

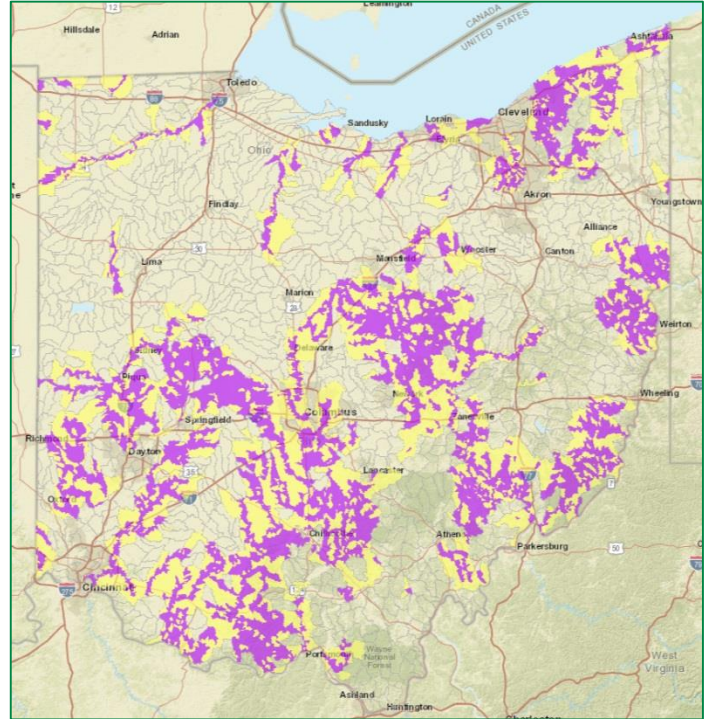
# Ohio Regulatory Updates

## Changes to Clean Water Act Section 404 & 401 Regulations

Development projects in Ohio that propose to impact regulated wetlands and streams are confronted with complex regulations and permitting requirements. Navigating the laws that protect these water resources can be costly and time consuming, and unfortunately for Ohio, the process to obtain permits from U.S. Army Corps of Engineers (USACE) and Ohio Environmental Protection Agency (EPA) is set to become even more challenging for applicants.

### Ohio EPA's 401 Water Quality Certifications to USACE's Nationwide Permit Program

USACE's Nationwide Permit program allows the Corps to authorize minimal impacts to jurisdictional wetlands and streams for a myriad of projects, including those in the residential, commercial, utility, and transportation sectors. To obtain a Nationwide Permit from the Corps, an applicant has to comply with Ohio EPA's state Water Quality Certifications to the Nationwide Permits. Ohio EPA has proposed changes to its Certifications that will have an enormous impact on any project seeking to obtain a Nationwide Permit.



**Figure 1.** Ohio stream impact eligibility map. Purple areas must obtain a 401 Water Quality Certification or Director's Authorization from Ohio EPA for stream impacts. Yellow areas must submit additional stream sampling data to determine if a permit from EPA is required.

- **Stream Impact Eligibility:** Ohio EPA has proposed a new eligibility requirement for projects seeking to impact streams in watersheds that the Agency has determined to be high-quality or in ones that support high-quality streams. EPA has produced a map that identifies these watersheds (Figure 1). Stream impacts in these watersheds can no longer be authorized solely by a Corps Nationwide Permit; applicants must now also secure an Individual 401 Water Quality Certification or a Director's Authorization from Ohio EPA, which will add considerable cost and delay to a project. EPA's map can be accessed here:

<http://oeqa.maps.arcgis.com/apps/webappviewer/index.html?id=e6b46d29a38f46229c1eb47deefe49b6>

- **Wetland Quality Assessments:** projects proposing to impact wetlands with a Nationwide Permit must submit quality assessments (ORAMs) to the Corps for the wetlands on a site that will be filled. Ohio EPA has proposed new restrictions on the timing of conducting these assessments. Historically, ORAMs could be completed any time of the year as long as there was no snow cover. EPA's now proposes that wetland assessments can only be completed during the growing season (approximately April to October), thereby narrowing the window when a developer can conduct due diligence for a site.

For additional information on how these regulatory changes may affect your project, please contact Greg Snowden (greg.snowden@davey.com) or Judith Mitchell (judith.mitchell@davey.com).