, Pickerel Creek, Portage River, Sandusky River, South Creek, Sugar Creek, Toussaint Creek, Wolf Creek (Portage River), Wolf Creek (Sandusky River)	Riley
Scioto	Little Scioto River, Ohio River, Pine Creek, Rocky Fork, Scioto Brush Creek, Scioto River, South Fork Scioto Brush Creek, Turkey Creek	Rush, Union
Seneca	East Branch Sandusky River, Green Creek, Honey Creek, Rock Creek, Sandusky River, Wolf Creek	
Shelby	Great Miami River, Leatherwood Creek, Loramie Creek, Mile Creek, Mosquito Creek	
Trumbull	Grand River, Pymatuning Creek	
Union	Big Darby Creek, Bokes Creek, Little Darby Creek, Mill Creek, Rush Creek	
Van Wert	Black Creek, Blue Creek, Dog Creek, Hagerman Creek, Hoaglin Creek, Little Auglaize River, Maddox Creek, St. Marys River, Town Creek	
Warren	Clear Creek, Great Miami River, Little Miami River, Todd Fork	
Washington	Muskingum River, Ohio River	
Wayne		Clinton, Wooster
Williams	Bear Creek, Brush Creek, Clear Fork, Eagle Creek, East Branch St. Joseph River, Fish Creek, Lick Creek, Mill Creek, Nettle Creek, St. Joseph River, Tiffin River, West Branch St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wood	Beaver Creek, Brush Creek, Bull Creek, Cedar Creek, Crane Creek, Cutoff Ditch, East Branch Portage River, Maumee River, Middle Branch Portage River, Portage River, Rocky Ford, South Branch Portage River, Toussaint Creek	
Wyandot	Broken Sword Creek, Sandusky River, Sycamore Creek, Tymochtee Creek	

Note: 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.

(f) ***Critical Resource Waters***: Notification is required for all work in Critical Resource Waters. The following are designated as **Critical Resource Waters**:

- Special habitat waters of Lake Erie including the shoreline, off shore islands, rock outcrops, and adjacent waters within the boundaries defined as 82° 22' 30" West Longitude, 83° 07' 30" West Longitude, 41° 33' 00" North Latitude, and 42°00'00" North Latitude.

- In Ohio, two areas have been designated critical habitat for the piping plover (Charadrius melodus) and are defined as lands 0.62 miles inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately 2.0 miles. Unit OH-2 extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.

(g) ***Oak Openings:*** Notification is required for all activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry, and Fulton counties. For a map of the Oak Openings Region, visit http://www.oakopen.org/maps/.

6. ***Notification Submittals***: In addition to the information required under Nationwide Permit General Condition 31, the following information is needed for all Notifications:

(a) Drawings: The Notification must include project drawings on 8 1/2" x 11" paper. The illustrations must clearly depict the project boundaries and include all known elements and phases of the proposed work. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Typical Cross-Section. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross-section). In addition, each illustration should be identified with a figure or attachment number.

(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, through their website at http://www.fws.gov/midwest/ohio, or by writing to 625 Morse Road, Suite 104, Columbus, OH 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 and the bald eagle (*Haliaeetus leucocephalus*). Federal Candidate species are those for which the USFWS has sufficient information to propose them as endangered or threatened under the Endangered Species Act (ESA), but for which a listing proposal is precluded by other higher priority listing activities. Information regarding Federal Candidate species can be found at: http://www.fws.gov/midwest/endangered/section7/s7process/index.html.

Bald Eagle: Applicants must ensure that activities associated with Nationwide Permits do not result in unpermitted take of bald eagles (*Haliaeetus leucocephalus*) under the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act. Information regarding activities that may result in take of bald eagles, thus requiring a permit from the USFWS under the Act, can be found at http://www.fws.gov/midwest/MidwestBird/EaglePermits/index.html. Applicants should determine whether a bald eagle nest is located near a permitted activity by contacting the U.S. Fish and Wildlife Service, Ohio Ecological Services Field Office, 4625 Morse Road, Suite 104, Columbus, Ohio 43230, phone: 614-416-8993, http://www.fws.gov/midwest/Ohio/.

All relevant information obtained from the USFWS should be submitted with the Notification.

