



Legal Department

American Electric Power
1 Riverside Plaza
Columbus, OH 43215-2373
AEP.com

March 25, 2022

Ms. Tanowa Troupe, Secretary
Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43215-3793

Hector Garcia
Senior Counsel –
Regulatory Services
(614) 716-3410 (P)
hgarcia1@aep.com

**RE: Proof of Compliance with Condition
Case No. 20-0788-EL-BLN
Guernsey 765 kV Transmission Line Extension Project**

Dear Ms. Troupe:

In satisfaction of Condition (4) of the Staff Report for this Project, AEP Ohio Transmission Company, Inc. submits this notice and attachment to inform you that the Army Corps of Engineers' Section 404 Clean Water Act Individual Standard Permit modifications has been approved for the above-referenced Project.

If you have any questions regarding this information, please do not hesitate to contact me.

Respectfully submitted,

/s/ Hector Garcia

Hector Garcia (0084517), Counsel of Record
Counsel for AEP Ohio Transmission Company, Inc.

cc: John Jones, Counsel OPSB Staff
Jon Pawley, OPSB Staff



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

August 17, 2020

Regulatory Division
North Branch
LRH-2017-00244-MUS-Wills Creek

DEPARTMENT OF THE ARMY PERMIT MODIFICATION

Thomas Grace
Guernsey Power Station, LLC
960 Holmdel Road, Building 2
Holmdel, New Jersey 07733

Dear Mr. Grace:

I refer to the information submitted on your behalf by Haley & Aldrich, Inc., received via email on May 20, 2020, requesting a modification to your Department of the Army (DA) Section 404 of the Clean Water Act Individual Standard Permit authorization (DA Permit) No. LRH-2017-00244-MUS-Wills Creek issued on February 23, 2018. The project is located west of Interstate 77 (I-77) and approximately four (4) miles south of Interstate 70 (I-70), in Valley Township, Guernsey County, Ohio (39.93390°, 81.53588°W).

Under the DA Permit issued on February 23, 2018, you were authorized to temporarily discharge dredged and/or fill material into 3.46 acres of three (3) wetlands (Wetlands W-C31, W-C52, and W-C101) and to permanently discharge dredged and/or fill material into 3.07 acres of three (3) wetlands (Wetlands W-C31, W-C52, and W-C101) in association with the construction of the Guernsey Power Station. Through a DA permit modification request dated May 20, 2020, Guernsey Power Station, LLC requested a DA permit modification for the revised temporary discharge of dredged and/or fill material into 2.86 acres six (6) wetlands, Wetlands W-C31, W-C52, W-C101, W-C34, W-C38, and W-C40, and the permanent discharge of dredged and/or fill material into 3.23 acre of three (3) wetlands, Wetlands W-31, W-C52, and W-C101, in association with project design changes. The permanent discharge of dredged and/or fill material into Wetland W-C52 includes the request for DA authorization to maintain the unauthorized permanent discharge of dredged and/or fill material into 0.17 acre of Wetland W-C52 in association with the construction of a sediment pond culvert and a culvert for the substation access road.

In accordance with 33 CFR 325.7 (b), we have determined that a modification of a previously issued DA permit will be granted and is not contrary to the public interest. **All terms and conditions of the DA Permit issued on February 23, 2018 remain applicable unless superseded by the modified Special Conditions 1 and 8 and the inclusion of Special Condition 14 of this modification letter.**

Should new information regarding the scope and/or proposed impacts of the project become available that was not submitted to this office during our review of the proposal, you must submit written information concerning proposed modification(s) to this office for review, evaluation and approval as required by law before the work is begun. If you have any questions concerning the above information, please contact Ms. Audrey Richter of the Energy Resource Branch at (716) 879-4263 or by email at Audrey.M.Richter@usace.army.mil.

Sincerely,

**Teresa
Spagna**
Digitally signed
by Teresa
Spagna
Date:
2020.08.17
15:21:25 -04'00'
Teresa D. Spagna
Chief, North Branch

cc: (via email)

**MODIFIED SPECIAL CONDITION FOR THE SECTION 404 CLEAN WATER ACT
INDIVIDUAL STANDARD PERMIT NO. LRH-2017-00244-MUS-WILLS CREEK FOR
GUERNSEY POWER STATIONS, LLC'S GUERNSEY POWER STATION PROJECT,
GUERNSEY COUNTY, OHIO**

Page 1 of 2

1. The permittee is hereby authorized to temporarily discharge dredged and/or fill material into approximately 2.86 acres of six (6) wetlands (Wetlands W-C31, W-C52, W-C101, W-C34, W-C38, and W-C40) and to permanently discharge dredged and/or fill material into 3.23 acres of three (3) wetlands (Wetlands W-C31, WC52, and W-C101), as listed on Tables 1 and 2 below, in association with the Guernsey Power Station Project, and as shown on the enclosed drawings. This Department of the Army (DA) Section 404 Clean Water Act Individual Standard Permit remains contingent upon and must be constructed in accordance with drawings attached hereto.

Table 1. Previously Authorized and Revised Temporary Discharge of Dredged and/or Fill Material into Waters of the U.S. Associated with the Guernsey Power Station Project, Guernsey County, Ohio (LRH-2017-00244).					
Aquatic Resource	Wetland Classification	On-Site Acreage (Ac)	Previously Authorized Temporary Fill Acreage	DA Permit Modification Revised Temporary Fill Acreage	Temporary Fill Type
W-C31	Emergent; Category Modified 2	8.37	1.45	1.10	Fill – Access and Work Space for Pole Construction
W-C52	Emergent; Category 2	2.06	0.15	0.10	Fill – Access and Work Space for Pole Construction and Substation
	Scrub-Shrub; Category 2	2.79	0.7	0.53	Fill – Access and Work Space for Pole Construction
	Forested; Category 2	20.63	1.13	1.01	Fill – Access and Work Space for Pole Construction and Substation
W-C101	Emergent; Category 2	0.10	0.03	0	Fill – Work Space for Pole Construction
W-C34	Emergent; Category 1	0.24	0	0.03	Fill – Access
W-C38	Emergent; Category 1	2.61	0	0.09	Fill – Access
W-C40	Emergent; Category 1	1.55	0	0.004	Fill – Access
Total Previously Authorized and Revised Temporary Discharge of Dredged and/or Fill Material into Waters of the U.S.			3.46 acres	2.86 acres	

