



Proposed Rules – Section 401 Water Quality Certification Program

OAC Chapters 3745-32 and 3745-45

What is the Section 401 water quality certification program?

The federal Clean Water Act requires anyone discharging dredged or fill material into Ohio waters to obtain a water quality certification from Ohio EPA pursuant to Section 401 and a permit from the U.S. Army Corps of Engineers (USACE) pursuant to Section 404. Ohio EPA's Section 401 water quality certification program reviews projects submitted to the U.S. Army Corps of Engineers to ensure they comply with Ohio's water quality standards, which are located in Chapter 3745-1 of the Ohio Administrative Code (OAC).

Which rules are under review at this time?

The rulemaking includes the five year review of all of OAC Chapters 3745-32 and 3745-45. OAC Chapter 3745-32 contains the administrative and technical requirements for submitting a Section 401 water quality certification to Ohio EPA's Division of Surface Water. Seven rules in the chapter are being combined into three new rules: 3745-32-01, 3745-32-02 and 3745-32-03. OAC Chapter 3745-45 consists of one rule, which contains outdated water quality certification fees. This rule is being rescinded.

What changes are being proposed?

The rules are being amended as part of the five year rule review requirements in Ohio Revised Code section 106. The Agency has reviewed these rules and has identified necessary changes. The intent of the rulemaking is to clarify historical administrative procedures and move these administrative requirements together into fewer rules.

The Agency is proposing the following revisions:

- Reorganization of rule content – combining content into fewer rules.
- Inclusion of more consistency with USACE's Section 404 regulations and procedures.

OAC 3745-32-01

- Update of definitions for act, applicant, discharge of dredged material, discharge of fill material, dredged material, fill material, general permit, nationwide permit, person, Rivers and Harbors Act, waters of the state, and wetland. Addition of definitions for 40 C.F.R., letter of permission and regional permit. Deletion of definition for director.

OAC 3745-32-02

- Clarification of applicability and application requirements.

OAC 3745-32-03

- Revising Antidegradation alternatives analysis to be consistent with federal requirements in 40 C.F.R. Part 230 (this will also necessitate a revision in OAC 3745-1-05 to be made in a separate rule package).
- Incorporating the ability of the director to authorize the coverage of a project under a nationwide permit, regional permit or letter of permission based upon a case specific determination.
- Inclusion of requirement for an applicant to submit a Section 401 water quality certification to the Agency within 45 days of USACE's public notice of the Section 404 permit.
- Inclusion of a requirement for a Section 401 water quality certification application to be complete within 180 days of the publication of the USACE's public notice of the Section 404 permit.
- Enhancing administrative procedures to help address historical ambiguities. This includes certification modifications and transfers.
- Requirement that the Section 401 water quality certification will expire contiguous with USACE's Section 404 permit.

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- Clarification that the director may deny a Section 401 water quality certification based upon failure of an application to submit an application and failure to submit a complete application.
- Inclusion of procedures for emergency certifications.

OAC 3745-45-02

- Rescission of the out dated fee rule, OAC 3745-45-02.

Are there changes from the January 2016 draft rule revisions?

The following changes were made to the rules in response to comments received:

OAC 3745-32-01

- Changed the definitions of discharge of dredged material, discharge of fill material, nationwide permit to be more consistent with the federal definition.
- Removed definition of preferred alternative as that term is no longer used in the rule.
- Added the definition of wetland back into the rule.

OAC 3745-32-02

- Simplified the language for exemptions in OAC 3745-32-02 to reference the federal language in 33 C.F.R. Part 323.4.

OAC 3745-32-03

- Changed the requirement for an applicant to submit a Section 401 water quality certification to the Agency within 30 days of USACE's public notice of the Section 404 permit to within 45 days.
- Changed the language in OAC 3745-32-03 regarding Ohio Rapid Assessment Method (ORAM) submittals.
- Changed the language for photograph submittals and removed the seasonal photograph restrictions.
- Changed the requirement that comments from Ohio Department of Natural Resources (ODNR) and United States Fish and Wildlife Service (USFWS) need only to be requested, and not received, for an application to be complete.
- Corrected inaccurate cross references in OAC 3745-32-03.
- Revised the transfer language.

Who will be regulated by these rules?

Anyone who wishes to discharge dredged or fill material into waters of the state is regulated by these rules. This includes local and state governments, federal government, businesses and private property owners. This rulemaking does not change existing requirements and should have no additional impact on stakeholders.

What additional information is the Agency seeking?

The Agency wants to hear from interested stakeholders (public, local officials, industry sectors, other state agencies, consultants and environmental organizations) who may be impacted by these rule revisions and additions. General comments and specific factual information are welcome.

How are the amendments formatted in the proposed rules?

New text is underlined. Rules being rescinded have "To Be Rescinded" at the top of the first page of the rule.

What is the rulemaking schedule?

A public hearing on the proposed rule will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. This hearing will be held at the Ohio EPA Conference Center, Room A, 50 West Town Street, Suite 700, in Columbus, Ohio at 10:30 a.m. on August 31, 2016. The purpose of the public hearing is to give interested persons the opportunity to present oral or written comments on the proposed rules.

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At the close of the public comment period, the Agency will review the comments, make any necessary changes to the rules, and then adopt the rules. This is roughly a two-month process from the close of the comment period. A responsiveness summary will be prepared and sent to everyone who comments on the proposed rules. Final rules could be adopted in summer 2016.

How can I comment on the proposed rules?

Please submit your comments in one of the following ways:

- By email: 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 proposed rules must be received no later than 5:00 p.m. on August 31, 2016.

How can I get more information?

Copies of this fact sheet and proposed rule are on the Division of Surface Water website at:

www.epa.ohio.gov/dsw/dswrules.aspx.

Federal Section 404 regulations in 40 C.F.R. 230 is available at: www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol25/pdf/CFR-2015-title40-vol25-part230.pdf.

For more information about these draft rules, please contact:

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