

What is a 401?

404 program/permit:

Section 404 of the Clean Water Act requires a permit from the Army Corps of Engineers for activities that would result in the discharge of fill into waterways and wetlands. The Corps' 404 jurisdiction includes all waters which are used in interstate or foreign commerce; all interstate waters (including wetlands, lakes, rivers); and wetlands connected to navigable bodies of water.

401 water quality certification:

Section 401 of the CWA allows states to determine whether a Section 404 permit issued by the Corps complies with state water quality standards. After an application is submitted, the state of Ohio can certify the project, certify the project with conditions necessary to protect water quality, deny certification, or waive its certification authority. (Waiving authority means that the state fails to act on an application within one year and the permit can go ahead without the water quality certification.)

Ohio's isolated wetland permitting:

In January 2001, the Supreme Court ruled in *Solid Waste Agencies of Northern Cook County v. US Army Corps of Engineers* that the Clean Water Act did not extend to isolated wetlands that provide habitat for migratory birds or endangered species. This ruling means that *federal* permits would no longer be required to discharge wastes into such isolated waters. In order to disturb the wetlands that are no longer subject to Corp regulation, an Ohio state permit for Isolated Wetlands must be issued. As a result of House Bill 231's passage into law in 2001, a permit must be issued from Ohio EPA to destroy an isolated wetland.

"Nationwide" and general permits:

Small, so-called "insignificant" projects may allow a developer to avoid a full permit and the corresponding public participation process, depending on the size and quality of the wetland or stream.

Public participation:

Most 401 certifications (and Isolated Wetland permits) will have a 30-day public comment period and sometimes a public hearing.

What you can do

Get on Ohio's mailing list for public notices of proposed 401 certifications in your region.

Submit comments to Ohio EPA and speak out at a public hearing. Build local opposition. Getting local government on your side is one way to win.

Issues to raise

Avoidance: Is there a way to design the project on the site so that it does not fill the wetland or stream?

Minimization: Can the project layout be improved to minimize the impacts on water quality?

Social-economic justification: Has the developer shown that the benefits outweigh the costs?

Cumulative impacts: Are there other harmful activities in the same watershed?

Impaired waterways: Is the wetland or stream in a watershed that is already listed by Ohio EPA as not meeting the bare, minimum standards of the Clean Water Act?

Local value: Does the wetland or stream provide a unique, local value?

Mitigation: If the project must be built, are there opportunities in the same sub-watershed for projects that measurably compensate for the lost functions and values?

Where you can get more information

Ohio Environmental Protection Agency, 401 Section -- www.epa.state.oh.us/dsw/401/401WetlandSection.html

United States Environmental Protection Agency -- www.epa.gov/owow/wetlands/facts/fact24.html

To get on the Ohio EPA's Interested Party list for 401's: Write or call the Division of Surface Water at Ohio EPA -- 614-644-2001 or Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. (You can either request a full state list or by county)

For further information please contact : David R. Celebrezze, Director of Air and Water Special Projects at david@theoec.org, or 614-487-7506.