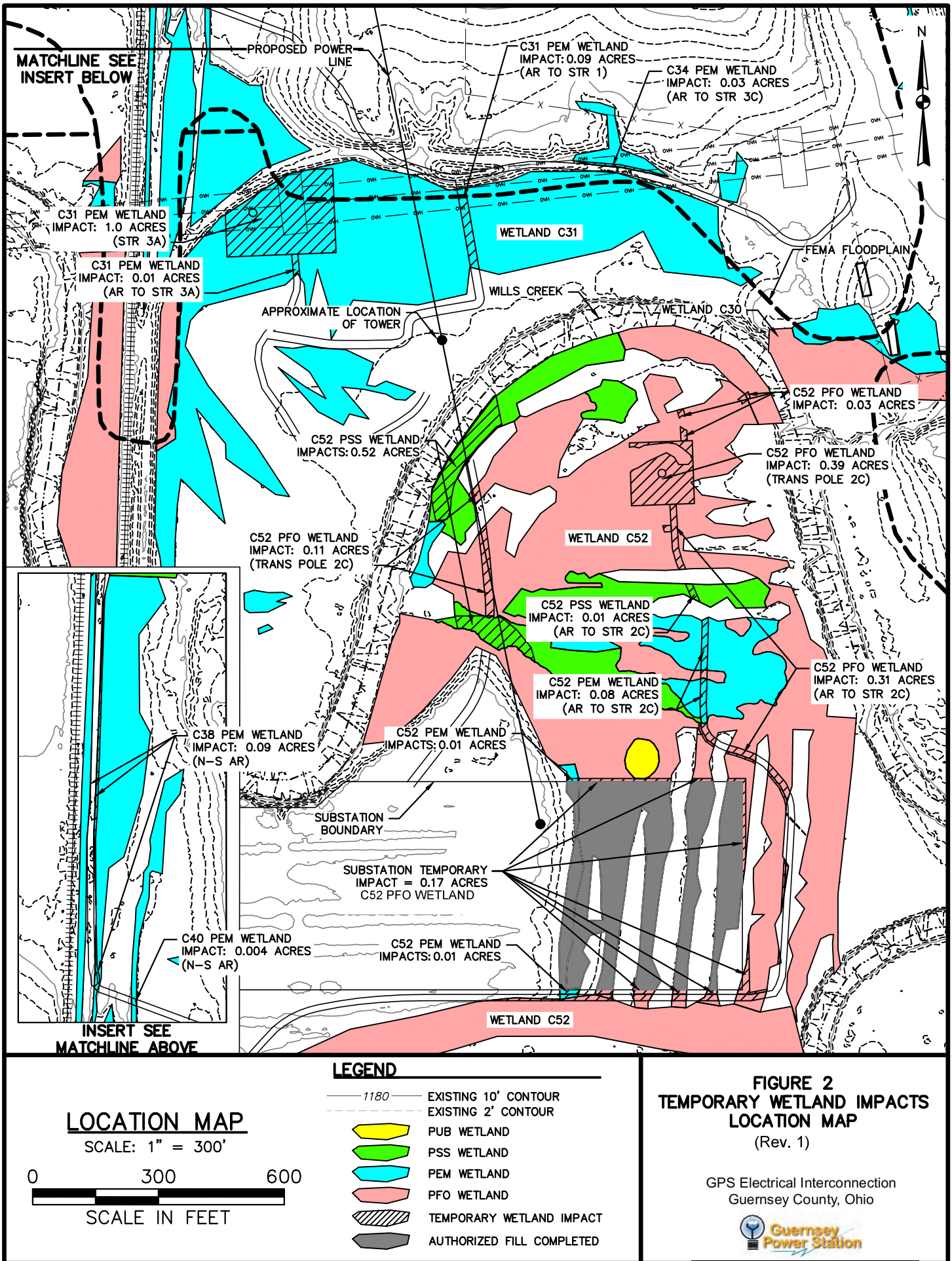
**MODIFIED SPECIAL CONDITION FOR THE SECTION 404 CLEAN WATER ACT
INDIVIDUAL STANDARD PERMIT NO. LRH-2017-00244-MUS-WILLS CREEK FOR
GUERNSEY POWER STATIONS, LLC'S GUERNSEY POWER STATION PROJECT,
GUERNSEY COUNTY, OHIO**

