



# Ohio Department of Natural Resources

BOB TAFT, GOVERNOR

SAMUEL W. SPECK, DIRECTOR

July 21, 2000 JUL 27 PM 12:01

Lt. Col. Glen R. DeWillie, District Engineer  
U.S. Army Corps of Engineers  
Buffalo District  
1776 Niagara Street  
Buffalo, New York 14207-3199  
ATTN: Mr. Phil Frapwell

Re: Federal Consistency – Corps of Engineers Nationwide Permit (NWP) #27  
Issued to Barnes Nursery (PCN 2000-01800), Erie County, Ohio

Dear Lt. Colonel DeWillie:

The Ohio Department of Natural Resources (ODNR) recently became aware of the above referenced project, authorized by the U.S. Army Corps of Engineers (Corps), that is located within the designated coastal area of the Ohio Coastal Management Program (OCMP). The above referenced activity, already commenced, was authorized by Nationwide Permit #27.

In concert with Federal Consistency requirements of the Coastal Zone Management Act (CZMA) that must be adhered to by the Corps, Ohio Revised Code §1506.03 provides that no project or activity directly affecting the coastal area that is subject to the approval of any agency of the state shall be implemented or approved until the Director, ODNR, has determined that it is consistent with the policies in the OCMP document. The OCMP has found the use of most Nationwide Permits (NWP) in Ohio's coastal area to be consistent with the policies of the OCMP provided appropriate management measures are incorporated in projects so authorized and that projects comply with enforceable state laws and regulations. However, in this instance, the issuance of the NWP by the Corps violates the consistency provisions of the Coastal Zone Management Act. The project involves dredging a channel and sidecasting the material into a dike-like structure in coastal wetlands. The activity is also adjacent to Sheldon Marsh State Nature Preserve, which is part of the same coastal wetland complex. The work has commenced without obtaining necessary state approvals. The activity is causing damage during construction and is expected to continue to adversely affect the quality of highly important coastal wetlands, associated fish and wildlife resources and beneficial functions of waters of the state important to the general public interest. This is due to the physical alteration of category three wetlands (as defined in Ohio's wetland water quality standards) and the alteration of water flow and movement of aquatic organisms within special habitat waters of Lake Erie (critical resource waters).

ODNR requests that the Corps immediately revoke the nationwide permit for this project. The applicant has failed to comply with the terms and conditions of the nationwide permit as it relates to consistency with the policies of the OCMP and required state approvals. It is the responsibility of both the permit applicant and the Corps of Engineers to be familiar with the OCMP. Ohio's coastal management policies and limitations of the consistency certification for NWP #27 requires that the applicant furnish ODNR with necessary data and information to determine whether the project complies with the OCMP and will be conducted in a manner consistent with the program. Among these policies is the protection of wetlands and water quality. Ohio EPA has placed special conditions in the State Water Quality Certification applicable to use of this NWP. These conditions prohibit any temporary and permanent impacts to category three wetlands and lists special habitat waters of Lake Erie as critical resource waters. There are well known points of contact to effect consultation necessary to meet the mandates of Ohio law and the CZMA prior to making decisions regarding the issuance or denial of Federal permits for projects affecting Ohio's coastal area.

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Additionally, ODNR questions why a formal pre-construction notification (PCN) was not received by this office. While we realize that PCNs are optional with regard to NWP #27, our extensive expertise in wetlands restoration, as well as the adjacency of Sheldon Marsh State Nature Preserve to the project site, could have assisted the Corps in making a more informed decision on this project. Also, we are dismayed that when ODNR requested a copy of the issued permit and project plan information, the Corps instructed that ODNR must make its request under the Freedom of Information Act. Ohio has patiently waited for information from the Corps, having first made contact with the Corps a week ago.

We appreciate the opportunity to provide these comments and look forward to working in partnership with the U.S. Army Corps of Engineers in our shared protection of Ohio's wetland and coastal resources. If you have any questions, please contact Ms. Kim Baker (614/265-6411) of the Resource Management Section of this office.

Sincerely,



Wayne R. Warren, Chief  
REALM

WRW/kab

cc: Scott Zody, Administration  
Mike Colvin, REALM  
Scudder Mackey, GeoSurvey  
John Watkins, Water  
John Marshall, Wildlife  
Stu Lewis, DNAP  
Dick Bartz, Water  
Pat Fagan, Engineering  
Ric Queen, Ohio EPA  
Ken Multerer, US Fish and Wildlife Service  
Tom Glatzel, US EPA  
David Kaiser, NOAA