



**U S Army Corps
of Engineers**
Pittsburgh District

Public Notice

In reply refer to Public Notice No.

08-53

Issuance Date:

October 10, 2008

Closing Date:

March 18, 2012

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Pittsburgh District

ATTN: CELRP-OP-F Public Notice No. 08-28

1000 Liberty Avenue

Pittsburgh, Pennsylvania 15222-4186

Phone: (412) 395-7154

NATIONWIDE PERMITS FOR THE STATE OF OHIO

CORPS OF ENGINEERS REGULATORY PROGRAM ISSUANCE OF NATIONWIDE PERMITS WITH OHIO EPA 401 WATER QUALITY CERTIFICATION

On March 12, 2007, the Corps of Engineers 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, 2007.

An integral part of the Corps' regulatory program is the concept of nationwide permits (NWP) 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 March 12, 2007, Federal Register, Reissuance of Nationwide Permits (72 FR 11092-11198), are issued by the Chief of Engineers, and are intended to apply throughout the entire United States and its territories. The districts in Ohio imposed regional conditions. For convenience, all NWPs with the appropriate regional, general and special conditions are attached.

The NWPs permits are not valid until the appropriate state agency certifies the discharge does not violate state water quality standards. In response to the March 12, 2007, Federal Register Notice (72 FR 11092-11198), the State of Ohio Environmental Protection Agency (OEPA) granted water quality certification and imposed general conditions on NWPs 1, 2, 6, 9, 10, 11, 15, 20, 22, 25, 29, 30, 34, 35, 37, 39, 45, 46, and 50, and specific conditions on NWPs 3, 4, 5, 7, 12, 13, 14, 16, 18, 19, 21, 23, 27, 28, 31, 32, 33, 36, 38, 40, 41, 42, 43, 47, and 49.

OEPA denied 401 water quality certification for NWP 8-*Oil and Gas Structures on the Outer Continental Shelf*, NWP 17-*Hydropower Projects*, NWP 44-*Mining Activities*, and NWP 48-*Existing Commercial Shellfish Aquaculture Activities*. 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 NWP's 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 March 12, 2007, Federal Register Notice (72 FR 11092-11198), the Ohio Department of Natural Resources (ODNR) concurred with the US Army Corps of Engineers Federal Consistency Determination and imposed general conditions on NWP's 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50.

ODNR objected to the US Army Corps of Engineers Federal Consistency Determination for NWP 3-*Maintenance* and NWP 13-*Bank Stabilization* for all activities within Lake Erie, including Maumee Bay and Sandusky Bay; however, ODNR concurred with the Corps of Engineers Federal Consistency Determination for the use of NWP 3-*Maintenance* and NWP 13-*Bank Stabilization* for activities within navigable waters other than Lake Erie. Furthermore, ODNR objected to the US Army Corps of Engineers Federal Consistency Determination for NWP 27-*Aquatic Habitat Establishment and Enhancement Activities*. Activities which are NOT included in ODNR's concurrence of the NWP's 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 nationwide permits require advance notification. The notification should be made in writing as early as possible prior to commencing the proposed activity. The notification procedures are located under General Condition 27. The notification to the Corps can be made concurrently with the request for individual state certification, if required.

The Corps has adopted changes that allow for the District Engineer to assert discretionary authority to modify, suspend, or revoke nationwide permits for individual activities. 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 basis for asserting discretionary authority has been broadened to include all public interest factors.

For activities involving Section 10 of the Rivers and Harbors Act of 1899, 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.

The nationwide permits provide a simplified, expeditious means of project authorization under the various authorities of the Corps of Engineers. 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 of Engineers regulatory program may be obtained by contacting:

BUFFALO DISTRICT

Name: Tom Switala, 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 Branch
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

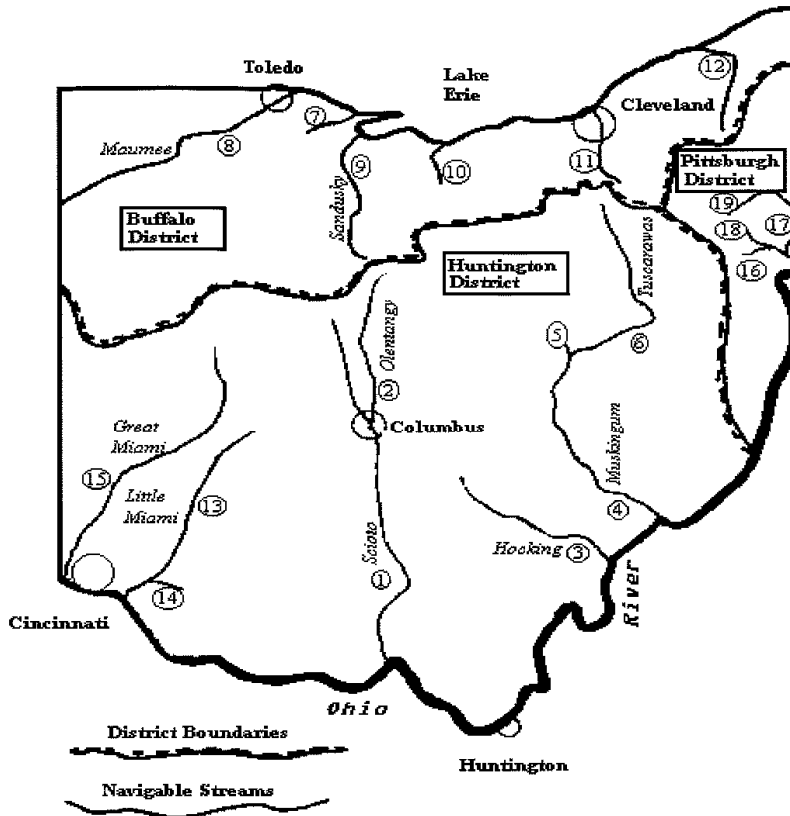
Attached is a map showing the district boundaries for the State of Ohio.

FOR THE DISTRICT ENGINEER:

//signed//

Scott A. Hans
Chief, Regulatory Branch

Corps Districts and Navigable Streams in the State of Ohio



Navigable Limits of Major Section 10 Streams in Ohio (Due to the scale of this map, all Section 10 streams are not shown. Contact the proper District office for information.)

Huntington District

Scioto River.....	175.0 miles
Olentangy River.....	74.3 miles
Hocking River.....	79.0 miles
Muskingum River.....	112.5 miles
Walhonding River.....	8.8 miles
Tuscarawas River.....	113.3 miles
Great Miami River.....	117.0 miles
Little Miami River.....	90.7 miles
E. Fk. Little Miami River.....	6.4 miles

Louisville District

Ohio River.....below MP 438

Buffalo District

Portage River.....	12.0 miles
Maumee River.....	To Ind. St. Line
Sandusky River.....	96.0 miles
Huron River.....	10.0 miles
Cuyahoga River.....	41.1 miles
Grand River.....	91.6 miles

Pittsburgh District

Little Beaver Creek.....	15.7 miles
Middle Fk. L. B. Creek...	17.3 miles
North Fk. L. B. Creek.....	14.3 miles
Mahoning River.....	41.0 miles

Note: The Huntington District processes all highway projects where the Ohio Department of Transportation is the applicant.