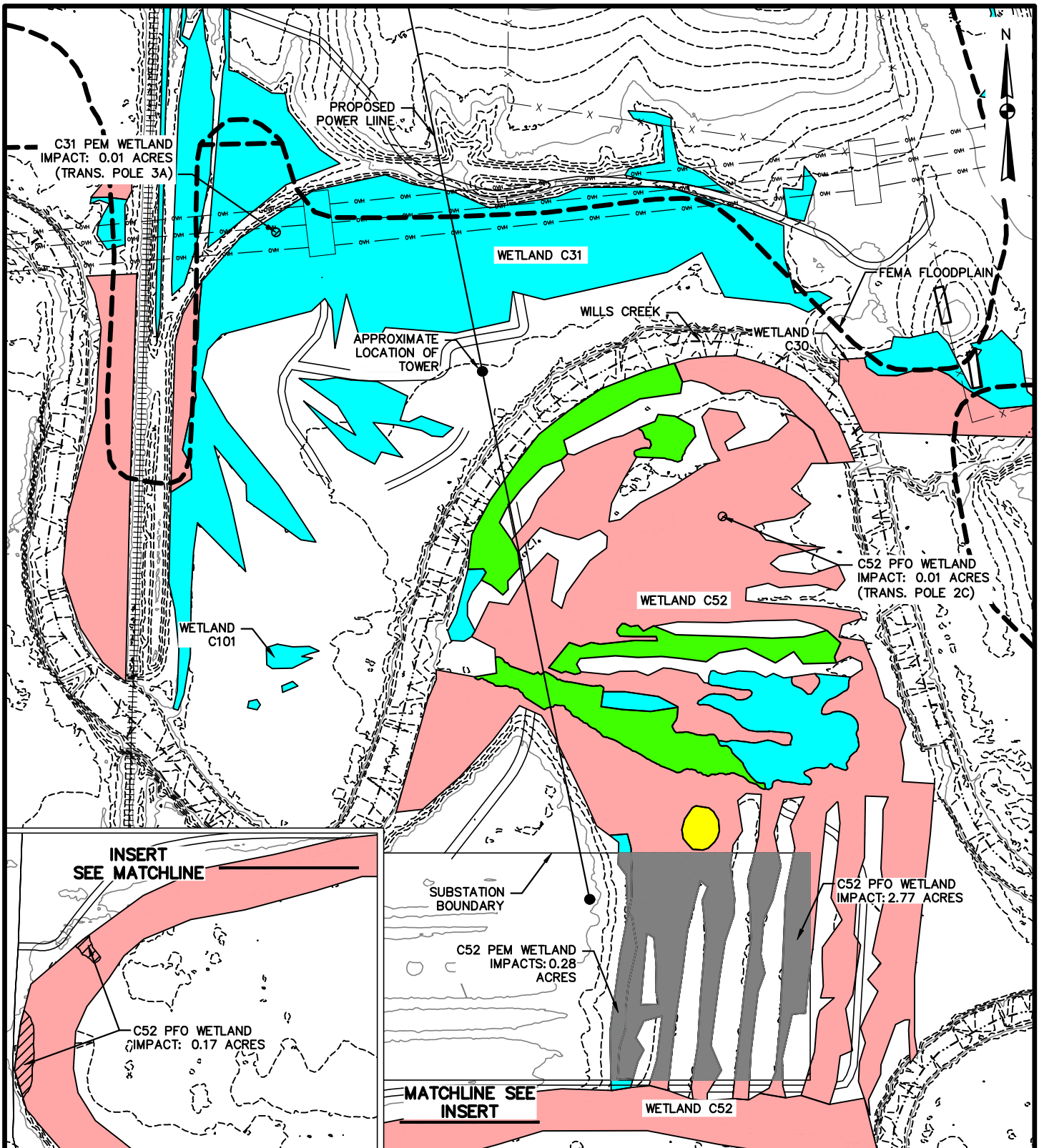
Page 2 of 2

Table 2. Previously Authorized and Revised Permanent Discharge of Dredged and/or Fill Material into Waters of the U.S. Associated with the Guernsey Power Station Project, Guernsey County, Ohio (LRH-2017-00244).					
Aquatic Resource (AR)	Wetland Classification	On-Site Acreage (Ac)	Previously Authorized Permanent Fill Acreage	DA Permit Modification Revised Permanent Fill Acreage	Permanent Fill Type
W-C31	Emergent; Category Modified 2	8.37	0.012	0.01	Fill – Transmission Poles
			0.004	0	Fill – Distribution Poles
W-C52	Emergent; Category 2	4.85	0.002	0	Fill – Distribution Poles
			0.28	0.28	Fill – Substation
	Forested; Category 2	20.63	0.004	0	Fill – Distribution Poles
			0	0.01	Fill -Poles
			2.77	2.77	Fill – Substation
			0	0.17	Fill- Sediment Pond Culvert and Substation Access Road
W-C101	Emergent; Category Modified 2	0.10	0.002	0	Fill – Distribution Pole
Total Previously Authorized and Revised Permanent Discharge of Dredged and/or Fill Material into waters of the U.S.			3.07 acres	3.24 acres	

8. The Individual Section 401 Water Quality Certification (WQC) issued by the Ohio Environmental Protection Agency (Ohio EPA) dated February 20 2018, and a modification to the Section 401 WQC dated August 10, 2020 are attached hereto and made a part of this permit. All conditions attached to or contained therein are hereby incorporated by reference as being special conditions of the DA permit.

14. To offset the loss of wetland functions resulting from the additional permanent discharge of dredged and/or fill material into 0.17 acre of Wetland W-C52, the permittee will purchase 0.425 wetland credits from the federally approved Buffalo Fork Mitigation Bank. The permittee has voluntarily chosen to purchase a total of 0.5 wetland credits from the Buffalo Fork Mitigation Bank. Within 30 days of the issuance of this DA Permit Modification, a copy of the fully executed mitigation bank agreement with the Buffalo Fork Mitigation Bank must be provided to the Corps. Discharges of dredged and/or fill material into waters of the U.S., as authorized under Special Condition No. 1 of this DA Permit Modification, must not occur until the terms of this condition have been met.





LOCATION MAP

SCALE: 1" = 300'



LEGEND

- 1180 ——— EXISTING 10' CONTOUR
- - - - - EXISTING 2' CONTOUR
- PUB WETLAND
- PSS WETLAND
- PEM WETLAND
- PFO WETLAND
- PERMANENT WETLAND IMPACT
- AUTHORIZED FILL COMPLETED

FIGURE 3 PERMANENT WETLAND IMPACTS LOCATION MAP

(Rev. 1)

GPS Electrical Interconnection
Guernsey County, Ohio





Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

Ohio EPA 8/10/2020
Entered Directors Journal

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

By:  Date: _____

8/10/2020

Re: **Guernsey Power Station
Permit - Intermediate
Approval
401 Wetlands
Guernsey
DSW401175544**

TRANSMITTED ELECTRONICALLY

August 10, 2020

Thomas A. Grace, Director
Guernsey Power Station LLC c/o Caithness Services LLC
960 Holmdel Road, Bldg 2
Holmdel, NJ 07733
tgrace@caithnessenergy.com

Subject: Guernsey Power Station
Guernsey / Valley / Derwent
Modification of a Section 401 Water Quality Certification issued on
February 20, 2018
Corps Public Notice No. LRH-2017-00244-MUS
Ohio EPA ID No. 175544

Dear Stakeholders:

I hereby authorize the above referenced project under the following authorities, and it is subject to the following modifications and/or conditions:

Section 401 Water Quality Certification

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, I hereby certify that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. This authorization is specifically limited to a Section 401 Water Quality Certification (here after referred to as "certification") with respect to water pollution and does not relieve the Certification Holder of further Certifications or Permits as may be necessary under the law. I have determined that a lowering of water quality in the Wills Creek watershed (HUC 05040005) as authorized by this certification is necessary. I have made this determination based upon the consideration of all public comments, if submitted, and the technical, social, and economic considerations concerning this application and its impact on waters of the state.

PART I ON-SITE WATER RESOURCES AND IMPACTS

A. Watershed Setting

The watershed in which this project is located, Trail Run – Wills Creek (HUC 05040005-02-07), has an area of 22.98 square miles. Wills Creek is a warmwater habitat (WWH) stream and primary contact recreation water with an antidegradation category of general high quality water. Other Ohio EPA Aquatic Life Use Designations located in this watershed, as found in OAC rule 3745-1-24, include Exceptional Warmwater Habitat (EWH) and WWH.

B. Project Description

The project involves construction of a new natural gas-fired combined cycle electric generating facility located in Guernsey County, Ohio and a utility-owned substation and interconnecting transmission/distribution lines. The generating facility will use state-of-the-art combined cycle technology and a dry air cooling system to reduce air emissions and minimize consumptive water use.

