



## Ohio EPA issues water quality certification for NWP

October 14, 2021

On October 13, 2021, Ohio EPA issued its [water quality certification](#) pursuant to Section 401 of the Clean Water Act for the 41 nationwide permits (NWP) that are currently set to expire on March 18, 2022.

NWPs offer a streamlined permitting approach for certain categories of activities that cause minimal impacts to wetlands and other waters of the United States. NWPs are not valid until the appropriate state agency issues a 401 water quality certification for the activities authorized by the NWPs certifying that the discharge of dredged or fill material into waters of the U.S. as a result of the activities does not violate state water quality standards, or unless the state waives certification pursuant to 40 CFR § 121.9. Ohio EPA is the regulatory agency in Ohio charged with making such certification.

Ohio EPA's water quality certification applies to 41 NWP activities (nos. 1-11, 13-20, 22-25, 27-38, 41, 45-56, 49, 53-34, and 59), matching the federal rule. It includes general limitations and conditions applicable to all Ohio EPA certified NWPs, including requirements for the use and installation of culverts; sediment and erosion control measures and best management practices; compensatory mitigation requirements; guidelines for issuance of director's authorizations; and notification requirements to Ohio EPA. It also includes special limitations and conditions applicable to certain specific NWPs.

The changes in the 2022 NWPs from the previous 2017 NWPs include a minimum 1:1 mitigation ratio for stream losses over three one-hundredths of an acre; the addition of an entirely new NWP (no. 59, governing water reclamation and reuse facilities); and reduced pre-construction notification triggers.

Earlier this year, the U.S. Army Corps of Engineers modified and reissued 12 NWPs, and issued four entirely new NWPs. Those

prior 16 NWPs went into effect on March 15, 2021, and do not include general or specific limitations and conditions from Ohio EPA, as the Army Corps considered Ohio's 401 Water Quality Certification to have been waived for those 16 NWPs. See prior [Bricker article](#) for a more detailed discussion on these 16 NWPs.

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