



Ohio EPA waiver of 401 water quality certification for 2021 nationwide permits

April 28, 2021

The U.S. Army Corps of Engineers (Army Corps) issued its [final rule](#) on January 13, 2021, modifying and reissuing 12 existing nationwide permits (NWP) and issuing four entirely new NWP, which went into effect on March 15, 2021 (the "2021 NWP"). NWP offer a streamlined permitting approach for certain categories of activities that cause minimal impacts to wetlands and other waters of the United States. NWP are not valid until the appropriate state agency issues a 401 water quality certification (WQC) for the activities authorized by the NWP, certifying that the discharge of dredged or fill material into waters of the U.S. as authorized by the NWP does not violate state water quality standards, or unless the state waives certification pursuant to 40 CFR § 121.9.

Ohio EPA announced on March 4, 2021, that it had finalized its 401 water quality certifications for these 2021 NWP. However, the Army Corps previously set a deadline of December 12, 2020, for Ohio EPA to finalize its 401 water quality certification for these 16 NWP. Ohio EPA requested extensions of this deadline from the Army Corps in order to allow for its state-specific public involvement process to proceed, consistent with the agencies' historic approach. However, the Army Corps declined Ohio EPA's requests for extension, and announced in its [public notice](#) issued on March 15, 2021, that Ohio's 401 WQC had been waived for the 2021 NWP.

In light of the Army Corps' determination that Ohio waived its certification for the 2021 NWP, there is no corresponding 401 WQC permitting obligation for these 16 NWP. However, the 40 remaining, existing NWP that the Army Corps did not reissue or modify with its January 13, 2021, final rule remain in effect until they expire on March 18, 2022, or until the Army Corps otherwise

issues a final rule modifying or reissuing them. The obligation to obtain a 401 WQC from Ohio EPA for impacts associated with these 40 NWP's remains.

A full listing of the 16 NWP's issued in 2021 and the remaining 40 NWP's still in effect from their 2017 issuance is available [here](#).

Authors



Christine Rideout Schirra

Partner

Columbus

614.227.8810

cschirra@bricker.com