C. Impacts to Waters of the State

1. Streams

Impacts to streams are not authorized under this certification.

2. Wetlands

a. Temporary Impacts

Wetland ID	Isolated or Non-isolated?	Forested or Non-Forested	Category	Total Acreage on Site	Total Acreage Impacted	Percent Avoided
W-C31	NI	NF	2	8.74	1.10	87.4
W-C52	NI	NF	2	25.48	0.10	93.6
		NF - SS			0.53	
		F			1.01	
W-C101	NI	NF	2	0.10	0.0	100.0
W-C34	NI	NF	1	0.24	0.03	87.5
W-C38	NI	NF	1	3.08	0.09	97.1
W-C40	NI	NF	1	1.55	0.004	99.7
Total				39.19	2.86	92.7

b. Permanent Impacts

Permanent impacts include 3.24 acres of wetland fill (2.95 acres of forested wetland) and 1.85 acres of forested conversion (FC) for a total of 5.09 acres.

Wetland ID	Forested or Non-Forested	Category	Total Acreage on Site	Total Acreage Impacted	Percent Avoided	Impact Type
W-C30	F	2	1.91	0.07	96.3	FC
W-C31	NF	2	8.74	0.01	99.9	Fill
W-C52	NF	2	25.48	0.28	80.3	Fill
	F			2.95		Fill
				1.78		FC
W-C101	NF	2	0.10	0.00	100.0	-
Total			36.23	5.09	86.0	-

3. Lakes

Impacts to lakes are not authorized under this certification.

PART II TERMS & CONDITIONS

- A. This certification shall remain valid and in effect as long as the 404 Permit issued by the U.S. Army Corps of Engineers for this project is in effect.
- B. Terms and conditions outlined in this section apply to project and mitigation construction as described in this certification.

- C. The Certification Holder shall notify Ohio EPA, in writing, and in accordance with *Part IV (NOTIFICATIONS TO OHIO EPA)* of this certification, upon the start and completion of site development.
- D. A copy of this certification shall remain on-site for the duration of the project.
- E. In the event of an inadvertent spill, the Certification Holder must immediately call the Ohio EPA Spill Hotline at 1-800-282-9378, as well as the Ohio EPA Section 401 Manager (614-644-2020).
- F. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401 Manager (614-644-2020), for further evaluation.
- G. Pesticide application(s) for the control of plants and animals shall be applied in accordance with the NPDES General Permit to Discharge Pesticides In, Over or Near Waters of the State available at: <https://www.epa.ohio.gov/portals/35/permits/OHG870002%20FINAL%20PERMIT.pdf> and may require a pesticide applicator license from the Ohio Department of Agriculture.
- H. Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this certification.
- I. In the event that there is a conflict between the certification application, including the mitigation plan, and the conditions within this certification, the condition shall prevail unless Ohio EPA agrees, in writing, that the certification application or other provision prevails.
- J. The Certification Holder shall provide electronic maps of the development area to Ohio EPA 401 WQC and Isolated Wetland Permitting Section within 30 days of the date of this certification. When sending the electronic files, include the Ohio EPA ID Number and the Army Corps of Engineers Number (if applicable). If possible, these electronic maps shall be GIS shape files or Geodatabase files. If this is not possible, the electronic maps shall be in another electronic format readable in GIS (GIF, TIF, etc). The electronic files shall be sent to the following e-mail address: EPA.401Webmail@epa.ohio.gov

If the files are too large to send by e-mail (over 25 MB), a disk containing the electronic files shall be mailed to the following address:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: 401 WQC/IWP/Mitigation Section Manager
50 West Town Street, Suite 700
PO Box 1049
Columbus, OH 43216-1049

- K. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office as follows:

Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138
740-385-8501

Additional information regarding environmental permitting assistance at Ohio EPA can be found at http://www.epa.ohio.gov/dir/permit_assistance.aspx

L. Best Management Practices (BMPs)

1. All water resources and their buffers which are to be avoided, shall be clearly indicated on site drawings demarcated in the field and protected with suitable materials (e.g., silt fencing) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
2. All BMPs for storm water management shall be designed and implemented in accordance with the most current edition of the Ohio Department of Natural Resources Rainwater and Land Development Manual, unless otherwise required by the National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with construction activities (construction general permit), if required.

A copy of the Rainwater and Land Development Manual is available at:
http://epa.ohio.gov/Portals/35/storm/technical_assistance/RLD_11-6-14All.pdf

A copy of the NPDES construction general permit is available on the
"Construction Activities" tab at:
http://www.epa.ohio.gov/dsw/storm/construction_index.aspx

3. Straw bales shall not be used as a form of erosion/sediment control.

4. Fill material shall consist of suitable non-erodible material and shall be stabilized to prevent erosion.
5. Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as fill or bank protection.
6. Concrete rubble used for fill or bank stabilization shall be in accordance with ODOT specifications; free of exposed re-bar; and, free of all debris, soil and fines.
7. Chemically treated lumber which may include, but is not limited to, chromated copper arsenate and creosote treated lumber shall not be used in structures that come into contact with waters of the state.

M. Wildlife Protection

1. The project is within the range of the northern harrier, a state-endangered bird that breeds in large marshes and grasslands. Since this habitat may occur on the project site, construction should be avoided during the species' nesting period of May 15 to August 1 or further coordination with the Ohio Department of Natural Resources (ODNR) Division of Wildlife (DOW) should take place prior to the commencement of work.

PART III MITIGATION

A. Description of Required Mitigation

For the original 401 WQC, as mitigation for 4.914 acres of permanent wetland impact, including fill of 0.30 acres of Category 2 non-forested wetland, 2.774 acres of Category 2 forested wetland, and 1.84 acres of Category 2 wetland forest conversion to non-forested wetland habitat, the certification holder purchased 12.2 credits from the Stream + Wetlands Foundation located within the secondary service area of the Tuscarawas watershed (HUC 05040001) as shown below.

In-Lieu Fee Mitigation Summary Table					
Watershed (HUC 8)	Wetland Type	Wetland Category	Impact Acreage	Ratio Multiplier	Mitigation Credits
Tuscarawas (05040001)	Forested	2	4.614	2.5	11.6
	Non-Forested	2	0.30	2.0	0.60
Project Totals			4.914		12.2

For mitigation of additional forested fill of 0.17 acres of Category 2 wetland, the certification holder shall purchase 0.5 credits from the Buffalo Creek Preserve Mitigation Bank in the Wills Creek watershed (HUC 05040005).

