

August 2005

401 Water Quality Certification

What is a Section 401 water quality certification?

Section 401 of the federal Clean Water Act (CWA) requires state agencies to evaluate projects that will result in the discharge of dredged or fill material into waters of the United States to determine whether the discharge will violate the State's water quality standards. A Section 401 certification is required for activities that require federal permits such as a Section 404 permit, a Federal Energy Regulatory Commission (FERC) license, or a U.S. Coast Guard permit.

Who must apply?

Any person who wishes to place dredged or fill material into wetlands, streams or lakes must apply for an individual Section 401 certification unless the project meets the Ohio EPA conditions of applicable nationwide permits (see below). Activities typically requiring 401 certification include stream rerouting, culverting streams, filling wetlands and dredging and filling in lakes. Typical projects include highway construction, marina and dock construction, shopping mall construction, strip mining operations or housing subdivision.

What are the applicable laws and regulations?

- Federal Water Pollution Control Act of 1972 and subsequent amendments (a.k.a. Clean Water Act)
- 40 CFR Parts 230 through 233 and 33 CFR Parts 320 through 330
- Ohio Revised Code (ORC) 6111

- Ohio Administrative Code (OAC) Rule 3745-32: Water Quality Certification

- Ohio Administrative Code (OAC) Rule 3745-1 -01 through 32: Water Quality Standards

- Ohio Administrative Code (OAC) Rule 3745-1 -50 through 54: Wetland Water Quality Standards

What is the application process?

Ohio EPA must determine whether an application is complete within 15 business days and notify the applicant in writing if the application is complete. The applicant is then responsible for issuing a public notice within 21 days after the determination that their project is complete. The public will have 30 days following the publication of the public notice to provide comments. At least 30 days prior to the hearing, the applicant is responsible for public noticing the details of the hearing. Ohio EPA will conduct a public hearing for projects if the director determines that there is significant public interest.

An applicant seeking 401 certification must present an evaluation of alternatives and discuss the social and economic impacts that will result from the project. The Clean Water Act allows states up to one year to act on applications for Section 401 water quality certification. However, the new statute allows a 180-day issuance time frame.

What are some typical requirements of a Section 401 certification?

1. Complete 401 application
2. Application permit fees
3. U.S. Army Corps of Engineers Public Notice or General Permit Notification
4. U.S. Army Corps of Engineers Jurisdictional Determination Letter
5. Applicant's Investigation Report of Waters of the United States
6. Site photographs
7. Descriptions, schematics and appropriate economic information for the applicant's preferred alternative, minimal degradation alternative and non-degradation alternative for construction and operation of the activity.
8. Wetland Characterization Analysis (consistent with Ohio Rapid Assessment Method (ORAM) –if wetland impacts are proposed
9. Stream Use Attainability Analysis – if stream impacts are proposed to a stream and no aquatic life use designation had been made
10. Copies of comment request letters to U.S. F&W and ODNR regarding endangered species and critical habitat
11. Specific and detailed mitigation proposal, including the legal mechanism to protect the mitigation areas in perpetuity



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How much does it cost?

Application fee: \$200 plus Review Fees*
Impact fee: \$500 per acre Wetland

Resource	Review Fees	Max Fees	Additional Comments
Wetland	\$500 per acre	\$25,000	
Ephemeral Stream	\$5 per lineal ft. or \$200 (whichever is greater)	\$200	
Intermittent Stream	\$10 per lineal ft. or \$200 (whichever is greater)	\$200	
Perennial Stream	\$15 per lineal ft. or \$200 (whichever is greater)	\$200	
Lake	\$3 per cubic yard of dredged or fill material to be moved		
Total		Maximum Fee is \$25,000 (\$5,000 for counties, townships or municipal corporations). State agencies are exempt from fees	Coal mining and reclamation operations are exempted from fees from 09/29/2005 through 09/29/2006

*\$200 plus one-half of review fees are due with the application submittal.

Applicants must mitigate wetland impacts by restoring or enhancing wetlands elsewhere in accordance with the wetland water quality standards. Ohio EPA also may require applicants to mitigate stream impacts by restoring impacted stream segments or purchasing conservation easements within the watershed in which the impacts occur.

What are nationwide permits?

Specific activities that will have minimal environmental impacts may be authorized by the U.S. Army Corps of Engineers under nationwide permits. If the activities meet Ohio EPA's conditions on the nationwide permit, the project does not require an individual Section 401 water quality certification. There are currently nationwide permits for approximately 40 types of activities.

How long is the 401 certification valid?

The 401 certification is valid for five years when issued in conjunction with a U.S. Army Corps of Engineers individual Section 404 permit unless a different time frame is established.

For More Information

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