



# Draft Rule – Section 401 Water Quality Certification Program

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*(OAC 3745-32-05)*

## **What does OAC 3745-32-05 cover?**

Ohio Administrative Code (OAC) 3745-32-05 contains the criteria for the director of Ohio EPA to use in the issuance of Section 401 Water Quality Certifications (WQC). The rule also grants the director authority to deny a Section 401 WQC, impose terms and conditions and require the applicant to perform various environmental tests to ensure adequate protection of water quality.

## **What step is this in the rulemaking process?**

This step in Ohio EPA's rulemaking process is called Interested Party Review. During this step, the Agency makes available draft rules for interested parties for review and comment. This step occurs after the Early Stakeholder Outreach comment period.

## **What changes are being considered?**

The Agency is considering amendments to the rule to provide the director the ability to prohibit open lake disposal of dredged material from harbor or navigation maintenance activities in Lake Erie if the dredge material could result in higher levels of a chemical in fish that bioaccumulates throughout the food chain, such as PCBs, or if the disposal of dredge material would violate any international treaties or compacts. Minor formatting revisions and reference citations are also included.

On February 9, 2015, the Agency began the Early Stakeholder Outreach review and comment of all the Section 401 Water Quality Certification rules in OAC Chapter 3745-32. Revisions to the rule beyond those specified above are under consideration as part of this separate rulemaking.

## **Why is the Agency considering this rulemaking at this time?**

On February 11, 2015, Governor Kasich signed Executive Order 2015-02K, authorizing the Agency to conduct an emergency rulemaking to protect Lake Erie from open lake disposal of dredge material contaminated with bioaccumulative chemicals of concern (BCCs). The emergency rule expires on June 11, 2015. The Agency is conducting this rulemaking to replace the emergency rule.

## **How will the changes affect controls placed on water pollution?**

The revisions to the rule will prohibit the open lake disposal of BCC contaminated dredge material in Lake Erie. The contaminated dredge material will be required to be placed in a confined disposal facility or upland location

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determined to be protective of public health and the environment. Removing contaminated sediment from Lake Erie will better protect the lake, its aquatic life and fishing industry.

### What additional information is the Agency seeking?

The Agency is seeking comments from interested stakeholders (public, local officials, and National Pollutant Discharge Elimination System [NPDES] permit holders, industry sectors, other state agencies, consultants and environmental organizations) who may be impacted by these rule revisions. General comments and specific factual information are welcome. In addition to the draft rule amendments, Ohio EPA is also seeking comments and feedback on the draft Common Sense Initiative (CSI) Business Regulation Impact Analysis form, which is being released with this draft rule during interested party review.

### How are the amendments formatted in the draft rules?

Text that is considered for deletion is identified in strikeout font; new text is underlined.

### What is the rulemaking schedule?

At this time, the Agency is soliciting input on these draft rule revisions. Ohio EPA is required by section 121.39(D) of the Revised Code to contact potentially affected parties prior to adopting rule changes.

At the close of the draft rule comment period, the Agency will review the comments and make necessary changes to the rule. The Agency will then file a proposed rule with the Joint Committee on Agency Rule Review, the Legislative Service Commission and the Secretary of State.

At that point, another comment period, including one or more public hearings, will be scheduled. After the close of the comment period, the Agency will review the comments, make any necessary changes and then adopt the final rule. The final rule will be effective before June 11, 2015.

If you have comments on the rule provisions unrelated to those changed by the executive order, please submit the comments on the separate five year rule review rulemaking in progress that includes all of the Section 401 Water Quality Certification rules in OAC Chapter 3745-32.

### How can I comment on the draft rule?

Please submit your comments in one of the following ways:

- By email: [dsw\\_rulecomments@epa.ohio.gov](mailto:dsw_rulecomments@epa.ohio.gov)
- By fax: (614) 644-2745
- By postal mail:

**Rule Coordinator**  
Ohio EPA, Division of Surface Water  
P.O. Box 1049  
Columbus, OH 43216-1049

**Comments on the draft rule must be received no later than 5:00 p.m. on March 17, 2015.**

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### How can I get more information?

- Copies of this fact sheet, CSI form and the draft rules are on the Division of Surface Water website at [www.epa.ohio.gov/dsw/dswrules.aspx](http://www.epa.ohio.gov/dsw/dswrules.aspx).
- Copies of Governor Kasich's Executive Order and fact sheet regarding the emergency rulemaking are available on the Ohio EPA website at <http://epa.ohio.gov/News/OnlineNewsRoom/NewsReleases/TabId/6596/ArticleId/696/language/en-US/governor-kasich-signs-executive-order-to-further-protect-lake-erie.aspx>.

. For more information about this draft rule, please contact:

**Karl Gebhardt**

(614) 644-2001

[karl.gebhardt@epa.ohio.gov](mailto:karl.gebhardt@epa.ohio.gov)