B. Timing of Mitigation Requirements

Within 30 days of the date of the modified Corps 404 Permit, a copy of the fully-executed mitigation banking agreement with Buffalo Creek Preserve, LLC shall be provided to Ohio EPA.

C. Reporting

1. Annual Update Reports

A project construction update report shall be submitted to Ohio EPA by December 31 of each year following the date of this certification and until project construction is complete. Each update report shall contain, at a minimum, the following information:

- a. The status of the filling activities at the development site including dates filling was started and completed, or are expected to be started and completed. If filling activities have not been completed, a drawing shall be provided, which shows the locations and acreage/feet of wetlands/streams that have not yet been filled. If filling activities have been completed, then as-built drawings shall be submitted, which show where fill was placed;
- b. Current contact information for all responsible parties including phone number, e-mail, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to the Certification Holder, consultant, project construction manager(s)
- c. As-built drawings sized 11" by 17" (to scale) of the final project construction, once construction is complete.

PART IV RESTORATION

A. Temporary Impacts

1. Mitigation is not required for temporary impacts associated with construction of the project. Temporary impacts are those that facilitate the nature of the activity or aid in the access, staging or development of construction; are short-term in nature; and that are expected, upon removal of the temporary impact, to result in the surface water or wetland returning to conditions which support pre-impact biological function with minimal or no human intervention within 12 months following the completion of the temporary impact. Monitoring of the restoration of the temporarily impacted wetlands is required.

Restoration monitoring shall occur for at least 2 years after completion of construction unless the certification holder can demonstrate the restored sites are meeting performance goals after the first year of monitoring. Restoration reports shall be submitted by December 31st of each restoration monitoring year. The applicant shall request a site visit with Ohio EPA during the growing season that follows the submittal of the first annual restoration report.

B. Description of Required Restoration

The Certification Holder shall complete onsite restoration of wetlands to pre-existing contours and conditions.

C. Annual Project Update Reports

A project update report shall be submitted to Ohio EPA by December 31 of each year following the date of this certification and until restoration is complete and a restoration monitoring report is ready for submittal. Each update report shall contain, at a minimum, the following information:

1. The status of all of the restoration required for the project as specified in the certification.
2. The status of the filling activities at the development site including dates filling was started and completed or are expected to be started and completed. If filling activities have not been completed, a drawing shall be provided, which shows the locations and acreage/feet of wetlands/streams that have not yet been filled.
3. Restoration construction start date and completion date. If restoration has not begun, an expected construction start date and completion date will be provided.
4. Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the Certification Holder, consultant, and/or owner.

D. Restoration Monitoring Reporting

1. The restoration monitoring period shall commence immediately following completion of restoration construction and shall continue through two growing seasons.
2. Annual restoration reports shall be submitted to Ohio EPA by December 31 of each year following the end of the first full growing season and completion of restoration construction. Each report shall contain, at a minimum, the following information:

- a. The status of all restoration required for the project as specified in the application and certification;
- b. Restoration construction start date and completion date. If restoration has not begun, an expected construction start date and completion date will be provided;
- c. A discussion of the extent to which the restoration has been completed;
- d. Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the Certification Holder, consultant, and/or owner.

E. Wetland Restoration Monitoring Requirements

1. Provide a list of invasive species names and percent coverage of invasive species and a comparison to pre-impact invasive species coverage;
2. Provide data from a wetland delineation point within the restored area on a U.S. Army Corps of Engineers Wetland Determination Data Form;
3. Provide a map of wetland boundaries, acreage, and delineation points; and
4. Provide a minimum of four high resolution color photographs taken while facing each of the four cardinal directions of each wetland. Photographs must accurately depict the quality of the wetland and may not include a majority of dying or dead vegetation and excessive cover due that would prevent the observation of vegetation and substrates, such as leaf litter, snow, or ice.

F. Wetland Restoration Performance Goals

Restored wetlands must show no net increase of percent cover of invasive species from pre-impact wetland conditions, no loss in wetland acreage, and the restored wetland area shall continue to meet all three wetland criteria.

G. Restoration Contingency Plans

If the wetland restoration areas are not meeting the restoration performance criteria detailed in section D by the end of the second year of post construction monitoring, the monitoring period may be extended one year, and/or the Certification Holder may be required to revise the existing restoration plan.

PART V NOTIFICATIONS TO OHIO EPA

All notifications, correspondence, and reports regarding this certification shall reference the following information:

Certification Holder Name:	Thomas A. Grace
Project Name:	Guernsey Power Station
Ohio EPA ID No.:	175544

and shall be sent to:

Ohio Environmental Protection Agency
Division of Surface Water, 401/IWP Unit
Lazarus Government Center
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Pursuant to Ohio Revised Code Chapter 6111 and Ohio Administrative Code Chapter 3745-1, and other applicable provisions of state law, the director of the Ohio Environmental Protection Agency hereby concludes that the above-referenced project will comply with the applicable provisions of Sections 6111.03 and 6111.04 of the Ohio Revised Code. This permit does not relieve the applicant of further certifications and permits as may be necessary under the law. **This permit modifies and supersedes the water quality certification issued on February 20, 2018.**

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
30 East Broad Street, 4th Floor
Columbus 43215

Sincerely,



Laurie A. Stevenson
Director

ec: Audrey Richter, Audrey.M.Richter@usace.army.mil, Department of the Army,
Huntington District, Corps of Engineers
Candice Bauer, bauer.candice@epa.gov, U.S. EPA, Region 5
Dana Rzeznik, rzeznik.dana@epa.gov, U.S. EPA, Region 5
Patrice Ashfield, Ohio@fws.gov, U.S. Fish & Wildlife Service
Mike Pettegrew, Mike.Pettegrew@dnr.state.oh.us, ODNR, Office of Real Estate
Diana Welling, dwelling@ohiohistory.org, Ohio Historical Preservation Office
Carol Siegley, Carol.Siegley@epa.ohio.gov, Ohio EPA, DSW, Section 401/IWP
Marianne Piekutowski, Marianne.Piekutowski@epa.ohio.gov, Ohio EPA, DSW
Andrea Kilbourne, Andrea.Kilbourne@epa.ohio.gov, Ohio EPA, DSW
Mitigation Coordinator
Rachel Taulbee, Rachel.Taulbee@epa.ohio.gov, Ohio EPA, DSW, SEDO
Curtis Ewers, curtisewers@sbcglobal.net, Buffalo Creek Preserve, LLC
Vince Messerly, vmesserly@streamandwetlands.org, Stream + Wetlands
Foundation
Lynn Gresock, LGresock@haleyaldrich.com, Haley & Aldrich, Inc.