(c) Cultural Resources: The Notification must provide justified conclusions concerning whether or not the proposed activity could affect any historic properties listed, determined to be eligible, or which you have reason to believe may be eligible, for listing on the National Register of Historic Places. This data shall be utilized by the Corps to determine if the proposed activity has the potential to affect historic properties. Be advised that further effort may be required to take into account the effects the proposed activity may have on historic properties, as required by the National Historic Preservation Act of 1966.

To ensure compliance with Nationwide Permit General Condition 20, the following basic project information is needed:

> (1) A detailed description of the project site in its current condition (i.e. prior to construction activities) including information on the terrain and topography of the project site, the acreage of the project site, the proximity of the project site to major waterways, and any known disturbances within the project site. Photographs, keyed to mapping, are also needed which show the site conditions and all buildings or structures both within the project site and on adjacent parcels.
>
> (2) A detailed description of past land uses in the project site. Particular attention should be given to past activities pertinent to the potential for historic properties to exist in the project area. Photographs and maps supporting past land uses should be provided as available.

(3) A detailed description of the construction activities proposed to take place on the project site and a comparison of how the site will look after completion of the project compared to how it looked before the project.

(4) Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.

(5) Any other data the applicant deems pertinent.

The applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716) during this data gathering process. These professionals can assist with compiling the basic project information discussed above and should provide recommendations as to whether or not the proposed project has the potential to affect historic properties and if further effort is required or not required to identify historic properties or assess potential effects to historic properties. These professionals can also compile basic preliminary review information to submit to the district engineer. A preliminary resource review encompasses a search radius of 2 miles, centered on the project area, and consists of the following resources:

(1) OHPO United States Geological Survey (USGS) 7.5' series topographic maps;
(2) Ohio Archaeological Inventory (OAI) files;
(3) Ohio Historic Inventory files (OHI);
(4) OHPO Cultural Resources Management (CRM)/contract archaeology files;
(5) National Register of Historic Places (NRHP) files including Historic Districts; and
(6) County atlases, histories and historic USGS 15' series topographic map(s).

As an alternative to submitting the information described above, the applicant may choose to complete the Ohio Historic Preservation Office Section 106 Review Project Summary Form or request comments from the Ohio Historic Preservation Office and district engineer on specific requirements appropriate to the particular circumstances of the project. Similarly, the applicant may choose to hire someone meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716) to conduct what they recommend to be appropriate historic property identification efforts (e.g. archeological survey and/or historic structure inventories) to expedite the review process. Be advised, undertaking identification efforts prior to consideration of the potential of the proposed activity to affect historic properties by the Corps in not without risk. It is possible that previous efforts could be determined insufficient or even potentially unnecessary once reviewed by the Corps and other consulting parties.

Upon receipt and review of the information listed above, the Corps will evaluate the submittal. If the Corps determines the proposed activity has the potential to cause effects to a historic property, the Corps will seek consulting parties. In consultation with those parties, the Corps will scope appropriate historic property identification efforts and take into account the effect of the proposed activity on historic properties.

(d) National Wild and Scenic Rivers: Prior to submitting Notifications for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with Nationwide Permit General Condition 16.

(e) 401 Water Quality Certification: For activities that result in between 1/10 and ½ acre of loss of waters of the U.S. **two copies** of the Notification must be submitted. In order to determine if a project meets the terms and conditions of Ohio EPA's 401 water quality certification the following additional information must be submitted:

1) To determine the quality of the wetlands on the site, all wetland delineations must include the latest approved version of the Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form**; and

2) Photographs of all the waterbodies.

Prior to submitting Notifications, the applicant may contact Ohio EPA, Division of Surface Water by writing to (614) 644-2001 at P.O. Box 1049, Columbus, Ohio 43216-1049 and request verification of the ORAM score of the wetlands on the site to expedite the permit process. All relevant information obtained from Ohio EPA should be submitted with the Notification.

(f) Agency Coordination: In an effort to expedite full agency permit review, it is requested that the applicant submit five (5) copies of the Notification package when the Notification requires full agency coordination in accordance with Nationwide Permit General Condition 31 (d)(2). Applicants are encouraged to submit this information in electronic format as CDs, in order to minimize the use of paper.