A. Index of Nationwide Permits, Conditions, Further Information, and Definitions

Nationwide Permits

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3. Maintenance
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5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
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28. Modifications of Existing Marinas
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41. Reshaping Existing Drainage Ditches
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45. Repair of Uplands Damaged by Discrete Events

46. Discharges in Ditches
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
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49. Coal Remining Activities
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Nationwide Permit General Conditions

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3. Spawning Areas
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Nationwide Permit Regional General Conditions

Ohio EPA Section 401 Water Quality Certification General Limitations and Conditions

Ohio Coastal Management Program Federal Consistency Conditions

Further Information

Definitions

Best management practices (BMPs)
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Currently serviceable

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Enhancement
Ephemeral stream
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Historic property
Independent utility
Intermittent stream
Loss of waters of the United States
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Open water
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Practicable
Pre-construction notification
Preservation
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Rehabilitation
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Riparian areas
Shellfish seeding
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

B. Nationwide Permits

1. ***Aids to Navigation.*** The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (**Section 10**)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

2. ***Structures in Artificial Canals.*** Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (**Section 10**)

Nationwide Permit 2 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for any proposed structure exceeding 25% of the width of the existing canal.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

3. ***Maintenance.*** (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures.

All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. **(Sections 10 and 404)**

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Nationwide Permit 3 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required prior to the use of vertical sheet piling and closed structures in the special habitat waters of Lake Erie (See Nationwide Permit General Condition 19 *Designated Critical Resource Waters*, and Regional General Condition (3f) for *Critical Resource Waters*.)
- b. The placement of any new rip-rap is limited to a total of 200 feet.
- c. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for temporary construction, access, and dewatering activities in Section 10 waters, perennial streams, and wetlands. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. Bridge Replacement:
 - a. This Certification shall only authorize minor deviations from the existing structure’s centerline, unless these deviations are necessary to follow current safety standards.

- b. Bridge replacements shall not result in additional lanes unless necessary to follow current safety standards.
2. Maintenance or repair of existing fills (stabilization projects):
- a. Minor Deviations from the original filled area are authorized provided these minor deviations are necessary to accommodate safety standards and/or new construction practices/methods/techniques and/or new materials available which are necessary for the rehabilitation/replacement/repair; and,
 - b. This nationwide shall not authorize the replacement of existing structures that are open to the flow of water with structures that are not open to the flow of water.
3. Replacement vertical bulkheads:
- a. For ship channels and harbors adjacent to federal navigation channels within the following harbors: Sandusky Harbor, Huron Harbor, Vermilion Harbor, Lorain Harbor, Conneaut Harbor, Port Clinton Harbor, Rocky River Harbor, Cleveland Harbor, Fairport Harbor, Ashtabula Harbor, and Toledo Harbor, 1,000 feet of existing vertical bulkheads may be replaced if recessed areas for aquatic habitat, or other aquatic habitat improvements, are incorporated within the design and construction of the replacement vertical bulkhead;
 - b. For all other areas, except Lake Erie, Lake Erie Islands, or Sandusky Bay, up to 1,000 feet of existing vertical bulkheads may be replaced. Toe stone shall be placed at the base of these replacement vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent;
 - c. Replacement vertical bulkheads are not to be placed more than an average of one foot waterward of the intersection of the ordinary high water level of the waterbody and the existing shoreline;
 - d. Minor dredging necessary for the installation of the replacement vertical bulkhead is authorized;
 - e. Placement of fill between the replacement vertical bulkhead and existing shoreline is authorized; and
 - f. Toe stone shall be placed at the base of these replacement vertical bulkheads except in areas where the original shoreline is composed of bedrock and slopes are predominately greater than 75 percent or where the placement of toe stone would interfere with shipping activity. When required, toe stone shall be placed at an average rate of one-third the total height of the replacement vertical bulkhead at a 2:1 slope.
4. Removal of accumulated sediment:
- a. Removal of accumulated sediment shall occur only once per year, except in cases of emergency situations that threaten life or property.
 - b. Removal of accumulated sediments shall be limited to low-flow conditions whenever practicable, except in cases of emergency situations that threaten life or property.

Project specific CZMA Federal Consistency Determinations are required from the Ohio Department of Natural Resources for all activities within Lake Erie, including Maumee Bay and Sandusky Bay.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. **(Sections 10 and 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall not authorize weirs and flumes.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. **(Sections 10 and 404)**

Nationwide Permit 5 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for any discharge associated with weirs and flumes.
- b. This nationwide permit does not authorize discharges of dredged or fill material into wetlands, islands, island backchannels, embayments, and/or sites at the confluence of one stream with another.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall not authorize weirs and flumes.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

6. Survey Activities. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this

NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (**Sections 10 and 404**)

Nationwide Permit 6 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for “exploratory trenching.”

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

7. Outfall Structures and Associated Intake Structures. Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (**Sections 10 and 404**)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This Certification shall only authorize outfall structures which have been authorized by a Permit-to-Install (PTI) and/or National Pollutant Discharge Elimination System (NPDES) permit issued by Ohio EPA pursuant to Ohio Revised Code Chapter 6111, and Ohio Administrative Code Chapters 3745-31 and -33 and outfall structures from stormwater ponds that do not require an NPDES permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

8. Oil and Gas Structures on the Outer Continental Shelf. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) **(Section 10)**
Ohio State Certification for this nationwide permit has been denied.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. **(Section 10)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. **(Section 10)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

11. Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. **(Section 10)**

Nationwide Permit 11 Specific Regional Condition:

- a. This nationwide permit does not authorize temporary recreational structures in or near wetlands, islands, island backchannels, embayments, and/or sites at the confluence of one stream with another.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

12. Utility Line Activities. Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility

line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) **(Sections 10 and 404)**

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Nationwide Permit 12 Specific Regional Conditions:

- a. Pre-Construction Notification: The permittee must notify the District Engineer in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition for the following activities:
- All work in waters of the U.S., including special aquatic sites, associated with utility line substations;
 - All stream work (perennial, intermittent, and ephemeral) associated with foundations for overhead utility line towers, poles, and anchors;
 - Impacts greater than 1/10 acre in waters of the US, including wetlands, associated with access roads;
 - All work associated with temporary construction, access, and dewatering activities in Section 10 waters, perennial streams, and wetlands. The PCN must include a restoration

plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

- All impacts to forested wetlands; and
 - All impacts to shrub/scrub wetlands.
- b. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland or shrub/scrub wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.
 - c. Anti-seep collars or clay plugs must be utilized for trenching activities conducted in a wetland.
 - d. This nationwide permit does not authorize the placement of manholes in wetlands.
 - e. Excess material must be removed to upland areas immediately upon completion of construction.
 - f. Pre-Construction Notifications for aerial transmission lines over Section 10 waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation.

Note: All aerial crossings will have the following minimum clearances above the clearance required for bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed crossing. These clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code. For any non-electrical cable, the crossing must have a minimum clearance of 20 feet above the clearance required for bridges.

<u>NOMINAL SYSTEM VOLTAGE, KV</u>	<u>ADDITIONAL CLEARANCE, FEET</u>
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 – 765	45

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. 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 waterbody shall not exceed twice the width of that waterbody at the location of the crossing.
2. The Certification shall not authorize the physical disturbance of more than 500 linear feet of forested wetland soils (containing woody vegetation 6 meters or taller).
3. Buried utility line stream crossings shall not exceed a total of three per stream mile per stream.
4. The total width of any excavation, grading, or mechanized clearing of vegetation and soil shall not exceed 25 feet on either side of a utility line, or a total width of 50 feet on both sides of a utility line.