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

By:  Date: _____

3/22/2022

Re: **Guernsey Power Station**
Permit - Intermediate
Approval
401 Wetlands
Guernsey
DSW401175544

Transmitted Electronically

March 22, 2022

Thomas Grace
Guernsey Power Station LLC c/o Caithness Energy
960 Holmdel Road, Building 2
Holmdel, NJ 07733
tgrace@caithnessenergy.com

Subject: Guernsey Power Station
Guernsey / Valley / Derwent
Second Modification of a Section 401 Water Quality Certification and
replaces the modified certification issued on August 10, 2020
Corps Public Notice No. LRH-2017-00244-MUS
Ohio EPA ID No. 175544

Dear Stakeholders:

I hereby authorize the above referenced project under the following authorities, and it is subject to the following modifications and/or conditions:

Section 401 Water Quality Certification

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, I hereby certify that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. This authorization is specifically limited to a Section 401 Water Quality Certification (here after referred to as "certification") with respect to water pollution and does not relieve the Certification Holder of further Certifications or Permits as may be necessary under the law. I have determined that a lowering of water quality in the Wills Creek watershed (HUC 05040005) as authorized by this certification is necessary. I have made this determination based upon the consideration of all public comments, if submitted, and the technical, social, and economic considerations concerning this application and its impact on waters of the state.

PART I ON-SITE WATER RESOURCES AND IMPACTS

A. Watershed Setting

The watershed in which this project is located, Trail Run – Wills Creek (HUC 05040005-02-07), has an area of 22.98 square miles. Wills Creek is a warmwater habitat (WWH) stream and primary contact recreation water with an antidegradation category of general high-quality water. Other Ohio EPA Aquatic Life Use Designations located in this watershed, as found in OAC rule 3745-1-21, include Exceptional Warmwater Habitat (EWH) and WWH.

B. Project Description

The project involves construction of a new natural gas-fired combined cycle electric generating facility located in Guernsey County, Ohio and a utility-owned substation and interconnecting transmission/distribution lines. This modification involves additional conversion of forested wetland to non-forested wetland habitat.

C. Impacts to Waters of the State

1. Streams

Impacts to streams are not authorized under this certification.

2. Wetlands

a. Temporary Impacts

Wetland ID	Isolated or Non-isolated?	Forested or Non-Forested	Category	Total Acreage on Site	Total Acreage Impacted	Percent Avoided
W-C31	NI	NF	2	8.74	1.10	87.4
W-C52	NI	NF	2	25.48	0.10	93.6
		NF - SS			0.53	
		F			1.01	
W-C101	NI	NF	2	0.10	0.0	100.0
W-C34	NI	NF	1	0.24	0.03	87.5
W-C38	NI	NF	1	3.08	0.09	97.1
W-C40	NI	NF	1	1.55	0.004	99.7
Total				39.19	2.86	92.7

b. Permanent Impacts

Permanent impacts include 3.24 acres of wetland fill (2.95 acres of forested wetland) and 2.63 acres of forested conversion (FC) for a total of 5.87 acres.

Wetland ID	Forested or Non-Forested	Category	Total Acreage on Site	Total Acreage Impacted	Percent Avoided	Impact Type
W-C30	F	2	1.91	0.07	96.3	FC
W-C31	NF	2	8.74	0.01	99.9	Fill
W-C52	NF	2	25.48	0.28	77.3	Fill
	F			2.95		Fill
				2.56		FC
W-C101	NF	2	0.10	0.00	100.0	-
Total			36.23	5.87	83.8	-

3. Lakes

Impacts to lakes are not authorized under this certification.

PART II TERMS & CONDITIONS

- A. This certification shall remain valid and in effect as long as the 404 Permit issued by the U.S. Army Corps of Engineers for this project is in effect.
- B. Terms and conditions outlined in this section apply to project as described in this certification.
- C. The Certification Holder shall notify Ohio EPA, in writing, and in accordance with *Part IV (NOTIFICATIONS TO OHIO EPA)* of this certification, upon the start and completion of site development.

- D. A copy of this certification shall remain on-site for the duration of the project.
- E. In the event of an inadvertent spill, the Certification Holder must immediately call the Ohio EPA Spill Hotline at 1-800-282-9378, as well as the Ohio EPA Section 401 Manager (614-644-2001).
- F. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401 Manager (614-644-2001), for further evaluation.
- G. Pesticide application(s) for the control of plants and animals shall be applied in accordance with the NPDES General Permit to Discharge Pesticides In, Over or Near Waters of the State available at: <https://www.epa.ohio.gov/portals/35/permits/OHG870002%20FINAL%20PERMIT.pdf> and may require a pesticide applicator license from the Ohio Department of Agriculture.
- H. Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this certification.
- I. In the event that there is a conflict between the certification application, including the mitigation plan, and the conditions within this certification, the condition shall prevail unless Ohio EPA agrees, in writing, that the certification application or other provision prevails.
- J. The Certification Holder shall provide electronic maps of the development area and the mitigation area to Ohio EPA 401 WQC and Isolated Wetland Permitting Section within 30 days of the date of this certification. When sending the electronic files, include the Ohio EPA ID Number and the Army Corps of Engineers Number (if applicable). If possible, these electronic maps shall be GIS shape files or Geodatabase files. If this is not possible, the electronic maps shall be in another electronic format readable in GIS (GIF, TIF, etc). The electronic files shall be sent to the following e-mail address: EPA.401Webmail@epa.ohio.gov

If the files are too large to send by e-mail (over 25 MB), a disk containing the electronic files shall be mailed to the following address:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: 401 WQC/IWP/Mitigation Section Manager
50 West Town Street, Suite 700
PO Box 1049
Columbus, OH 43216-1049

- K. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office as follows:

Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138
740-385-8501

Additional information regarding environmental permitting assistance at Ohio EPA can be found at http://www.epa.ohio.gov/dir/permit_assistance.aspx

L. Best Management Practices (BMPs)

1. All water resources and their buffers which are to be avoided, shall be clearly indicated on site drawings demarcated in the field and protected with suitable materials (e.g., silt fencing) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
2. All BMPs for stormwater management shall be designed and implemented in accordance with the most current edition of the Ohio Department of Natural Resources Rainwater and Land Development Manual, unless otherwise required by the National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with construction activities (construction general permit), if required.

