



State of Ohio Environmental Protection Agency

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MAILING ADDRESS:

P.O. Box 1049  
Columbus, OH 43216-1049

September 12, 2008

**Re:** Draft amendments addressing Section 401 Water Quality Certification rules in Ohio Administrative Code (OAC) Chapters 3745-32 and 3745-45

Dear Interested Party:

This letter is to make you aware of, and solicit your input on, the Agency's draft revisions to the following rules in OAC Chapters 3745-32 and 3745-45.

Rule #	Rule Title	Action
OAC Chapter 3745-32 Section 401 Water Quality Certifications		
3745-32-01	Definitions	Amend
3745-32-02	Section 401 water quality certification required	Rescind
3745-32-02	Applicability	New
3745-32-03	Section 401 water quality certification exemptions	Rescind
3745-32-03	Individual state water quality permit application requirements and procedures	New
3745-32-04	Section 401 water quality certification applications	Rescind
3745-32-05	Criteria for decision by director	Rescind
3745-32-06	Revocation of section 401 water quality certification	Rescind
3745-32-07	Procedure for decision by director	Rescind
OAC Chapter 3745-45 Section 401 Water Quality Certification Fees		
3745-45-02	Certification Fees	Rescind

Anyone who wishes to discharge dredged or fill material into the waters state must obtain a Section 401 water quality certification from the state. The current Section 401 water quality certification rules, as they apply to streams, apply only in situations involving a pending federal permit, usually a Section 404 permit. Section 404 permits are required only for waterways that can be defined as waters of the United States.

The definition of waters of the United States under the Clean Water Act no longer includes isolated wetlands and streams. However, these are considered waters of the state under the Ohio Revised Code. The Ohio General Assembly addressed this conflict for isolated wetlands in 2001 by establishing a state isolated wetland permitting program. This rule package addresses this conflict for isolated streams by establishing a state water quality permit.

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

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Other draft revisions in Chapter 3745-32 combine and enhance procedural rules that help address some historical procedural ambiguities within the program. Rule 3745-45-02 is being rescinded because certification fees are now incorporated into state law (Ohio Revised Code 3745.114).

The draft rules and a fact sheet explaining the rule revisions are posted on the Ohio EPA Web page at [www.epa.state.oh.us/dsw](http://www.epa.state.oh.us/dsw). If you are unable to access the Web page, contact Bob Heitzman, Division of Surface Water, at (614) 644-3075 to request a copy. Comments on these rules are due to this Agency by **October 27, 2008**. Comments should be forwarded to:

Ohio EPA, Division of Surface Water  
Attn: Bob Heitzman  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
(email: [bob.heiztman@epa.state.oh.us](mailto:bob.heiztman@epa.state.oh.us)).

Please contact Mr. Heitzman at the email address or telephone number above if you have any questions.

Sincerely,



George Elmaraghy, P.E., Chief  
Division of Surface Water

GE:bh