5. All hydric soils up to 12 inches in depth within wetlands shall be stockpiled and replaced as the topmost backfill layer.
6. This Certification shall not authorize the stockpiling of side cast dredged material in excess of 3 months. Dredged side cast material that will be stockpiled in excess of 45 days shall be stabilized in accordance with the conditions of the Construction General Storm Water Permit.
7. Applicants who intend to use chemicals regulated by the Ohio Department of Agriculture in any waters of the State (including wetlands) shall comply with all Ohio Department of Agriculture requirements regarding the use and application of the chemicals.
8. New buried utility lines crossing more than 1,500 feet (cumulative for the entire project) of surface waters (wetlands, and ephemeral, intermittent, and perennial streams) or with impacts located in three or more Ohio EPA 8-digit hydrologic units as defined in Ohio Administrative Code 3745-1-54(F) are not authorized.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

13. Bank Stabilization. Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;
- (e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- (g) The activity is not a stream channelization activity.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) **(Sections 10 and 404)**

Nationwide Permit 13 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for the use of any vertical bulkhead. A

vertical bulkhead is defined as any structure, or fill, with a vertical face. It may be constructed of timber, steel, concrete, etc.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. For all bank stabilization projects, including those located on the shorelines of Lake Erie, Lake Erie Islands, or Sandusky Bay, the applicant must demonstrate that there is an erosion problem before the project can be authorized under this NWP.
2. For bank stabilization projects located on the shorelines of Lake Erie, Lake Erie Islands, or Sandusky Bay, the applicant must document that the project is in a known Coastal Erosion Areas established by the Ohio Department of Natural Resources.
3. The following conditions apply to all bank stabilization projects:
 - a. This nationwide permit shall only authorize bank stabilization projects up to 500 feet in length.
 - b. Material used for bank stabilization or fill shall consist of suitable material free from toxic contaminants in other than trace quantities. Suitable material shall consist of rock, stone, vegetative erosion control measures, broken concrete (without exposed reinforcing bar) and clean soil.
 - c. No material shall be placed in such a manner so as to restrict surface water flow into or out of any tributary.
 - d. Any fill used for bank stabilization shall be limited to that amount necessary to provide erosion protection.
 - e. Vertical bulkheads, if used:
 - i. may not be placed more than one foot waterward of the intersection of the ordinary high water level of the waterbody and the existing shoreline;
 - ii. minor dredging necessary for the installation of the vertical bulkhead is authorized; and,
 - iii. placement of fill between the vertical bulkhead and existing ordinary high water mark is authorized.

Project specific CZMA Federal Consistency Determinations are required from the Ohio Department of Natural Resources for all activities within Lake Erie, including Maumee Bay and Sandusky Bay.

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (**Sections 10 and 404**)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Nationwide Permit 14 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for all activities in Section 10 waters.
- b. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required if the cumulative stream impacts for the project are greater than 500 linear feet. In addition, Pre-Construction Notification is required if the cumulative perennial and intermittent stream impacts are greater than 200 linear feet.
- c. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for temporary construction, access, and dewatering activities in Section 10 waters, perennial streams, and wetlands. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- d. Interior roadways for recreational facilities and residential, commercial, and institutional developments are not authorized by this nationwide permit.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Stream crossings shall not exceed a total of three per stream mile per stream.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments,

foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. **(Section 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

16. Return Water From Upland Contained Disposal Areas. Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. **(Section 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall be limited to the authorization of the disposal of dredged materials dredged from state-owned properties, where there are no known areas of contaminated sediments, provided best management practices are used to minimize adverse impacts to water quality.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) **(Section 404)**

Ohio State Certification for this nationwide permit has been denied.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.) (**Sections 10 and 404**)

Nationwide Permit 18 Specific Regional Conditions:

- a. This Nationwide permit does not authorize stream culverting, relocation, channelization or elimination of streams.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

- 1. If used to authorize utility line backfills and bedding, this nationwide permit shall authorize sidecasting or stockpiling of dredged or fill material for a maximum of three months.
- 2. Dredged material shall be placed directly at an upland site in such a way that sediment runoff to any surface water is controlled and minimized.
- 3. This nationwide permit shall not authorize disposal of fill material into Lake Erie, Lake Erie Islands, or Sandusky Bay where that is the primary project purpose.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

19. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (**Sections 10 and 404**)

Nationwide Permit 19 Specific Regional Conditions:

- a. Dredging operations in Lake Erie and its bays that recover material consisting of greater than 60% sand and/or gravel shall be disposed of in the nearshore areas of Lake Erie (i.e. within the littoral zone) and down drift from the dredging location. The dredged material to be disposed of in the nearshore areas must not exceed 5 grams/kilograms total organic carbon. For purposes of this general condition, the littoral zone generally encompasses those nearshore areas of Lake Erie with water depths of 0-4 feet.

The Ohio State Certification General Limitations and Conditions apply to this nationwide

permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. This nationwide permit shall not authorize dredging in stream riffles as defined in 40 CFR 230.45.
2. This nationwide permit shall not authorize dredging in surface waters that contain contaminated sediments. The applicant shall contact Ohio EPA for a determination whether a particular surface water contains contaminated sediments.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

20. Oil Spill Cleanup. Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR Part 761. **(Sections 10 and 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

21. Surface Coal Mining Operations. Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) **(Sections 10 and 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Water quality certification is provided for stream and wetland impacts to the following thresholds for surface coal mining, including mining within previously mined areas, conducted under a permit issued by the Ohio Department of Natural Resources, Division of Mineral Resources Management (DMRM) that incorporates the standards of the federal Surface Mining Control and Reclamation Act, and including activities conducted under contracts to reclaim forfeited coal mining operations or abandoned mine land areas. This certification would allow impacts as qualified below, assuming the appropriate functional

assessments are performed:

1. Unlimited impacts to Class I PHWH streams and streams with a QHEI score less than 45, and
2. For natural stream reaches, no more than an aggregate total of 1,500 linear feet of impacts to Class II PHWH streams or streams with a QHEI score of 45 - 60.
3. No impacts shall be authorized to streams designated as Warmwater Habitat or having an equivalent or higher designation, as set forth in OAC Chapter 3745-1, or to Class III PHWH streams or streams with a QHEI score greater than 60.
4. Impacts to an additional 1,500 linear feet of Class II PHWH streams or streams with a QHEI score of 45 - 60, impacted by previous mining, may be authorized by this certification.
5. Impacts to any waterways with a slope greater than 2% authorized under this nationwide permit shall be reclaimed and/or reconstructed using natural stream channel design standards identified in the ODNR/DMRM-Ohio EPA Joint Stream Reconstruction Guidelines, when appropriate. Reclamation of streams with less than 2% slope will be completed using natural channel design techniques.
6. A maximum of 3 acres of total wetland impacts is authorized under this nationwide permit, with:
 - a. No more than 3 acres of impacts to Category 1 wetlands permitted.
 - b. No more than ½ acre of impacts to Category 2 wetlands permitted.
 - c. No impacts to Category 3 wetlands permitted.
 - d. Wetland mitigation shall be provided in accordance with Ohio EPA's wetland water quality standards (OAC Chapter 3745-1).
7. The applicant shall provide to Ohio EPA, the following information:
 - a. Total stream length and wetland acreage impacted
 - b. Qualitative Habitat Evaluation Index (QHEI) or Headwater Habitat Evaluation Index (HHEI), or ORAM as appropriate
 - c. The mining permit map showing all water resources on the site.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

22. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 27.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. **(Sections 10 and 404)**

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 17, Endangered Species, and general condition 18, Historic Properties, is required for all NWP. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. **(Sections 10 and 404)**

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rxlsindx.htm> . Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

Nationwide Permit 23 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the "Pre-Construction Notification" Nationwide Permit General Condition is required for use of this nationwide permit.
- b. Pre-Construction Notifications must also include a copy of the CE determination, delineation of special aquatic sites and a mitigation plan for impacts greater than 1/10 acres of waters of the United States.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall only authorize activities described in 23 CFR Part 771.117 of the Federal Highway regulations.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

24. Indian Tribe or State Administered Section 404 Programs. Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. **(Section 10)**

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

Not Applicable.