A copy of the Rainwater and Land Development Manual is available at:
<https://epa.ohio.gov/dsw/storm/rainwater>

A copy of the NPDES construction general permit is available at:
https://www.epa.ohio.gov/portals/35/permits/OHC000005/Final_OHC000005.pdf

3. Straw bales shall not be used as a form of erosion/sediment control.
4. Fill material shall consist of suitable non-erodible material and shall be stabilized to prevent erosion.
5. Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as fill or bank protection.
6. Concrete rubble used for fill or bank stabilization shall be in accordance with ODOT specifications; free of exposed re-bar; and, free of all debris, soil and fines.

7. Chemically treated lumber which may include, but is not limited to, chromated copper arsenate and creosote treated lumber shall not be used in structures that come into contact with waters of the state.

M. Wildlife Protection

1. In the event that an eastern massasauga rattlesnake (*Sistrurus catenatus catenatus*) is encountered during construction of the project, work should immediately cease and the Ohio Department of Natural Resources, Division of Wildlife contacted. Caution should be employed during construction and during the snakes' active season (March 15 - November 15).
2. The Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW), recommends no in-water work in perennial streams from March 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat.

PART III MITIGATION

A. Description of Required Mitigation

For the original 401 WQC (February 20, 2018), as mitigation for 4.914 acres of permanent wetland impact, including fill of 0.30 acres of Category 2 non-forested wetland, 2.774 acres of Category 2 forested wetland, and 1.84 acres of Category 2 wetland forest conversion to non-forested wetland habitat, the certification holder purchased 12.2 credits from the Stream + Wetlands Foundation located within the secondary service area of the Tuscarawas watershed (HUC 05040001) as shown below.

In-Lieu Fee Mitigation Summary Table					
Watershed (HUC 8)	Wetland Type	Wetland Category	Impact Acreage	Ratio Multiplier	Mitigation Credits
Tuscarawas (05040001)	Forested	2	4.614	2.5	11.6
	Non-Forested	2	0.30	2.0	0.60
Project Totals			4.914		12.2

For the modified 401 WQC issued on 8/10/2020, additional forested fill in the amount of 0.17 acres of Category 2 wetland was authorized and for mitigation, the certification holder purchased 0.5 credits from the Buffalo Creek Preserve Mitigation Bank in the Wills Creek watershed (HUC 05040005).

For this second modification involving additional forested conversion in the amount of 0.78 acres of Category 2 wetland, 2.0 credits of forested mitigation will be purchased from The Nature Conservancy's Ohio Stream and Wetland In-Lieu Fee mitigation program in the Wills Creek watershed (HUC 05040005).

B. Timing of Mitigation Requirements

Within 30 days of the date of the modified Corps 404 Permit, a copy of the fully executed mitigation banking agreement with The Nature Conservancy's Ohio Stream and Wetland In-Lieu Fee mitigation program shall be provided to Ohio EPA. **Impacts to waters of the state shall not occur until the terms of this condition have been met.**

PART IV RESTORATION

A. Temporary Impacts

1. Mitigation is not required for temporary impacts associated with construction of the project. Temporary impacts are those that facilitate the nature of the activity or aid in the access, staging or development of construction; are short-term in nature; and that are expected, upon removal of the temporary impact, to result in the surface water or wetland returning to conditions which support pre-impact biological function with minimal or no human intervention within 12 months following the completion of the temporary impact. Monitoring of the restoration of the temporarily impacted wetlands is required.

Restoration monitoring shall occur for at least 2 years after completion of construction unless the certification holder can demonstrate the restored sites are meeting performance goals after the first year of monitoring. Restoration reports shall be submitted by December 31st of each restoration monitoring year. The applicant shall request a site visit with Ohio EPA during the growing season that follows the submittal of the first annual restoration report.

B. Description of Required Restoration

The Certification Holder shall complete onsite restoration of wetlands to pre-existing contours and conditions.

C. Annual Project Update Reports

A project update report shall be submitted to Ohio EPA by December 31 of each year following the date of this certification and until restoration is complete and a restoration monitoring report is ready for submittal. Each update report shall contain, at a minimum, the following information:

1. The status of the restoration required for the project as specified in the certification.
2. The status of the filling activities at the development site including dates filling was started and completed or are expected to be started and completed. If filling activities have not been completed, a drawing shall be provided, which shows the locations and acreage/feet of wetlands/streams that have not yet been filled.
3. Restoration construction start date and completion date. If restoration has not begun, an expected construction start date and completion date will be provided.
4. Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the Certification Holder, consultant, and/or owner.

D. Restoration Monitoring Reporting

1. The restoration monitoring period shall commence immediately following completion of restoration construction and shall continue through two growing seasons.
2. Annual restoration reports shall be submitted to Ohio EPA by December 31 of each year following the end of the first full growing season and completion of restoration construction. Each report shall contain, at a minimum, the following information:
 - a. The status of all restoration required for the project as specified in the application and certification;
 - b. Restoration construction start date and completion date. If restoration has not begun, an expected construction start date and completion date will be provided;
 - c. A discussion of the extent to which the restoration has been completed; and,
 - d. Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the Certification Holder, consultant, and/or owner.

E. Wetland Restoration Monitoring Requirements

1. Provide a list of invasive species names and percent coverage of invasive species and a comparison to pre-impact invasive species coverage;

2. Provide data from a wetland delineation point within the restored area on a U.S. Army Corps of Engineers Wetland Determination Data Form;
3. Provide a map of wetland boundaries, acreage, and delineation points; and,
4. Provide a minimum of four high resolution color photographs taken while facing each of the four cardinal directions of each wetland. Photographs must accurately depict the quality of the wetland and may not include a majority of dying or dead vegetation and excessive cover that would prevent the observation of vegetation and substrates, such as leaf litter, snow, or ice.

F. Wetland Restoration Performance Goals

1. Restored wetlands must show no net increase of percent cover of invasive species from pre-impact wetland conditions, no loss in wetland acreage, and the restored wetland area shall continue to meet all three wetland criteria.

G. Restoration Contingency Plans

If the wetland restoration areas are not meeting the restoration performance criteria detailed in Section IV (D) by the end of the second year of post construction monitoring, the monitoring period may be extended one year, and/or the Certification Holder may be required to revise the existing restoration plan.

