

## **Guidance for LPAs on Managing Transportation Projects through the Waterway Permit Process**

As a streamlining measure for ODOT's environmental program, ODOT funds an US Army Corps of Engineers (USACE) office in Columbus, Ohio known as the Ohio Regulatory Transportation Office (ORTO). ORTO reviews ODOT projects and its presence in central Ohio has afforded ODOT a direct link to USACE for regulatory programs, specifically Section 404 of the Clean Water Act. After discussions with USACE, ODOT decided to make ODOT's waterway permits process, including ORTO, available to the LPAs for their federally funded projects. Through ORTO, the LPA may be able to secure the necessary permits for their projects faster than going through the USACE in Huntington, Pittsburgh or Buffalo Districts. The Waterway Permits Unit (WPU) in the Office of Environmental Services (OES) is responsible for reviewing transportation projects to determine the appropriate level of waterway permitting, ensure permit applications are compliant with regulatory requirements and ODOT standards, and obtaining permit authorizations from the agencies to facilitate ODOT's program. The WPU is responsible for all coordination with the USACE and manages project priorities to help ensure the USACE delivers all assigned permits timely.

While this process is offered to LPAs to assist them through the waterway permit process, it is not required. The LPA still has the option to coordinate directly and independently through their assigned USACE office (Huntington, Buffalo or Pittsburgh).

If waterway permit coordination with Ohio Environmental Protection Agency (Ohio EPA) is required for a LPA project, ODOT will also coordinate the project with ODOT's funded position at Ohio EPA to obtain the necessary approvals and/or authorizations.

In short, ODOT's permit process requires the following steps:

- 1) During stage 2 design, the LPA will develop a Permit Determination Request (PDR) and submit to OES for review.
- 2) Based on the PDR, WPU will provide a Permit Determination (PD) for the LPA's use in preparing the necessary permit application(s).
- 3) If a permit/approval from the USACE or OEPA is required, the LPA prepares and submits the permit application(s) to WPU for review.
- 4) The LPA shall address all comments and submit final application(s) to OES for agency coordination and review.
- 5) ODOT and the LPA shall work together to address any comments/questions from agencies.
- 6) OES will forward approved permits to the LPA upon authorization.

### **Permit Determination Request and Permit Determination**

The LPA shall submit a PDR to the District Environmental Coordinator (DEC) to forward to OES-Waterway Permits Unit for review, per the form and associated instructions located on OES's website at the following link:

[http://www.dot.state.oh.us/Divisions/Planning/Environment/Ecological\\_Resources/Permits/WATERWAY\\_PERMITS/Pages/Permits.aspx](http://www.dot.state.oh.us/Divisions/Planning/Environment/Ecological_Resources/Permits/WATERWAY_PERMITS/Pages/Permits.aspx)

The following criteria are required prior to submitting a PDR:

- Completed ecological coordination
- Completed Section 106 coordination
- A jurisdictional determination, if appropriate. A JD request shall be made by the LPA to the DEC, who will then forward the request to OES for coordination with ORTO.
- ODNR Scenic River coordination and approval (if applicable)

The PD will inform the LPA of the permitting requirements for the project, including any mitigation requirements. If agency notification is not required, OES will inform the LPA that they can proceed with the project utilizing the applicable NWP; however, OES will not provide waterway permit special provisions for LPA projects.

The WPU will provide a PD to the LPA within 30 days, unless the PDR is incomplete and requires more information or revisions.

If a project exceeds a threshold or thresholds of the 401 NWP certifications but will likely have minimal impacts on water quality, a Director's Authorization (DA) from Ohio EPA may be pursued. OES will consider whether a DA request to Ohio EPA is appropriate and make a recommendation to the LPA via the ODOT district office. A DA will be granted if OEPA determines that a project will have a minimal impact on water quality and an individual 401 WQC is not warranted, provided that all other NWP terms and conditions are met. If a DA is not granted, then an individual 401 WQC must be obtained. ODOT will typically reach out to Ohio EPA informally, during the permit determination process, for feedback if pursuing a DA is appropriate for a project.

### Application Review

Upon completion of all necessary permit application(s), the LPA shall submit the application(s) to the DEC who will forward the application(s) to the WPU for review. The WPU will provide comments back to the DEC within 30 days of submittal to OES. Once comments are addressed and the application is resubmitted to OES, the WPU will complete a final review and provide any remaining comments within 15 days of resubmittal. If original comments were substantial, ODOT will require a 30-day back check.

If mitigation is required for the project, the LPA must identify a mitigation plan and include the plan in the permit application(s). The WPU will provide comments on whether the proposed mitigation plan is appropriate for the project. LPAs cannot utilize ODOT's existing pooled mitigation sites, or previously purchased in-lieu fee or mitigation bank credits. The LPA is responsible for all mitigation costs and actions.

After all application comments are addressed, applicant and agent signatures are required. ODOT will sign as the applicant and agent for all project utilizing ODOT's permitting process regardless of location within USACE district boundaries. This approach will allow ODOT to function as a federal permittee, which will further streamline the process.

See Waterway Permits Manual and associated agency website on how to complete different types of permit applications:

<http://www.dot.state.oh.us/Divisions/Planning/Environment/Ecological Resources Permits/WATERWAY PERMITS/Pages/Manual.aspx>

### Agency Review

The following timeframes are associated with permit type and agency review and processing. The timeframes indicated below are based off a complete application from the LPA.

Permit Type	Processing Time	Regulatory Agencies
NWP	30 days	USACE
NWP with PCN	45 days	USACE
OEPA Notification	45 days	OEPA
NWP PCN with DA	90 days*	USACE/OEPA
NWP PCN with individual 401	6-8 months	USACE/OEPA
Individual 404 & 401	8-12 months	USACE/OEPA
Isolated wetland permit – level 1	30 days	OEPA
Isolated wetland permit – level 2	90 days	OEPA
Isolated wetland permit – level 3	12 months	OEPA
Section 9 Permit	12 months	USCG
Section 10 Permit (PCN)	45 days	USACE
Section 408 Permissions	30 to 120 days	USACE

\*A 15-day public notice on Ohio EPA's website and an additional 30 days for review at processing prior to DA issuance.

The WPU will assist the LPA with any comments or questions on the permit application(s) from the agencies.

### Receipt of Waterway Permits

Upon receipt of all waterway permits, ODOT will notify the DEC and the permit(s) will be transferred to the LPA as soon as possible. . For general permits, the transferee (LPA) must submit a letter to the USACE per general condition 29 of the Nationwide Permits, which states that the LPA assumes all the terms and conditions of the permit, along with a copy of the permit. An example transfer request letter is provided in this guidance. The USACE will then provide a letter to the LPA granting the transfer request. If a permit transfer is required for an individual permit or Director's Authorization, OES will provide specific guidance on the transfer process.

If the project requires individual 404 permit authorization, ODOT will sign the proffered permit and forward to the USACE for their signature prior to the permit considered final. If the project requires a Section 408 Permission, the LPA (not ODOT) will need to sign the Alteration Conditions Form and return to the USACE for their signature before the authorization is considered final. As previously stated, OES will not provide special provisions for waterway permits. The LPA is responsible for incorporating the conditions of the waterway permits into the plan package.

This guidance is not intended to be comprehensive instructions. For a complete overview of the waterway permits process for ODOT's program, please consult the Waterway Permits Manual at the above link.

For additional information on this subject, you can also contact Adrienne Earley, ODOT-OES, Waterway Permits Program Manager at (614) 466-2159 or email her at: [Adrienne.Earley@dot.ohio.gov](mailto:Adrienne.Earley@dot.ohio.gov).