25. Structural Discharges. Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a section 10 permit if located in navigable waters of the United States. **(Section 404)**

Nationwide Permit 25 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required if the impacts to waters of the United States are more than 1/10 acre.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

26. [Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-

tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or

appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification. The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27), except for the following activities:

- (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies;
- (2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation. **(Sections 10 and 404)**

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Nationwide Permit 27 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for all work in waters of the U.S., including special aquatic sites.
- b. For impacts associated with development activities, the loss of waters of the United States is limited to ½ acre, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the

district engineer.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. This Certification does not authorize impacts to more than ½ acre of Category 2 forested wetlands unless Ohio EPA is a signatory to a Mitigation Banking Review Team (MBRT) instrument which addresses the impact.
2. Temporary and permanent impacts to Category 3 wetlands are prohibited except as authorized below:
 - a. Impacts resulting from activities listed in Condition 3 of this nationwide permit;
 - b. In accordance with the procedures in Condition 4 of this nationwide permit; and,
 - c. That are proposed for authorization using this nationwide permit in Category 3 Lake Erie coastal and tributary wetlands (i.e., wetlands located at an elevation less than 575 feet on a USGS map, adjacent to this elevation, or along a tributary to Lake Erie that is accessible to fish), and which are Category 3 wetlands for the following reasons:
 - i. The wetland scores less than 60 on the Quantitative Rating of the Ohio Rapid Assessment Method for Wetlands (ORAM), and are "hydrologically unrestricted" (i.e., they are categorized as Category 3 wetlands using the Narrative Rating of ORAM), but the wetland has been drained, farmed, or degraded and is unvegetated or sparsely vegetated with wetland annuals or is vegetated with one or several of the following species: *Butomus umbellatus*, *Lythrum salicaria*, *Myriophyllum spicatum*, *Najas minor*, *Phalaris arundinacea*, *Phragmites australis*, *Potamogeton crispus*, or *Typha angustifolia*; or
 - ii. The wetland is diked and managed ("hydrologically restricted"), scores less than 60 on the Quantitative Rating of ORAM, is categorized as a Category 3 wetland using the Narrative Rating of ORAM because of the presence of state or federally threatened or endangered species, and/or because of the documented presence of significant breeding or non-breeding bird concentration areas, and the proposed activities will not destroy, jeopardize or adversely affect, either directly or indirectly, the continued existence of the threatened or endangered species.
3. Activities in wetlands described in Condition 2 of this nationwide permit, which may be authorized under this nationwide permit, are as follows:
 - a. *Tile alteration.* Removing, altering, disabling drain tile or replacing perforated drain tile with non-perforated drain tile.
 - b. *De-leveling.* Regrading for the purposes of microtopography to enhance hydrologic diversity, including the creation of shallow scrapes, channels, submerged islands, and interconnected areas of deeper water. Final grade of any excavation, following topsoil replacement if applicable, shall not exceed 60cm (~2 feet). Replacement of the original excavated topsoil is required for all de-leveling activities except when the seed bank is dominated by invasive vegetation. In these cases the area must be seeded by using a seed mix of natural, non-invasive, species appropriate for the hydrological regime present in the area. Excess spoils that are not able to be incorporated into the regrading activities shall be deposited in adjacent non-wetland areas, used in other restoration

- activities listed in this paragraph, or trucked off-site;
- c. Ditch plugs and ditch fills. Ditch plugs and water control structures: Disabling surface drains by filling lengths, provided that the surface drains originate on the property of the project sponsors and have no base flow, or installing water control structures (e.g., riser structures, flap gates, fixed weirs, trickle tubes). Ditch plugs may include an emergency spillway to safely route flows back into the ditch below the plug;
 - d. *Earthen embankments*. Earthen fill structures that do not exceed 1.8 m (6 feet) in height with side slopes of 3:1 or greater with less than 50 acre-feet of storage. The embankments may include rock or vegetated overflow structures to pass base-flow as needed;
 - e. *Interior dikes*. Earthen fill structures constructed within the interior of an existing diked and managed wetland for the purpose of improving management of hydrology in the diked wetland in order to facilitate control of invasive plant species, exclude or control invasive animal species, improve habitat features, etc.
4. The Applicant proposing activities listed in Condition 3 under this nationwide permit in wetlands listed in Condition 2 of this nationwide permit shall provide advance written notice and an opportunity to discuss the proposed activities with Ohio EPA prior to initiating any construction activities. Upon written notice from Ohio EPA that the proposed activity or the wetland in which the proposed activity is to occur does not meet the applicability requirements of this paragraph or might otherwise result in a degradation of waters of the state, the Applicant shall submit an individual Section 401 application.

Project specific CZMA Federal Consistency Determinations are required from the Ohio Department of Natural Resources.

28. Modifications of Existing Marinas. Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. **(Section 10)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Non-floating boat docks shall be constructed in a manner which will minimize obstructions to flow.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

29. Residential Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2 acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) **(Sections 10 and 404)**

Nationwide Permit 29 Specific Regional Conditions:

- a. The Pre-Construction Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project.
- b. Perpetual protection, in the form of a conservation easement, deed restriction, deed-restricted open space, or other similar legal protection, should be placed on the remaining waters of the United States on-site to guarantee their preservation for aquatic resources, wildlife, open space, and flood protection. The Pre-Construction Notification should include a written description of the perpetual protection and corresponding drawings. The permittee is required to clearly identify, on the plot plan, the boundary of the Federal jurisdictional waters and associated upland buffer that is protected by the easement. The restrictions shall specifically state that the aquatic resources are not to be adversely impacted such as filling; excavating; draining; dredging; removal, destruction, or cutting of vegetation; spraying with herbicides; grazing of domestic animals; placement of structures; or other disturbances or manipulation of the protected area. A copy of the recorded easement shall be provided to the Army Corps of Engineers by December 31st in the year the authorized work commences, or by an approved time extension.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

30. Moist Soil Management for Wildlife. Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. **(Section 404)**

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Nationwide Permit 30 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for use of this nationwide permit unless the applicant is working under the leadership of a governmental wildlife resource agency such as the Natural Resource Conservation Service (NRCS), the United States Fish & Wildlife Service (USFWS), or the Ohio Department of Natural Resources.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

31. Maintenance of Existing Flood Control Facilities. Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, by 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood

control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 27). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. **(Sections 10 and 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall only authorize projects constructed by the Corps of Engineers and maintained by the Corps or transferred by the Corps to a local sponsor.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

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)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall not authorize any project with greater than three acres of wetland impacts, or impacts over 500 linear feet in any stream 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.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

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 upland areas, 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 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 27). 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**)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. Temporary shall be defined as less than one year in duration;
2. This nationwide permit does not authorize construction, or maintenance, or modification of marina basins;
3. This nationwide permit does not authorize activities in special aquatic sites as defined in 40 CFR 230.3(q-1);
4. This nationwide permit shall not authorize temporary construction access and dewatering associated with mining activities.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or

fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 27.) **(Section 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

35. Maintenance Dredging of Existing Basins. Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is deposited at an upland site and proper siltation controls are used. **(Section 10)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

36. Boat Ramps. Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

- (a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the 50 cubic yard limit is waived in writing by the district engineer;
- (b) The boat ramp does not exceed 20 feet in width, unless this criterion is waived in writing by the district engineer;
- (c) The base material is crushed stone, gravel or other suitable material;
- (d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,
- (e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 27.) **(Sections 10 and 404)**

Nationwide Permit 36 Specific Regional Conditions:

- a. The discharge into waters of the United States is limited to 50 cubic yards of material and the width of the boat ramp is limited to 20 feet. However, for public boat ramps, the District

Engineer may consider proposals for boat ramps with discharges into waters of the United States in excess of 50 cubic yards of material and a 20 foot width.

