



C.P.R. for Wetlands: *Conserve, Protect, and Restore* Breathing new life into our sense of place

Community Involvement in Wetland Protection OHIO

Background

Wetlands are ecosystems of unique and major importance to the people of Ohio. Ohio's wetlands serve many important functions, including: fish and wildlife habitat, water quality protection, flood storage, and erosion control. Ohio's wetlands are significant recreational areas of incalculable aesthetic value, and contain delicate and irreplaceable types of flora and fauna. Wetlands directly and indirectly support hunting, trapping, fishing, nature study, wildlife observation, scientific research, drinking water sources, and many other beneficial human uses. One estimate of the economic value of Ohio's remaining wetlands is \$2.9 billion. Unfortunately, by their nature, wetlands are vulnerable and fragile environments. When wetlands are destroyed, the environmental effects are not limited to the wetland area, but are felt throughout the ecosystem. Wetlands have become diminished through destruction, alteration, pollution, and other activities of humans. Of the estimated original 5,000,000 acres of Ohio wetlands, circa 1780, only 482,800 acres are estimated to still exist, a net loss of 90%.

The Regulatory Landscape

Federal

Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act provide the regulatory framework for the federal government's role in regulating activities that impact wetlands. The federal program is administered by the U.S. Army Corps of Engineers (Corps) with oversight by the U.S. Environmental Protection Agency (EPA). In addition to this wetland regulatory program, the federal farm programs, the Endangered Species Act and other sections of the Clean Water Act (Section 401 – Water Quality Certification and Section 402 – National Pollution Discharge Elimination System) can help protect wetlands.



Photo courtesy of Paul Buescher

State

Administered by the Ohio Environmental Protection Agency (OEPA), Section 401 of the CWA allows states to determine whether a Section 404 permit issued by the Corps complies with state water quality standards. After an application is submitted, the state of Ohio can certify (approve) the project; certify the project with conditions necessary to protect water quality, or deny the application. Ohio's rules on wetland permits are available in the Ohio Administrative Code Section 3745-1-50 through 3747-1-54.

Ohio's Isolated Wetland Permitting: In January 2001, the Supreme Court ruled in *Solid Waste Agencies of Northern Cook County v. US Army Corps of Engineers* that the Clean Water Act did not extend to isolated wetlands solely on the basis that they provide habitat for migratory birds. This ruling meant that federal permits were no longer required in order to discharge wastes into isolated waters. Following that court ruling, Ohio adopted a new state law that set up an Isolated Wetland Permitting Program. The Isolated Wetland Permit Process is similar to Section 401 certification for jurisdictional wetlands.

"Nationwide" and General Permits: Small, so-called "insignificant" projects may allow a developer to avoid a full permit and the corresponding public participation process, depending on the size and quality of the wetland or stream.

In Practice

Under current rules, developers are supposed to show that the wetland destruction cannot be avoided. However, in practice, the OEPA has only disapproved five such applications in the past three years, and most projects are approved along with some requirement to do a "mitigation" project. Some of these mitigation projects are completed in watersheds away from the destroyed wetland, and many mitigation projects are unproven and provide poor replacement quality. Pictured below is an illustration of a poor wetland mitigation practice. It is a photo of a wetland that the developer preserved, but surrounded with a parking lot. This is clearly not an effective way to preserve a wetland.



Photo courtesy of Bill Donoho

Local Regulations

A few local jurisdictions are beginning to regulate wetlands. This, however, is not common.

What You Can Do

If a developer in your area proposes to destroy a wetland, your ability to protect the wetland depends on whether or not the activity is regulated. Therefore, the first thing you should do is find out whether the federal and/or state agencies regulate the proposed activity.

Contact the District Office of the US Army Corps of Engineers and find out if they would require a permit for the filling, dredging, or draining of the wetland. Note that the Corps may regulate each of these activities differently depending on the type of wetland and the type of activity. If it is a so-called isolated wetland, the Corps will most likely not regulate it, but the state (OEPA) will require a permit for filling or dredging the isolated wetland. If it's a so-called jurisdictional wetland, the Corps will probably require a permit if the developer is going to fill or dredge the wetland.

Here are other steps that you can take to preserve your wetland:

- 1) Review and comment on proposals to destroy wetlands. Urge the Corps and/or Ohio EPA to deny the application. Demand that any mitigation projects occur in watershed and truly replace the functions and values of the destroyed wetland;
- 2) Get on the OEPA's Interested Party list for 401's: Write or call the Division of Surface Water at OEPA – (614) 644-2001 or Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. (You can either request a full state list or by county);
- 3) Request a hearing and testify against the project at the hearing;
- 4) Build a relationship with a local reporter in order to publicize bad projects in your area;
- 5) Build a relationship with a local politician. Educate and inform them so that they can help block bad projects and adopt local ordinances to safeguard wetlands in your area;
- 6) Promote proper wetland stewardship among private landowners, promote permanent protection through conservation easements and purchase;
- 7) Get involved in wetland restoration or monitoring projects;
- 8) Educate others about the importance of wetlands and how to protect them.

Where to Go for More Information

The Ohio Environmental Council is actively engaged in protecting and restoring Ohio's wetlands. We work on the local, regional, state and federal levels to protect and restore Ohio's valuable water resources. For more information visit www.theoec.org or e-mail oec@theoec.org or call (614) 487-7506.

For information on the federal wetland regulatory program in the Lake Erie Basin contact the Buffalo District of the Corps at (716) 879-4299 or on the web at <http://www.lrb.usace.army.mil/>. Or call their Cleveland Project Office/Ohio Area Office at (216)685-1200. Other parts of Ohio are covered by Corps Districts in Huntington, WV, Louisville, KY, and Pittsburgh, PA.

For information on Ohio's wetland regulatory program, contact the OEPA Division of Surface Water at (614) 644-2001 or on the web at www.epa.state.oh.us.

Together the OEC and citizens can stop the senseless destruction of wetlands in Ohio and improve our quality of life. Get involved early and often!