

For Interested Party Review – December 2010 Draft

3745-32-01 Definitions.

~~For the purposes of this chapter the following definitions shall apply: In addition to the definitions in rules 3745-1-02, 3745-1-05, and 3745-1-50 of the Administrative Code, the following definitions apply to this chapter.~~

~~(A)~~ (A) "12-digit hydrologic unit watershed" means the 12-digit hydrologic unit watershed boundary delineation established by the United States department of agriculture, natural resources conservation service. A dataset is available on the internet at <http://www.oh.nrcs.usda.gov/technical/12-digit/>.

~~(A)~~(B) "Applicant" means any person required to obtain a ~~section 401 water quality certification~~ state water quality permit from the Ohio EPA.

~~(B)~~(C) "Director" means the director of ~~the~~ Ohio EPA or his duly authorized representative.

~~(C)~~(D) "Discharge of dredged material" means any addition of dredged material, ~~in excess of one cubic yard when used in a single or incidental operation,~~ into waters of the state, including redeposit of dredged material other than incidental fallback. The term includes, ~~without limitation~~ but is not limited to, the addition of dredged material to a specified ~~disposal discharge site which is located in waters of the state, or and the runoff or overflow of dredged material from a contained land or water disposal area which enters the waters of the state.~~ Discharges of pollutants into waters of the state resulting from the subsequent onshore processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Federal Water Pollution Control Act, even though the extraction of such material may require a permit from the army corps of engineers under section 10 of the Rivers and Harbors Act.

~~(D)~~(E) "Discharge of fill material" means the addition of fill material into waters of the state for the purpose of creating ~~fastlands~~ uplands, elevations changing the elevation of land beneath waters of the state, or ~~for creating~~ impoundments of water. The term includes, but is not limited to, the placement of the following in waters of the state: fill that is necessary to the construction of any structure; structures or impoundments requiring rock, sand, dirt, or other pollutants for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwalls, bulkheads and fills; beach nourishment; levees; sanitary landfills; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; or artificial reefs.

~~(E)~~(F) "Dredged material" means material that is excavated or dredged from waters of the state. The term does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

- ~~(F)~~(G) "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 886 (commonly referred to as the Clean Water Act), 33 U.S.C. 1251 et seq., as amended through July 1, 2009.
- ~~(G)~~(H) "Fill material" means any pollutant material used to fill an aquatic area, create fill to replace an aquatic area with dry land or to change the bottom elevation of a water body for any purpose, and that consists of suitable material that is free from toxic contaminants in other than trace quantities. "Fill material" does not include either of the following:
- (1) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products; or
 - (2) Material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.
- ~~(H)~~(I) "General permit" means a department of the army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cause only minimal individual and ~~cummulative~~ cumulative adverse environmental impact.
- (J) "Local drainage pattern" means a third order stream and its tributaries located within a 12-digit hydrologic unit watershed boundary, or an alternative watershed boundary. The local drainage pattern shall be determined from the perennial and intermittent streams depicted on soil survey maps published by the natural resources conservation service. These maps are available on the internet at http://soils.usda.gov/survey/online_surveys/ohio/. The watershed boundary delineated by the 12-digit hydrologic unit may be altered to include less or more land area if justified based upon regionally important factors such as large dams, waterfalls, predominate changes in land use, and other features affecting the zoogeographical distribution of aquatic species.
- (K) "Loss of use" or "elimination of use" means the elimination of an existing use through failure to maintain conditions necessary for continuation of one or more of the beneficial uses in rule 3745-1-07 of the Administrative Code. This includes, but is not limited to, failure to maintain adequate physical aquatic habitat features, failure to meet chemical criteria and, where applicable, failure to meet bacteria and biological criteria associated with the uses attained in that water body on or after November 28, 1975.
- (L) "Minimal degradation alternative" means an alternative, other than the applicant's preferred alternative, including pollution prevention alternatives, that would result in a lesser lowering of water quality. The alternatives may include, but are not limited to, pollution

prevention, best management practices, alternative manufacturing techniques, and alternative treatment methods. A minimal degradation alternative may also include proposing to discharge a lower loading of pollutants than the preferred alternative treatment technology is capable of achieving.

~~(H)~~(M) "Nationwide permit" means a department of the army authorization that has been issued for certain specified activities nationwide.

(N) "Non-degradation alternative" means an alternative, other than the applicant's preferred alternative, including pollution prevention alternatives, that would result in the elimination of the need to lower water quality. Non-degradation alternatives may include, but are not limited to, connection to a regional treatment system, using manufacturing processes that allow for no discharge of pollutants or recycle or recovery of pollutants, land application of treated wastewaters, or elimination of potentially contaminated storm water by employing no exposure methods.

(O) "Non federally protected waters" means a water of the state, other than isolated wetlands regulated pursuant to sections 6111.02 to 6111.029 of the Revised Code, that is determined by the United States army corps of engineers to be a water outside of the jurisdiction of the Federal Water Pollution Control Act.

~~(H)~~(P) "Ohio EPA" means the Ohio environmental protection agency or its director, as the context or other law or regulations may require.

(Q) "Outstanding national resource waters" are surface waters that have a national ecological or recreational significance, and that have been so categorized pursuant to rule 3745-1-05 of the Administrative Code.

~~(K)~~(R) "Person" means ~~the state, any municipal corporation, political subdivision of the state, person as defined in section 1.59 of the Revised Code, interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof~~ the same as defined in section 6111.01 of the Revised Code.

(S) "Preferred alternative" means an alternative preferred or proposed by the applicant to control the discharge of pollutants that will lower water quality.

~~(L)~~(T) ~~"Section 401 water quality certification~~State water quality permit" means either:

- (1) ~~certification~~Certification from Ohio EPA, pursuant to section 401 of the Federal Water Pollution Control Act, Chapter 6111. of the Revised Code and Chapter 3745-32 of the Administrative Code, that any discharge, as set forth in section 401 of the Federal Water Pollution Control Act, will comply with sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act; or

(2) A permit from Ohio EPA, pursuant to Chapter 6111. of the Revised Code and Chapter 3745-32 of the Administrative Code for discharges to non federally protected waters.

~~(M)~~(U) "The Rivers and Harbors Act" means the Rivers and Harbors Act of 1899, 30 Stat. 1151, 33 U.S.C. 401, as amended through July 1, 2009.

~~(N)~~(V) "Waters of the state" means ~~all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters, including those waters that are presently used, have been used or are susceptible to use to transport interstate commerce up to the head of navigation~~ the same as defined in section 6111.01 of the Revised Code.

~~(O)~~(W) "Wetlands" ~~are areas where the water table is at, near, or above the land surface long enough each year to support the growth of water dependent vegetation and to result in the formation of characteristic wet soil types. These include marshes, swamps, bogs and similar areas~~ are defined in rule 3745-1-02 of the Administrative Code.

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Certification

Date

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