- b. This nationwide permit does not authorize discharges of dredged or fill material into wetlands, islands, island backchannels, embayments, and/or sites at the confluence of one stream with another.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall not authorize boat ramps where dredging is required to establish and maintain water depths necessary for boat launching.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13);
- (c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
- (d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR Subchapter R), where the activity does not involve coal extraction; or
- (e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). **(Sections 10 and 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) **(Sections 10 and 404)**

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This nationwide permit shall only authorize projects that are performed, ordered, or sponsored by state or federal government agency with established legal or regulatory authority.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) **(Sections 10 and 404)**

Nationwide Permit 39 Specific Regional Conditions:

- a. The Pre-Construction Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project.
- b. Perpetual protection, in the form of a conservation easement, deed restriction, deed-restricted open space, or other similar legal protection, should be placed on the remaining waters of the United States on-site to guarantee their preservation for aquatic resources, wildlife, open space, and flood protection. The Pre-Construction Notification should include a written description of the perpetual protection and corresponding drawings. The permittee is required to clearly identify, on the plot plan, the boundary of the Federal jurisdictional waters and associated upland buffer that is protected by the easement. The restrictions shall specifically state that the aquatic resources are not to be adversely impacted such as filling; excavating; draining; dredging; removal, destruction, or cutting of vegetation; spraying with herbicides; grazing of domestic animals; placement of structures; or other disturbances or manipulation of the protected area. A copy of the recorded easement shall be provided to the Army Corps of Engineers by December 31st in the year the authorized work commences, or by an approved time extension.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) **(Section 404)**

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act Section 404(f)(1)(C) exemption because of the recapture provision at Section 404(f)(2).

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This Certification shall be used only once per farm. For the purposes of this condition, farm shall be defined to include all individual farm tracts, whether or not such tracts are contiguous, that are owned by the applicant.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

41. Reshaping Existing Drainage Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 27.) (**Section 404**)

Nationwide Permit 41 Specific Regional Conditions:

- a. Pre-Construction Notification in accordance with the “Pre-Construction Notification” Nationwide Permit General Condition is required for use of this nationwide permit.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions:

1. This Certification only authorizes impacts to existing maintained and channelized ephemeral water conveyances.
2. Reshaping of existing drainage ditches greater than 200 linear feet but less than 500 linear feet in total length that have been created or previously modified and maintained for the purpose of draining abutting existing agricultural land or existing roadways shall not require an individual Section 401 Certification if either:
 - a. The ditch was man-made and is existing; or
 - b. The stream/ditch has existing entrenchment ratios that are less than 1.4 and the proposed dredging impacts do not reduce the sinuosity of the stream/ditch channel.

3. Prior to the commencement of the project, all drainage ditch reshaping projects must be certified in writing by either the Natural Resources Conservation Service or Soil and Water Conservation District or County Engineer in the County where the project occurs, or by a certified professional engineer, that the project complies with the above criteria. In order to be authorized under this paragraph, such certification shall be maintained by the person or entity

engaged in the project and a copy shall be sent to: Ohio EPA, Division of Surface Water, Section 401 Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

42. Recreational Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (**Section 404**)

Nationwide Permit 42 Specific Regional Conditions:

- a. The Pre-Construction Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project.
- b. Perpetual protection, in the form of a conservation easement, deed restriction, deed-restricted open space, or other similar legal protection, should be placed on the remaining waters of the United States on-site to guarantee their preservation for aquatic resources, wildlife, open space, and flood protection. The Pre-Construction Notification should include a written description of the perpetual protection and corresponding drawings. The permittee is required to clearly identify, on the plot plan, the boundary of the Federal jurisdictional waters and associated upland buffer that is protected by the easement. The restrictions shall specifically state that the aquatic resources are not to be adversely impacted such as filling; excavating; draining; dredging; removal, destruction, or cutting of vegetation; spraying with herbicides; grazing of domestic animals; placement of structures; or other disturbances or manipulation of the protected area. A copy of the recorded easement shall be provided to the Army Corps of Engineers by December 31st in the year the authorized work commences, or by an approved time extension.

The Ohio State Certification General Limitations and Conditions apply to this nationwide

permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This Certification shall not authorize the construction, modification or expansion of golf courses or ski areas.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. **(Section 404)**

Nationwide Permit 43 Specific Regional Conditions:

- a. The permittee must notify the District Engineer in accordance with the Nationwide Permit Pre-Construction Notification General Condition for impacts to Section 10 waters and wetlands adjacent to Section 10 waters, impacts to perennial streams, and impacts to intermittent streams.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: This Certification shall not authorize the construction of new stormwater management facilities.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

44. Mining Activities. Revoked from use in Ohio.

45. Repair of Uplands Damaged by Discrete Events. This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged

areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 27) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. **(Sections 10 and 404)**

Note: Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

46. Discharges in Ditches. Revoked from use in Ohio.

47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs. Activities required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) within the U.S. Department of Transportation as time-sensitive (see 49 CFR parts 192 and 195) and additional maintenance activities done in conjunction with the time-sensitive inspection and repair activities. All activities must meet the following criteria:

(a) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work and discharges, including cofferdams, are necessary for construction activities or access fills or dewatering of construction sites;

(b) Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect);

(c) Temporary fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. 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;

(d) In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours;

(e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody;

(f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project;

(g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and,

(h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS).

Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map. **(Section 10 and 404)**

Note: Division engineers may modify this NWP by adding regional conditions to protect the aquatic environment, as long as those regional conditions do not require pre-construction notification or other actions that would delay time sensitive inspections and repairs. Examples of appropriate regional conditions include best management practices.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Time sensitive pipeline repairs, pursuant to 49 CFR 192 and 195, which require applicant remediation within 180 days of the discovery of the condition, and which meet the criteria of this NWP shall be exempt from General Limitation Conditions A.2. and B.1. to the extent that those impacts are essential to maintaining the integrity of the pipeline.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

48. Existing Commercial Shellfish Aquaculture Activities. This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures necessary for the continued operation of the existing commercial aquaculture activity. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the waterbody). This NWP does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) the size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) the project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in species being cultivated; or (4) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (5) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.) **(Sections 10 and 404)**

Note: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Ohio State Certification for this nationwide permit has been denied.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

49. Coal Remining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined plus any unmined area necessary for the reclamation of the remined area.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) **(Sections 10 and 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit except as modified below:

Ohio State Certification Special Limitations and Conditions: Water quality certification is provided for stream, wetland, and open water impacts to the following thresholds for surface coal mining within previously mined areas, conducted under a permit issued by the Ohio Department of Natural Resources, Division of Mineral Resources Management (DMRM) that incorporates the standards of the federal Surface Mining Control and Reclamation Act, and including activities conducted under contracts to reclaim forfeited coal mining operations or abandoned mine land areas. This certification is limited only to those areas that have been previously mined or directly impacted by areas previously mined.

1. Using the appropriate functional assessment method as determined by Ohio EPA, this certification authorizes:
 - a. Unlimited impacts to Class I PHWH streams and streams with a QHEI score less than 45, and
 - b. No more than an aggregate total of 2,000 linear feet of impacts to Class II PHWH streams or streams with a QHEI score of 45 - 60.
 - c. No impacts shall be authorized by this certification to Class III PHWH streams or streams with a QHEI score greater than 60.
2. Using Ohio EPA's Ohio Rapid Assessment Method (ORAM), this certification authorizes:
 - a. No more than 6 acres of impact to Category 1 wetlands;
 - b. No more than 1 acre of impact to Category 2 wetlands; and
 - c. No impact to Category 3 wetlands.
3. This certification authorizes unlimited impacts to jurisdictional open waters resulting from previous mining.
4. This certification authorizes unlimited stream impacts on streams that meet at least two of the following conditions:
 - a. pH less than 6.0 standard units
 - b. Iron greater than 6.0 mg/l daily
 - c. Manganese greater than 4.0 mg/l daily

These conditions must be measured during each of the low, intermediate and high seasonal variation background sampling at the downstream sampling point. Please refer to DMRM Policy and Procedure Directive Permitting and Hydrology 2000-5. Background sampling shall be obtained from a maximum three years prior to the date of submittal.

