



## Early Stakeholder Outreach — Section 401 Water Quality Certifications (OAC Chapters 3745-32 and 3745-45)

*Ohio EPA prepares early stakeholder outreach fact sheets to ensure stakeholders are brought into the review process as early as possible and to obtain additional input and discussion before development of interested party draft rules.*

### What do OAC Chapters 3745-32 and 3745-45 cover?

The rules in OAC Chapter 3745-32 provide the mechanism to grant businesses, other organizations and private landowners the permission they need under federal and state law to place fill material in streams, lakes, wetlands or other waters of the state. The existing rules (adopted in 1982) govern the process by which Ohio EPA either grants or denies the applicant authorization to place dredge or fill material into a body of water (wetlands, streams, lakes, etc.).

The existing rules provide definitions for key terms used in the program along with broadly written criteria for decisions on the issuance of Section 401 water quality certifications. There are also short statements governing applicability, application requirements, exemptions and revocation procedures.

Rule OAC 3745-45-02 covers outdated certification fees. The 401 program now follows the fee structure provided in Ohio Revised Code section 3745.114 and the Agency is planning to rescind this rule.

### Why are these rules being sent out for Early Stakeholder Outreach?

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. In response to EO 2011-01K, Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional interested party notification and request for information will allow for early feedback before the rule language has been developed by the Agency.

### What changes are being considered?

The rules have not been updated since their adoption in 1982, although the Agency did file the rules with no changes made in 2002. The 401 program has evolved since the rules were adopted and updates to

### How can I provide input?

The Agency is seeking stakeholder input on the rules. When preparing your comments, be sure to:

- explain your views as clearly as possible;
- describe any assumptions used;
- provide any technical information and/or data used to support your views;
- explain how you arrived at your estimate for potential burdens, benefits or costs;
- provide specific examples to illustrate your views; and
- offer alternatives.

**Written comments will be accepted through close of business March 11, 2015.**

**Please submit input to:**

Rule Coordinator  
Ohio EPA, Division of Surface Water  
P.O. Box 1049  
Columbus, Ohio 43216-1019  
[dsw\\_rulecomments@epa.ohio.gov](mailto:dsw_rulecomments@epa.ohio.gov)

### What if I have questions?

This fact sheet is available on the Division of Surface Water website at [www.epa.ohio.gov/dsw](http://www.epa.ohio.gov/dsw). For more information about the rulemaking, please contact [rachel.taulbee@epa.ohio.gov](mailto:rachel.taulbee@epa.ohio.gov).

## Early Stakeholder Outreach — Section 401 Water Quality Certifications

administrative procedures and application requirements are needed to address the growth of the program. Although previous drafts of rule language have been released for interested party review and comment, the Agency has decided to gather additional input from stakeholders and start over with revisions to these rules.

### Who will be regulated by these rules?

These rules apply to anyone who wants to place fill material in waters of the state. Common applicants and activities that require 401 water quality certifications include coal mining, developers, Ohio Department of Transportation, dredging, pipeline installation and maintenance, and the Army Corps of Engineers.

### What is the rulemaking schedule?

After the close of the Early Stakeholder Outreach comment period, the Agency will be holding regional stakeholder outreach meetings in March/April 2015. The purpose of the meetings will be to gather additional feedback on comments received during the early stakeholder outreach comment period and to assist the Agency with drafting rule language. After the regional stakeholder meetings, the Agency will consider input provided by stakeholders and draft revisions to the rules. These draft revisions will be released for another comment period called Interested Party Review, which the Agency anticipates occurring in the summer of 2015.

### What input is the Agency seeking?

Please review the existing rules in OAC Chapters 3745-32 and 3745-45, available at: [http://epa.ohio.gov/dsw/rules/3745\\_32.aspx](http://epa.ohio.gov/dsw/rules/3745_32.aspx) and [http://epa.ohio.gov/dsw/rules/3745\\_45.aspx](http://epa.ohio.gov/dsw/rules/3745_45.aspx). Look for rule language that is unclear, out-of-date, inconsistent with federal or state requirements, etc. The Agency strongly encourages interested stakeholders to provide comments on the existing rule language now, at this step in the process so that the Agency can draft revised language in response to those comments and make the draft revisions available for comment during the next rule review step.

The following questions may help guide you as you develop your comments.

- Is the general regulatory framework proposed the most appropriate? Should the Agency consider any alternative framework?
- What options are available for improving an identified concept?
- Are there considerations the Agency should take into account when developing a specific concept?
- Is there any information or data the Agency should be aware of when developing program concepts or rule language?

Ohio EPA would especially like to hear information regarding the following from stakeholders who may be impacted by the new program.

- Would this regulatory program have a positive impact on your business? Please explain how.
- Would this regulatory program have an adverse impact on your business? If so, please identify the nature of the adverse impact (for example, license fees, fines, employer time for compliance).