



## Oil & Gas Permitting Update: Recent General Developments Affecting Oil and Gas Development

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Due to rising interest in shale gas development, both state and federal agencies are taking action to facilitate the development of shale gas resources. A brief summary of these recent activities is below.

### Water and Wetlands

Under the federal Clean Water Act (“CWA”), a person who wishes to discharge dredged or fill material into waters of the United States must obtain a CWA 404 permit from the U.S. Army Corps of Engineers (“Corps”) and a Section 401 Water Quality Certification from the Ohio EPA.

A Nationwide Permit (“NWP”) is a general permit issued by the Corps on a national basis. Each NWP is based on a category of activity. The NWPs are designed to meet the prospective permittee’s requirement to obtain a permit under Section 404 of the CWA. The NWP program is intended to reduce administrative burdens for projects that will result in minimal impacts to waters of the U.S. Although NWPs are issued nationally, each state must certify each NWP and may include terms and conditions specific to the needs of that state.

A revised version of the Corps’ Section 404 NWPs became effective on March 19, 2012. Notably, the Corps revised NWP 39 (Commercial and Institutional Developments) to allow general permit coverage for oil and gas well pads. Coverage for such projects was previously excluded under NWP 39. Because the Corps deleted the words “or oil and gas wells” from the list of projects excluded from coverage by NWP 39, the Corps has expanded use of this NWP to oil and gas producers. The Corps has since confirmed the intent of this change, agreeing that “the construction of pads for oil and gas wells is a type of commercial development that would be appropriate for inclusion in this NWP.”

This change will assist oil and gas producers that will impact wetlands which do not exceed 1/2-acre of surface waters. Such oil and gas producers will not be required to obtain individual CWA Section 404 permits, but instead can take advantage of the shorter permitting timeline offered under NWP 39.

As referenced above, each state must certify each NWP and may include terms and conditions specific to the needs of that state. Ohio EPA has issued its draft Section 401 Water Quality Certification which proposes to certify NWP 39. Ohio EPA’s draft Section 401 Water Quality Certification is available at:

<http://epa.ohio.gov/dsw/401/applications.aspx>

Ohio EPA also recently proposed a draft general permit to authorize impacts to wetlands, streams or other waters of the state at shale gas well sites. However, it is our understanding, based upon discussions with Ohio EPA staff members, that the draft general permit will not be finalized because NWP 39 and Ohio EPA’s Section 401 Water Quality Certification for NWP 39 will offer general permit coverage to the oil and gas producers which meet eligibility requirements for such coverage.

## Air

Ohio EPA has recently developed a general permit to cover air emissions at shale gas production sites. These air emissions are generally associated with the production phase of a well, which occurs after the well has been drilled and completed. The production phase usually includes activities to prepare the gas for shipping and the management of by-products produced by the well—i.e., gases. Common sources involved in the production operations include storage tanks, combustion engines and generators. Emissions associated with these sources may contain constituents such as volatile organic compounds, sulfur dioxide and carbon monoxide.

Ohio EPA recommends that each prospective permittee review the general air permit qualifying criteria before applying for coverage in order to ensure the permittee is eligible for coverage under the general permit. For more information, visit the Ohio EPA website, available at:

[http://www.epa.ohio.gov/dapc/genpermit/Oil\\_Gas\\_GP12.aspx](http://www.epa.ohio.gov/dapc/genpermit/Oil_Gas_GP12.aspx)

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