5. This certification authorizes unlimited stream impacts associated with activities that satisfy the requirements of Ohio Administrative Code section 1501:13-4-15 for pollution abatement and have an approved pollution abatement plan for coal mining operation.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

50. Underground Coal Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. **(Sections 10 and 404)**

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

The Ohio Department of Natural Resources CZMA Federal Consistency Determination General Conditions apply to this nationwide permit.

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, 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.

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. Culverts placed in streams must be installed to maintain low flow conditions.

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.

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.

15. 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 in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. 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.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to 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 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.

(c) Non-federal permittees shall notify 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 may be affected by the proposed work or that utilize the designated critical habitat that may 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.

(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, both lethal and non-lethal “takes” of protected species are in violation of the ESA. 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/> and <http://www.noaa.gov/fisheries.html> respectively.

18. *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.

(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, 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)). 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 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.

(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, explaining 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.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for 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, and 50 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 27, 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.

20. 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) 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 some other form of mitigation would be more environmentally appropriate 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. 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.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, 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 NWP. 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 NWP.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the 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. 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 arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(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 a 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.

21. 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.

22. 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.

23. 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.

24. 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 NWP 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.

25. 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)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. 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, as a general rule, 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) Forty-five 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 17 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 18 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 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 Act (see 33 CFR 330.4(g)) is 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 cannot 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; 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 result in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, 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, where 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. 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 NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the 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 then 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. 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, but 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 multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: 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. 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 work 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 conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. 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 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.

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: (1) 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; (2) 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 (3) 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. The authorization will include the necessary conceptual or specific 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.

28. 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.

D. Regional General Conditions

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

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

3. **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 permittee notifies the District Engineer in accordance with the Nationwide Permit Pre-Construction Notification General Condition and receives written approval from the Corps:

<u>Location</u>	<u>Restricted Period</u>
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 (to Hadlock Rd.), Ashtabula Harbor, Chagrin River (to I-90), Cold Creek (entire reach), Conneaut Creek (entire reach), Conneaut Harbor, Cowles Creek (entire reach), Euclid Creek (entire reach), Grand River (to dam at Harpersfield Covered Bridge Park just upstream of the S.R. 534 bridge)/Fairport Harbor, Indian Creek (entire reach), Rocky River (to dam off Park Dr. just south of the I-90 bridge south of Rock River), Turkey Creek (entire reach), Vermillion River (to dam at Wakeman upstream of the S.R. 20/60 bridge), Wheeler Creek (entire reach), Whitman Creek (entire reach).

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

3. Class 3 primary headwater streams (watershed ≤ 1 mi²), EWH, CWH, WWH, or streams with T&E species. Includes Lake Erie & bays. 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.

4. Waters of Special Concern: The permittee must notify the District Engineer in accordance with the Nationwide Permit Pre-Construction Notification General Condition for activities in the following resources:

a. Category 3 Wetlands: Pre-Construction 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: Pre-Construction 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 High Quality Waters as determined by Ohio EPA except for NWP 3, 20, 27, 32, 37, 38, 45, and 47 or maintenance activities covered under NWP 7 and 12. The current list of these streams can be found on the Ohio EPA web-site at: <http://www.epa.state.oh.us/dsw/rules/3745-1.html>. 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: Pre-Construction Notification is required for all activities in State Wild and Scenic Rivers. The following are **State Wild and Scenic Rivers**:

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

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

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

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 Rd. (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

Grand River - *Wild segment* - from Harpersfield covered bridge downstream to Norfolk and Western Railroad trestle south of Painesville.

Scenic segment - from St. Rt. 322 bridge in Ashtabula County downstream to Harpersfield covered bridge. Miles designated (approximate): Scenic 33, Wild 23

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

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 US Rt. 25 bridge near Perrysburg. Miles designated (approximate): Scenic 43, Recreational 53

Stillwater River System - *Recreational segment* - Englewood dam to confluence with Great Miami River.

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

Chagrin River - Aurora Branch from St. Rt. 82 bridge downstream to confluence with Chagrin. Chagrin River from confluence with Aurora Branch downstream to St. Rt. 6 bridge. East Branch from Heath Road bridge downstream to confluence with Chagrin. Miles designated (approximate): 49

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

Kokosing River - 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

d. National Wild and Scenic Rivers: Pre-Construction 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 (Scenic component of the National System from Clifton to Foster): the portion from Foster to the Ohio River was designated a Recreational component of the National system. Total designation is 92 miles.

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

County	Waterway	Township
Adams	Ohio River	
Allen		Sugar Creek,
Ashtabula	Pymatuning Creek	Harperfield, Hartsgrove, Kingsville, Morgan, Orwell, Rome, Trumbell, Wayne, Williamsfield
Athens	Ohio River	
Brown	East Fork Little Miami River, Ohio River	Huntington, Pleasant, Union
Champaign	Little Darby Creek	Urbana
Clark		Bethel, Moorefield, Springfield
Clinton		Chester
Clermont	East Fork of Little Miami River, Ohio River	
Columbiana		Butler, Hanover
Coshocton	Killbuck Creek, Muskingum River, Walhonding River	Franklin, Linton, Newcastle, Virginia
Crawford		Auburn, Bucyrus, Cranberry, Lykens, Texas
Cuyahoga		Brooklyn
Defiance	St. Joseph River	Defiance, Hicksville, Mark, Milford, Richland
Delaware	Alum Creek Olentangy River, Scioto River,	Genoa, Orange, Radnor, Thompson, Troy
Erie		Berlin, Florence, Huron, Kelleys Island, Margaretta, Milan, Oxford, Perkins, Vermilion.
Fairfield	Walnut Creek	Walnut
Franklin	Alum Creek, Big Darby Creek, Blacklick Creek, Little Darby Creek, Olentangy River, Scioto River, Big Walnut Creek, Walnut Creek	
Fayette		Concord, Green, Jefferson, Jasper

Fulton		Fulton, Swan Creek
Gallia	Ohio River	
Geauga		Auburn, Burton, Munson, Troy
Greene	Little Miami River	Spring Valley, Bath
Guernsey		Jefferson
Hancock	Blanchard River	Amanda, Blanchard
Hamilton	Ohio River	
Hardin	Blanchard River	Blanchard, Dudley, Hale, Jackson
Harrison		Franklin, Stock
Henry		Flat Rock, Harrison, Liberty
Highland		Marshall, Paint
Holmes		Killbuck, Prairie, Washington,
Huron		Hartland, New Haven, Norwalk, Peru, Richmond, Sherman
Knox		Berlin, Butler, Union
Lake		Concord, Painesville, Willoughby
Lawrence	Ohio River	
Licking		Hanover, Newark, Union
Logan		Zane
Lorain		Brownhelm, Henrietta, Ridgeville, Russia
Lucas	Swan Creek	Adams, Jerusalem, Monclova, Oregon, Providence, Richfield, Spencer, Springfield, Swanton, Sylvania, Washington, Waterville
Madison	Big Darby Creek, Little Darby Creek	
Mahoning		Austintown, Beaver, Boardman, Jackson, Milton
Marion	Olentangy River	Big Island, Bowling Green, Green Camp
Medina		Harrisville
Meigs	Ohio River	
Mercer		Butler, Franklin, Jefferson
Miami	Stillwater River	
Montgomery		Mad River
Morgan	Muskingum River	Windsor
Morrow	Alum Creek	
Muskingum	Muskingum River	Blue Rock, Falls, Harrison, Hopewell, Madison, Muskingum
Noble		Beaver, Marion, Seneca, Wayne
Ottawa		Bay, Benton, Carroll, Clay, Erie, Danbury, Harris, North Bass Island (Put-in-Bay Twp.), Portage, Put-in- Bay, Riley, Salem
Paulding		Brown
Pickaway	Big Darby Creek, Scioto River,	Deer Creek, Monroe

