



State of Ohio Environmental Protection Agency

OHIO E.P.A.

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APR 15 2010 P.O. Box 1049
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ENTERED DIRECTOR'S JOURNAL

Certified Mail

April 15, 2010

Mr. Martin P. Wargo
Supervisory Biologist
U.S. Army Corps of Engineers, Buffalo District
1776 Niagara Street
Buffalo, New York 14207-3199

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature] Date: 4-15-10

Re: Lucas County /City of Toledo
Grant of Section 401 Certification (MODIFIED Minimum Degradation Alternative)
Toledo Harbor Dredging
ACOE Public Notice No. 10-01
Ohio EPA ID No. 093554

Ladies and Gentlemen:

The director of the Ohio Environmental Protection Agency hereby authorizes the above referenced project under one or both of the following authorities and is subject to the following modifications and/or conditions:

Section 401 Water Quality Certification (WQC)

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, the director of the Ohio Environmental Protection Agency hereby certifies that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

Ohio Isolated Wetland Permit

Pursuant to Ohio Revised Code Chapter 6111 and Ohio Administrative Code Chapter 3745-1, and other applicable provisions of state law, the director of the Ohio Environmental Protection Agency hereby concludes that the above-referenced project will comply with the applicable provisions of Sections 6111.03 and 6111.04 of the Ohio Revised Code.

This authorization is specifically limited to a Section 401 Water Quality Certification and/or Ohio Isolated Wetlands Permit (here after referred to as "permit") with respect to water pollution and does not relieve the applicant of further Certifications or Permits as may be necessary under the law. I have determined that a lowering of water quality in the Maumee River, Toledo Harbor (04100009) and Lake Erie (04120200) watersheds as authorized by this permit is necessary. I have made this determination based upon the consideration of all public comments, and including the technical, social, and economic considerations concerning this application and its impact on waters of the state.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

I have also determined that long term open lake disposal of dredged material in the Western Basin of Lake Erie is not an environmentally acceptable long term alternative. Thus, Ohio EPA has proposed a rule for to restrict the open lake disposal of sediment to 50,000 cubic yards per applicant, per year. The Corps of engineers is strongly encourage to develop other disposal/placement options for the dredged material in anticipation of these new rules.

PART I ON-SITE WATER RESOURCES AND IMPACTS

A. Watershed Setting

The Toledo Harbor Federal Navigation Channel is comprised of the lower seven miles of the Maumee River and 19 miles of the Lake Approach Channel within Maumee Bay and the Western Basin of Lake Erie.

HUC- Maumee River (04100009) and Lake Erie Drainage (04120200)

Designations: Maumee River: Warmwater Habitat
Lake Erie: Exceptional Warmwater Habitat

Maumee River Miles: RM 0 to RM 7

Watershed Impairment Status and Causes of Impairment: Per the Ohio Integrated Report Appendix E.2 Watershed Assessment Unit (WAU) Summaries, the high magnitude causes of impairment are Siltation and Direct Habitat Alterations. The high magnitude sources of impairment are Channelization – Development, Habitat Modifications o/than Hydromodification and Stream bank Destabilization - Development.

B. Project Description

Perform maintenance dredging of sediments in 2010 from the authorized federal navigation channel of Toledo Harbor, including the lake approach channel in Maumee Bay and the Western Basin of Lake Erie, and the river channel in the Maumee River.

C. Impacts

Under the Minimal Degradation Alternative, impacts to waters of the state are as follows:

1. Streams

Perennial (P) stream impacts include the dredging of three miles of the Maumee River to maintain a 400 foot wide, 27 foot deep draft federal navigation channel. The dredging area includes River Mile 0 to River Mile 1 and River Mile 5 to River Mile 7.

2. Lakes

Impacts to Lake Erie include the dredging of eleven miles of the Lake Approach Channel in the Western Basin of Lake Erie from Lake Mile 0 to Lake Mile 11 to maintain a 500 foot wide, 28 foot deep draft federal navigation channel; and, filling approximately one square mile of Western Basin habitat, via open lake disposal of sediment.

PART II TERMS & CONDITIONS

- A. Terms and conditions outlined in this section apply to project and mitigation construction as described in this permit.
- B. This permit shall be valid from the date of this certification through the 2010 maintenance dredging season during which time, the United States Army Corps of Engineers (USACE) shall continue to work with the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, Ohio Environmental Protection Agency, the Ohio Department of Natural Resources, and other appropriate parties to develop feasible habitat restoration units, beneficial reuse alternatives and other placement alternatives for dredge material associated with Toledo Harbor.
- C. This 401 WQC prohibits the placement of dredged material into the open lake provided that there is a cost effective upland disposal option.
- D. No more than 800,000 cubic yards of dredged material may be disposed of in the open lake during calendar year 2010.
- E. At a minimum, a portion of the dredged material from the Toledo Harbor must be beneficially reused by 2012 consistent with the spirit of the 2005 Memorandum of Agreement between the USACE, Ohio EPA, and ODNR, reducing the dependence on open lake disposal of dredged material.