PART IV NOTIFICATIONS TO OHIO EPA

All notifications, correspondence, and reports regarding this certification shall reference the following information:

Certification Holder Name:	Guernsey Power Station LLC
Project Name:	Guernsey Power Station
Ohio EPA ID No.:	175544

and shall be sent to:

Ohio Environmental Protection Agency
Division of Surface Water, 401/IWP Unit
Lazarus Government Center
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Pursuant to Ohio Revised Code Chapter 6111 and Ohio Administrative Code Chapter 3745-1, and other applicable provisions of state law, the director of the Ohio Environmental Protection Agency hereby concludes that the above-referenced project will comply with the applicable provisions of Sections 6111.03 and 6111.04 of the Ohio Revised Code. This permit does not relieve the applicant of further certifications and permits as may be necessary under the law. **This permit modifies and supersedes the modified water quality certification issued on August 10, 2020.**

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
30 East Broad Street, 4th Floor
Columbus 43215

Sincerely,



Laurie A. Stevenson
Director

Attachment: Response to Comments

ec: Rachel Klug, Rachel.A.Klug@usace.army.mil, Department of the Army,
Huntington District, Corps of Engineers
Wes Barnett, wes.barnett@usace.army.mil, Department of the Army,
Huntington District, Corps of Engineers
Candice Bauer, bauer.candice@epa.gov, U.S. EPA, Region 5
Dana Rzeznik, rzeznik.dana@epa.gov, U.S. EPA, Region 5
Patrice Ashfield, Ohio@fws.gov, U.S. Fish & Wildlife Service
Mike Pettegrew, Mike.Pettegrew@dnr.state.oh.us, ODNR, Office of Real Estate
Diana Welling, dwelling@ohiohistory.org, Ohio Historical Preservation Office
Carol Siegley, Carol.Siegley@epa.ohio.gov, Ohio EPA, DSW,
401/Wetlands/Mitigation Section

Andrea Kilbourne, Andrea.Kilbourne@epa.ohio.gov, Ohio EPA, DSW,
Mitigation Coordinator

Jessica Langdon, Jessica.Langdon@pa.ohio.gov, Ohio EPA

Rachel Taulbee, Rachel.Taulbee@epa.ohio.gov, Ohio EPA, DSW,
401/Wetlands/Mitigation Section

Devin Schenk, dschenk@TNC.org, The Nature Conservancy

Lynn Gresock, lgresock@haleyaldrich.com, Haley Aldrich



Division of Surface Water Response to Comments

Project: Guernsey Power Station
Ohio EPA ID #: DSW401175544

Agency Contacts for this Project

Division Contact: Carol Siegley, Division of Surface Water, 740-380-5225,
Carol.Siegley@epa.ohio.gov

Public Involvement Coordinator: Jessica Langdon, Jessica.Langdon@epa.ohio.gov

Ohio EPA held a public hearing and/or comment period on (insert date) regarding (insert topic). This document summarizes the comments and questions received at (the public hearing and/or during the associated comment period), which ended on (insert date).

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

Comments from (Leatra Harper, Fresh Water Accountability Project)

Comment 1: **The mitigation credits GPS (Guernsey Power Station) seeks to secure from The Nature Conservancy are outside the Wills Creek watershed.**

Response 1: The applicant has revised the mitigation plan to secure credits within the Wills Creek watershed to mitigate for wetland impacts with this modification.

Comment 2: **The GPS permit modification application provides no detail regarding what wetlands mitigation actions in the Tuscarawas watershed The Nature Conservancy will**

undertake in association with the mitigation credit purchase by GPA, nor does the application explain why mitigation actions in the Tuscarawas watershed are an acceptable substitute for mitigation actions that would take place in the Wills Creek watershed and directly offset degradation caused by the wetlands impacts GPS proposes to undertake.

Response 2: Please see Response 1.

Comment 3: Ohio EPA should require that GPS include in its permit modification all corrective actions it has taken in response to previous notices of violation of its Ohio EPA and USACE permits, as detailed in [Audrey Richter, USACE email of November 10, 2020; Ohio EPA Notice of Violation of November 19, 2020].

Response 3: Two violations were noted during a storm water inspection by Ohio EPA on October 27, 2020. A Resolution of Violation (ROV) letter was issued by Ohio EPA on January 6, 2021 noting the reconnection of a skimmer arm and documentation of the installation of a triple-stack filter sock sediment trap, thereby resolving all violations.

Comment 4: No further permit modifications should be granted without a full review of cumulative impacts from all prior permits granted, including the PUCO allowing the Guernsey Power Station to grow from 1100MW to 1875 MW with potentially another increase in the future.

Response 4: Ohio EPA, Division of Surface Water, reviews proposed actions of the Director in accordance with the regulatory requirements contained within the Ohio Revised Code (ORC) and Ohio Administrative Code (OAC). This comment may more appropriately be directed to the PUCO.

Comment 5: In addition, the laydown yard, and Brent Ball property needs to be examined for even more wetlands impacts that have not received permits. No further wetland credits should be issued until the laydown yard is removed and the wetland restored. All further permit modifications should be denied until a full audit of permit compliance is conducted.

Response 5: The site was investigated on Friday, March 4, 2022 by Carol Siegley of the Ohio EPA, Division of Surface Water, for unpermitted wetland impacts. No unpermitted wetland or stream impacts have occurred on the site.

Comments from Kevin and Marlene Young

Comment 6: For the past two years, we have suffered from air and water contamination due to the buildout of the Guernsey Power Station that Mike and Mary King assured us we would not even know was there. Now it is obvious that was a lie, and that others have been forced from their homes while we continue to be forced to wait for a buy-out. In the meantime, the air became so contaminated we became seriously sick, as well as the water so harmful that we had to shut off the flow and now have no indoor running water. I hope you can understand the extent of our frustration with the GPS project and that you will take our comments very seriously.

We object to the approval of any further permit modifications until the full scope of the air and water contamination by the Guernsey Power Station is assessed.

Response 6: The Ohio EPA recommends that you consider involving the public health department for possible contamination issues.

Comment 7: **We assert that there have been more wetlands impacted and destroyed than what has been given credit.**

Response 7: Please see Response 5.

Comment 8: **We also strongly object to using wetland credits outside of the Wills Creek watershed.**

Response 8: Please see Response 1.

Comment 9: **We are requesting a full review of any wetlands permits and credits until wetlands impacts from the laydown yard and the private property to the North are assessed, especially due to the fact that the laydown yard has yet to be removed and the wetlands restored.**

Response 9: All of the wetlands associated with the laydown yard have been avoided and no impacts had occurred as of the site inspection that took place March 4, 2022. No impacts were evident on the north property from a drive-by perspective.

End of Response to Comments

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/25/2022 2:38:03 PM

in

Case No(s). 20-0788-EL-BLN

Summary: OPSB Chair Letter Regarding Compliance Proof of Compliance
electronically filed by Hector Garcia-Santana on behalf of AEP Ohio Transmission
Company, Inc.