	Walnut Creek.	
Portage		Atwater, Aurora, Brimfield, Charleston, Franklin, Palmyra, Streetsboro
Preble		Gasper, Somers
Putnam		Sugar Creek
Richland		Blooming Grove, Butler, Franklin, Madison, Mifflin, Troy, Washington, Weller
Ross		Paint, Paxton, Twin
Sandusky		Ballville, Jackson, Green Creek, Madison, Rice, Riley, Sandusky, Townsend, Woodville, Washington
Scioto	Ohio River, Scioto Brush Creek	Union, Rush
Seneca		Adams, Bloom, Eden, Pleasant, Seneca, Venice
Stark		Lake, Marlboro, Sugar Creek
Summit		Northfield, Twinsburg
Trumbull	Pymatuning Creek	Bloomfield, Bristol, Farmington, Greene, Gustavus, Hartford, Kinsman, Mecca, Mesopotamia, Vernon
Tuscarawas	Tuscarawas River	Franklin
Union	Big Darby Creek, Little Darby Creek, Mill Creek	
Warren	Little Miami River	Wayne
Washington	Muskingum River, Ohio River	
Wayne		Chester, Clinton, Franklin, Wooster
Williams	Fish Creek, St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wood		Center, Freedom, Middleton, Perrysburg, Troy
Wyandot	Tymochtee Creek	Antrim, Crane, Marseilles, Mifflin, Pitt, Sycamore, Tymochtee

Note: As mentioned in General Condition 17-*Endangered Species*, 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.

f. Critical Resource Waters: Pre-Construction 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: Pre-Construction 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/>.

5. Pre-Construction Notification (PCN) Submittals: In addition to the information required under the Nationwide Permit Pre-Construction Notification General Condition (GC 27), the following information is needed for all Pre-Construction Notifications:

a. Drawings: The PCN must include project drawings on 8 1/2" x 11" paper. 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 Map. 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. Endangered Species: Prior to submitting notifications, it is recommended that the applicant contact the United States Fish & Wildlife Service (USFWS) office in Reynoldsburg, Ohio, at (614) 469-6923 or by writing to United States Fish & Wildlife Service, 6950 Americana Parkway, Suite H, Reynoldsburg, Ohio 43068-4127 for assistance in complying with Nationwide Permit General Condition 17. All relevant information obtained from the USFWS should be submitted with the notification.

c. Cultural Resources: The PCN must provide information concerning whether the proposed activity would 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 is necessary to ensure compliance with Nationwide Permit General Condition 18. To initiate efforts in identifying those properties on the project site which may be listed on the National Register or may be eligible for inclusion in the National Register, it is recommended that the applicant compile basic information about the general project area, as listed below, and submit this information to the District Engineer. This preliminary resource review should encompass a search radius of 2 miles and be centered on the project area. The following resources may be consulted during this review:

- 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, 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.

In addition to the information requested above, the applicant should provide information regarding the terrain and topography of the project area, acreage of the project area, proximity of the project area to major waterways, past land uses in the project area, and any past cultural resources studies or coordination for the project area, if available. It is also helpful if the applicant includes photographs, keyed to mapping, showing the project area and any buildings or structures on adjacent parcels. Upon receipt and review of this information and the information listed above, the Corps will be able to determine if further studies of the project area should be conducted (e.g., Phase I Cultural Resources Management Survey or Archeological Survey).

While accomplishing the activity authorized by a NWP, the inadvertent discovery of any artifacts (human remains, funerary objects, sacred objects, and objects of cultural matrimony/patrimony, etc.) shall result in immediately ceasing work and contacting the Regulatory Branch of the appropriate Corps of Engineers District. The Corps will initiate the Federal, state, and tribal coordination required to satisfy the National Historic Preservation Act and all other applicable laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under both Executive Order 13175 and 36 CFR Part 800.

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 15.

e. 401 Water Quality Certification: For activities that result in between 1/10 and ½ acre of loss of waters of the US **two copies of** the PCN 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 on the site are recommended.

f. Agency Coordination: Activities that result in the loss of greater than ½ acre of waters of the US require full agency coordination (See Nationwide Permit General Condition 27 *Pre-construction Notification*). In an effort to expedite permit review, it is requested that all PCN's

for activities resulting in the loss of greater than ½ acre of waters of the US include five (5) copies of the notification package. Applicants are encouraged to submit this information in electronic format in order to minimize the use of paper.

g. Floodplain Coordination: All PCN's 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 "FEMA Issued Flood Maps". 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 PCN information requested above.

Note 2: Nationwide Permit General Condition 27 *Pre-construction Notification* requires the permittee to include a delineation of special aquatic sites and all other waters of the United States on the project site. Special aquatic sites include sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes.

E. Ohio EPA Section 401 Water Quality Certification General Limitations and Conditions

A. STREAMS

1. Temporary or permanent impacts to streams are limited to 500 linear feet, of which no more than 200 linear feet can be impacts to intermittent or perennial streams [except for NWP's 3, 12, 13, 20, 21, 27, 32, 37, 38, 41, 45 and 47]. Impacts shall be measured linearly from upstream to downstream, including the length of permanent or temporary stream impoundments, when calculating the total length of stream impacts [except for NWP 12, for which impacts shall be measured bank-to-bank];
2. Temporary or permanent impacts to water bodies meeting any of the criteria set forth in a through d below, are prohibited [except for NWP 3, 20, 27, 32, 37, 38, 45, and 47 or maintenance activities covered under NWP 7 and 12]:
 - a. Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation;
 - b. Water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Waters or Outstanding High Quality Waters; and,
 - c. General high quality water bodies, such as Killbuck Creek in Coshocton County and Pymatuning Creek in Ashtabula County, which harbor federally listed threatened and/or endangered species.

For an alphabetical listing of the Superior High Quality Waters, go to http://www.epa.state.oh.us/dsw/rules/antidegHQlist_july03.pdf

3. Stream reconstruction 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 endpoint.
4. Stream or buffer improvements and/or mitigative measures required by the Corps shall address the following:
 - a. In order of priority, these measures shall focus on the following:
 - i. the stream segment being impacted;
 - ii. upstream segments and tributaries;
 - iii. the receiving stream.

The measures should, to the extent practicable, consider the causes and sources of impairment of the stream where the measures would be undertaken if the stream is listed as impaired in the most recent final report submitted to the United States Environmental Protection Agency by the director of Ohio EPA to fulfill the requirements of Section 303(d) of the Clean Water Act. The current list of impaired streams, as of the date of this certification, can be found at on Ohio EPA's web site at: http://www.epa.state.oh.us/dsw/tmdl/2004IntReport/final_2004IR_appB_2.pdf
 - b. If the applicant cannot find appropriate mitigation on streams listed in Section "a" above, mitigation shall be in the Ohio EPA 8-digit watershed.
 - c. Vegetative buffers on both stream banks shall be of an appropriate length (at least the length of the impacted stream segment), and, if practicable,
 - i. Provide a minimum width of 25 feet for preservation of existing vegetative buffers; or,
 - ii. Provide a minimum width of 50 feet for re-vegetating buffers cleared during construction.
 - iii. Buffer width is measured from the top of bank or level of bankfull discharge.
 - d. Vegetated buffers shall be planted, or restored, as soon as practicable after in-stream work is complete and shall extend to the top of both stream banks, or beyond as stipulated by the Corps or Ohio EPA, using native tree and shrub species with rapid growth characteristics,
 - e. Impacts to existing vegetative buffers shall be minimized to the maximum extent practicable. Entry to surface waters shall be through a single point of access on each side of the stream whenever practicable to minimize disturbance to buffer vegetation;
5. In-stream activities shall not result in the permanent destabilization of the stream banks or stream bed. The stream bed and substrates shall be restored to conditions that existed prior to work.
6. In-stream work shall be conducted during low-flow conditions whenever practicable in order to minimize adverse impacts to water quality away from the project site, except in emergency situations that threaten human life or property.
7. Culverts