- F. If open lake disposal is necessary, the open lake disposal of dredged material shall be restricted to the northeast half of the open lake disposal site.
- G. The USACE shall continue to investigate and evaluate options for establishing habitat restoration units within the Lower Maumee River and Maumee Bay, beneficial use alternatives, and other placement alternatives for the dredged material. A report documenting activities associated with this condition must be submitted to Ohio EPA, Division of Surface Water by December 31, annually.
- H. The Permittee shall notify Ohio EPA, in writing, and in accordance with *Part IV (NOTIFICATIONS TO OHIO EPA)* of this permit, upon the start and completion of dredging and mitigation monitoring.
- I. Dredging work shall take place during low flow conditions in order to minimize adverse impacts to water quality away from the project site.
- J. No dredging or disposal shall occur during storm events (i.e. winds > 30 knots or waves > 3 feet).
- K. By December 31, 2010 a "project update report" shall be submitted to Ohio EPA. This report shall document the status of the dredging activities including dates dredging was started and completed, the quantity of material removed from the federal navigation channel during that year, and the quantity and location of placement of all dredged material. A drawing shall be provided, which shows the locations and cubic yards of material removed from each dredging location.
- L. This 401 WQC does not authorize the placement of dredged material into the confined disposal facility known as Island 18 until such time the applicant effectively demonstrates to Ohio EPA that the weir structures and containment berm of Island 18 are structurally sound and capable of withstanding additional capacity.
- M. A copy of this permit shall remain on-site for the duration of the project and mitigation activities.
- N. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401/IWP Manager, (614-644-2001), for further evaluation.

- O. Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
- P. In the event that there is a conflict between the permit application, including the mitigation plan, and the conditions within this permit, the condition shall prevail unless Ohio EPA agrees, in writing, that the permit application or other provision prevails.
- Q. The applicant shall provide electronic maps of the development area and the mitigation area to Ohio EPA's Environmental Mitigation & Special Permitting section within 30 days of the date of this permit. When sending the electronic files, include the Ohio EPA ID Number and the Army Corps of Engineers Number (if applicable). If possible these electronic maps shall be GIS shape files or Geodatabase files. If this is not possible, the electronic maps shall be in another electronic format readable in GIS (GIF, TIF, etc). The electronic files shall be sent to the following e-mail address: Ric.Queen@epa.state.oh.us

If the files are too large to send by e-mail, a disk containing the electronic files shall be mailed to the following address:

Ohio Environmental Protection Agency
Division of Surface Water
Environmental Mitigation & Special Permitting
Attn: Ric Queen
50 West Town Street, Suite 700
PO Box 1049
Columbus, OH 43216-1049

- R. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office as follows:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
(419) 352-8461

Additional information regarding environmental permitting assistance at Ohio EPA can be found at http://www.epa.ohio.gov/dir/permit_assistance.aspx

S. Best Management Practices (BMPs)

1. Dredging Activities

- a. Dredging operations shall not take place within 3000 feet up-current of municipal or industrial water supply intakes.
- b. Prior to commencement of dredging operations, dredge operators must notify area water users, municipal and industrial, whose water quality may be affected by the dredge's turbidity plume and its associated contaminants.
- c. Steps shall be taken not to come into contact with municipal, industrial, or other water intakes or effluent structures which may be located in the project area.
- d. All dredge material which is to be placed in an upland site shall be disposed of in such a way that sediment run-off is controlled and minimized.
- e. Dredging contractors must be provided with contact information for the City of Toledo and City of Oregon Water Treatment Plants so that both parties can implement their contingency plans in the event of a chemical or petroleum spill from dredging equipment.

T. Wildlife Protection

1. Prior to commencement of dredging operations, the USACE shall contact Ms. Andrea Tibbels or Dave Sherman at the Ohio Department of Natural Resources (ODNR), Division of Wildlife at (419) 898-0960, regarding a bald eagle (*Haliaeetus leucocephalus*) nest that exists near the northern side of the Maumee River mouth and to obtain an updated status for the project area. USACE shall follow any restrictions recommended by ODNR and/or the U.S. Fish and Wildlife Service regarding the potential affects of the dredging activities on the bald eagle nest(s) within the project area.
2. No in-water work shall take place during March 15 to June 30 to reduce impacts to aquatic species and their habitat, unless specifically approved by the Ohio Department of Natural Resources, Division of Wildlife, in writing, with a copy provided to Ohio EPA prior to undertaking any in-water work during the

environmental window.

3. If native mussels and/or mussel beds, not previously identified, are encountered at any time during construction or dredging activities, work must cease immediately and the Ohio Department of Natural Resources' Division of Wildlife must be contacted for further evaluation.

PART III MITIGATION

A. Description of Required Mitigation

Dredging is restricted to occur between July 1 and November 30 in order to minimize impacts to local environmental resources, primarily fisheries. Dredge material Placement is to be restricted to the northeast half of the open-lake placement area and will not occur during Lake Erie storm events. Care must be taken to avoid creation of unnecessary turbidity that may degrade water quality or adversely affect aquatic life outside the project area.

Part IV NOTIFICATIONS TO OHIO EPA

All notifications, correspondence, and reports regarding this permit shall reference the following information:

Permittee Name: Martin Wargo, US Army Corps of Engineers
Project Name: Toledo Harbor Dredging 2010
Ohio EPA ID No.: 093554

and shall be sent to:

Ohio Environmental Protection Agency
Division of Surface Water, 401/IWP Unit
Lazarus Government Center
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the

grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer Kevin Boyce," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215

Sincerely,



Chris Korleski
Director

cc: Scott Pickard, U.S Army Corps of Engineers, Buffalo District
Kevin Pierard, U.S. EPA, Region 5
Mary Knapp, U.S. Fish & Wildlife Service
Brian Mitch, ODNR, Division of Real Estate & Land Management
Dave Snyder, Ohio Historical Preservation Office
Ric Queen, Ohio EPA, DSW, Manager, CO
Julie Letterhos, Ohio EPA, Lake Erie Unit, CO
Marc Smith, EAS
Ben Smith, Ohio EPA, DSW, 401/IWP Coordinator, NWDO
Randy Bournique, Ohio EPA, DSW, Manager, CO
Shannon Nabors, Ohio EPA, NWDO Chief

Attachments: Responsiveness Summary