(g) Floodplain Coordination: All Notifications must include a copy of the applicable FIRM map. You can get a FIRMette free from: http://www.msc.fema.gov. From this page select the "Product Catalog" tab at the top. Then select "Effective FIRMs /FHBMs". The choices allow you to select a state and county. Then you follow the instructions to create a FIRMette. In addition, from the same web-site, you can obtain a FIRMette for a specific address. From http://www.msc.fema.gov **conduct a "Product Search" for "Public Flood Map" and then follow the instructions to create a FIRMette.**

Note 1: In circumstances where there is another lead Federal agency with set procedures for addressing Endangered Species, Cultural Resources, and National Wild and Scenic

River Coordination, the applicant can submit documentation showing the coordination has already been completed instead of submitting the additional Notification information requested above.

Note 2: Nationwide Permit General Condition 31 requires the applicant to include a delineation of special aquatic sites and all other waters of the U.S. on the project site. Special aquatic sites include sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes.

G. 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.

H. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface,

and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

EXHIBIT 4

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS: STREAMS

The following guidelines serve as general specification for preparing removal and restoration plans to remediate the unpermitted filling of streams. As environmental conditions vary at every site, precise specifications defining the scope and complexity of the restoration plan will depend upon the length and area of stream to be restored, its biological and physical characteristics, and the level of disturbance the stream has experienced among others. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan.

I. Existing Physical Conditions

A. A surveyed site plan depicting property boundaries, and site features, including roads, ditches, culverts, tile systems, waterbodies (including streams and wetlands) and areas of unpermitted filling, excavation, or alteration of streams. Spot elevations are required at representative locations to discern normal undisturbed grades from fill elevations. The plan scale should be no greater than 1 inch = 40 feet.

II. Proposed Physical Conditions

A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill from channel, replace dredge material into ditches/new channels, etc.). Provide drawings for post-restoration stream patterns, profiles and dimensions, cross-sectional views at regular intervals, any instream structures (e.g. riffle structures, bank stabilization features, etc) and the location of all erosion control features and BMPs used (e.g., silt fencing).

B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; routes for equipment access; the location of the disposal site for any removed fill; the source of any dredged or fill material to be placed in waterbodies; how the work will progress across the site; and planting specifications (i.e., temporary stockpiling of fill removed, erosion control phasing, re-vegetation of stream riparian zone).

C. Prior to the commencement of removal work, the construction work area must be defined. Delineate the site restoration areas by installation of flagging, erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that **no** work shall occur beyond these boundaries.

III. As-Built Physical Conditions

A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of fill removal activities (i.e., an "as-built" plan), including stream profile measurements and all pertinent ground surface and

subsurface features. This as-built plan shall be prepared and submitted prior to planting/seeding activities are conducted in riparian areas. Describe any variances from the proposed physical conditions and the justification for them.

IV. Monitoring/Measures of Success

A. Monitoring plans are required for a minimum of five years – longer for reforestation of stream riparian zones. Monitoring commences after the completion of all earth moving activities and annually for the duration of the required monitoring period. Monitoring frequency can be adjusted based on the complexity of the remedial efforts required and the recovery rate shown by the site.

B. A monitoring plan shall incorporate a simple statistical approach to assessing measures of site restoration success for streams (e.g., stable channel which facilitates the passage of flood flows and low flows, channel length meets length proposed in plan, suitable sinuosity, etc). A permanent photographic record shall be included as part of the monitoring plan.

C. Depending upon the scope and complexity of the restoration efforts, general criteria to measure success (i.e., performance standards) shall be determined by USEPA. The criteria defining success and its measurement shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. Commonly, performance standards are related to stream profile and dimension, establishment of instream structures, riparian buffer establishment, and support of aquatic life. A general provision shall be included to allow for corrective action to be taken, at the direction of USEPA, should monitoring show that criteria for success are not met.

D. A report shall be prepared and submitted after each monitoring event(s) which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include permanent and repeatable photographic stations that represent the site. As appropriate, this report may recommend corrective action to ensure the success of restoration.

V. Inspections

A. The plan shall provide for inspection by USEPA personnel or their designated representative prior to, during or after the completion of earthmoving activity and prior to seeding/planting, after installation of erosion control structures, after planting, and during the monitoring period.

VI. Schedule

A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.