- a. For an individual stream, the combined length of an existing culvert and culvert extension shall not exceed 500 linear feet, and the individual culvert extension shall not exceed 200 linear feet if installed on an intermittent or perennial stream, or 500 linear feet if installed on an ephemeral stream.
 - b. For new road construction, flood plain culverts shall be installed where the flood prone area is greater than twice the width of the stream at Ordinary High Water Mark (OHWM).
 - c. New Culverts on Low Gradient Streams (<3% slope)
 - i. Culverts shall be installed at the existing streambed slope, not exceeding three percent, to allow for the natural movement of bedload and aquatic organisms.
 - ii. The culvert base or invert for intermittent and perennial streams with bottom substrate shall be installed below the sediment to allow natural channel bottom to develop and to be retained. The channel bottom substrate shall be similar to and contiguous with the immediate upstream and downstream reaches of the stream. 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.
 - iii. For perennial and intermittent streams, culverts with less than three percent grade or not installed on bedrock shall have the lower 10 percent of all culvert bottoms buried below the existing stream grade. Hydraulic design shall be based upon the remaining open portion of the culvert.
8. Compensatory mitigation for linear projects (e.g., highways) in streams may be mitigated for by the following, in descending order of practicability:
- a. Stream impacts associated with a linear project may be mitigated on-site, defined as within one mile of the linear project, and within the same 14-digit watershed as shown in OAC 3745-1-54(F)(2); or,
 - b. Stream impacts associated with a linear project may be mitigated at a single stream mitigation location or stream mitigation bank acceptable to the director, within each Ohio EPA 8-digit watershed in which such impacts occur; or,
 - c. If no stream mitigation bank, acceptable to the director, is located within one or more of the Ohio EPA 8-digit watersheds in which the impact occurs, then mitigation may occur in another Ohio EPA 8-digit watershed impacted by the linear project; at a single stream mitigation location, or a stream mitigation bank, acceptable to the director; or,
 - d. If no stream mitigation bank exists within any of the watersheds connected with the linear project, then mitigation should occur within the watershed in which the largest impacts (in terms of area) occur.

B. WETLANDS

- 1. Temporary or permanent impacts to Category 3 wetlands are prohibited [except for NWP 27].
- 2. Temporary or permanent impacts to Category 1 and 2 wetlands are limited to a maximum total of one-half acre [except for NWP 20, 21, 27, 32, 37, 38, 45, and 47].

3. Wetland Mitigation
 - a. Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWPs for approved activities.
 - b. Wetland mitigation shall adhere to the requirements set forth in Ohio EPA's Wetland Water Quality Standards [OAC Chapter 3745-1].
 - c. When it is determined that use of a mitigation bank is the best option, mitigation shall only be authorized at those mitigation banks having an active instrument signed by the director of Ohio EPA.
4. Discharges or diversions of storm water into wetlands shall not negatively alter the wetland's natural hydrologic regime as required by OAC Rule 3745-1-51 (Wetland Narrative Criteria) and shall meet warmwater habitat chemical criteria as required by OAC Rule 3745-1-52 (Numeric Chemical Criteria for Waste Water Discharges to Wetlands) unless the applicant has obtained alternate criteria from the director.

C. LAKE ERIE

1. No nationwide permit may be used to divert water from outside of the Lake Erie drainage basin.
2. Temporary or permanent impacts to Lake Erie coastal wetlands, including coastal wetlands located on Lake Erie Islands and Sandusky Bay are prohibited [except for NWP 3 and 27].
3. Disposal of Dredge Material from Lake Erie, Lake Erie Islands, and Sandusky Bay.
 - a. Dredged material that is greater than 60 percent sand (0.063 mm grain size), as determined by grain size analysis, shall be disposed of in the littoral drift, downdrift of the project site.
 - b. Dredged material that is less than 60 percent sand and is below the 75th percentile of the surficial background sediment contamination concentrations of the basin proposed for disposal (as identified in "Surficial Sediment Contamination in Lakes Erie and Ontario, (Table 1) 2002, Journal of Great Lakes Research Volume 28(3) pages 437-450 by Christopher H. Marvin et al) may be disposed of in the open lake.
 - c. Sand and gravel suitable for nearshore disposal shall not be entombed by any structure, but should be removed prior to construction, and placed in the littoral system, downdrift of the project site.

D. GENERAL

1. NWPs cannot be combined to increase any of the aforementioned limitations.
2. Ohio state certification for the use of any NWP to authorize the activities associated with the construction and or development of new mitigation banks that do not possess a mitigation banking agreement signed by the director of Ohio EPA is denied. Banks that have been approved for operation by the director of Ohio EPA may utilize NWPs for approved activities.

3. Authorization under this Certification does not relieve the permittee from the responsibility of obtaining any other federal, state or local permits, approvals or authorizations required by law, including without limitation, National Pollutant Discharge Elimination System (NPDES) permits including general or individual stormwater permits, or Permits to Install (PTIs).
4. In nationwide permits where the district engineer has been granted authority to waive certain requirements, the corresponding limitations and conditions of this certification shall apply unless written authorization from the director of Ohio EPA is obtained to authorize additional impacts.
5. To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, peak rates of runoff from an area after development may be no greater than the peak rates of runoff from the same area before development for all twenty-four-hour storms from one to one-hundred-year frequency.
6. To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, locally required post development stormwater ponds shall incorporate specific design features for water quality such as those listed in Ohio's Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection, 3rd Edition (2006), available at <http://www.dnr.state.oh.us/soilandwater/Rainwater.htm>, to the extent allowed by local stormwater requirements. These features include, but are not limited to, infiltration trenches, extended detention, wet pools, forebays, aquatic benches and vegetated shallows, optimum flow length, reverse flow pipe, optimum pool depth, shading and buffer plants, and runoff reuse.
7. To the extent that this condition does not conflict with the Construction General Storm Water Permit in effect at the time of application, the Best Management Practices (BMPs) listed below shall be utilized with all NWP when applicable.
 - a. Only suitable material, free of toxic contaminants in other than trace quantities, shall be used as fill material;
 - b. The use of asphalt and rubber tires as fill is prohibited under this permit;
 - c. Upon the cessation of temporary impacts authorized under a NWP, any hydric topsoil removed from a trench shall be separated and saved for later placement as the topmost back fill layer when the trench is refilled;
 - d. The stockpiling of side-cast dredged material in wetlands in excess of three months is not authorized;
 - e. The applicant shall comply with all final stabilization requirements contained in applicable NPDES construction stormwater permits for the site;
 - f. Construction equipment shall not be placed below the Ordinary High Water Mark (OHWM) of any surface water, except when no other alternative is practicable;
 - g. 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; and,

- h. BMPs shall be installed and maintained to minimize sediment runoff to adjacent surface waters.
8. Representatives from Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions of this water quality certification. This includes, but is not limited to, access to and copies of any records 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.

F. Ohio Coastal Management Program Federal Consistency Conditions

1. The applicant must obtain a Shore Structure Permit from ODNR pursuant to Ohio Revised Code 1521.22, if applicable.
2. The applicant must obtain a Submerged Land Lease from ODNR on behalf of the State of Ohio pursuant to Ohio Revised Code 1506.11, if applicable.
3. The applicant must obtain a Section 401 Water Quality Certification from the Ohio Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, Public Law 95-217, if applicable.

G. Further Information

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

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, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for 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.

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.

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 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.

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 NWP, 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.

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 coarse 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 waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

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 project: 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 project must have independent utility (see definition). For linear projects, a “single and complete project” is 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 waterbody several times at separate and distant locations, each crossing is considered a single and complete project. 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.

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 that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, 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.