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401/Wetland/Stream Mitigation (OAC 3745-1, 3745-32 and 3745-45)
February 2006 Draft Rules

Rule Number	Rule Title	Action
Chapter 3745-1. Water Quality Standards		
3745-1-05	Antidegradation.	Amend
3745-1-50	Definitions.	Amend
3745-1-51	Wetland narrative criteria.	Amend
3745-1-52	Numeric criteria for waste water discharges to wetlands.	Amend
3745-1-53	Wetland use designation.	Amend
3745-1-54	Wetland antidegradation.	Amend
3745-1-55	Compensatory mitigation requirements for wetlands.	New Rule
3745-1-56	Stream antidegradation and mitigation requirements.	New Rule
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 Rule
3745-32-03	Section 401 water quality certification exemptions.	Rescind
3745-32-03	401 certification application requirements and procedures.	New Rule
3745-32-04	Section 401 water quality certification applications.	Rescind
3745-32-04	Plans, design and monitoring for mitigation.	New Rule
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
Chapter 3745-45. Section 401 Water Quality Certification Fees		
3745-45-02	Certification fees.	Rescind

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For Interested Party Review - February 2006 Draft

3745-1-05 **Antidegradation.**

(A) Definitions.

- (1) "Available pollutant assimilative capacity" means the water body pollutant assimilative capacity for a substance, as determined in paragraph (A)(28)(a) of this rule, minus the background pollutant load, or the quantity for a substance as calculated in paragraph (A)(28)(b) of this rule.
- (2) "Background pollutant load" means the sum of all upstream pollutant loads of a regulated pollutant and has the same meaning as the background water quality as determined in accordance with paragraph (A)(3) of rule 3745-2-05 of the Administrative Code.
- (3) "Best available demonstrated control technology" means a wastewater treatment capable of meeting the following effluent limitations or design criteria.
 - (a) For the discharge of sanitary wastewater from facilities using conventional treatment technologies, the effluent limitations in table 5-1 of this rule.
 - (b) For the discharge of sanitary wastewater from alternative treatment technologies such as lagoon systems, land application and controlled discharge systems, constructed wetland systems or combined sewer overflow control systems effluent limitations shall be developed on a case-by-case basis.
 - (c) For industrial direct discharges subject to federal effluent guidelines, the facility shall be designed to meet the most stringent of the new source performance standards, best conventional pollutant control technology, best available technology economically achievable and best practicable control technology currently available for the appropriate categorical guidelines of 40 C.F.R. 400 to 40 C.F.R. 471.
 - (d) For categorical industrial indirect dischargers, the facility shall be designed to meet categorical pretreatment standards for existing sources or categorical pretreatment standards for new sources as contained in Chapter 3745-3 of the Administrative Code.
 - (e) For non-categorical industrial direct or indirect discharges, effluent limitations will be developed based upon best engineering/professional judgment.
 - (f) For wastewater discharges resulting from clean-up of response action sites contaminated with volatile organic compounds, the facility shall include air-stripping, carbon columns, both, or equivalent treatment capable of achieving final

thirty-day average effluent limits of five micrograms per liter or less for each individually regulated volatile organic compound.

- (4) "Control document" means any authorization issued by a state or federal agency to any source of pollutants to waters under its jurisdiction that specifies conditions under which the source is allowed to operate.
- (5) "Declining fish species" mean those species listed in table 5-2 of this rule. Declining fish species are native species that have declined in distribution across Ohio based on collection records since 1978 compared to historical distributions of fish species.
- (6) "Designated uses" mean those uses assigned in Chapter 3745-1 of the Administrative Code for a water body or segment whether or not those uses are being attained. Specific designated uses are defined in rule 3745-1-07 of the Administrative Code.
- (7) "Director" means the director of the Ohio environmental protection agency, or the director of the Ohio department of agriculture for projects or activities governed under Chapter 903. of the Revised Code.
- (8) "Existing uses" mean those uses actually attained in the water body on or after November 28, 1975.
- (9) "Existing source" means any treatment works or disposal system, and its associated treatment/production capacity that:
 - (a) Was built, operational and discharging prior to July 1, 1993; or
 - (b) Was authorized by a permit to install and/or national pollutant discharge elimination system permit issued after July 1, 1993.

An individual or a collection of several household sewage treatment systems does not constitute an existing source.

- (10) "High quality waters" mean all surface waters of the state except limited quality waters. Pursuant to division (A)(2) of section 6111.12 of the Revised Code, four categories of high quality waters are hereby recognized and described in this paragraph. Categorizations of specific water bodies shall follow the procedures in paragraph (E) of this rule.
 - (a) "General high quality waters" are wetlands categorized as category 2 or 3 in accordance with rule 3745-1-54 of the Administrative Code and other surface waters that are not specifically categorized limited quality waters, superior high quality waters, outstanding state waters, or outstanding national resource waters.

- (b) "Superior high quality waters" are surface waters that possess exceptional ecological values and that have been so categorized pursuant to paragraph (E) of this rule. Except as provided below, exceptional ecological values shall be assessed based upon a combination of the presence of threatened or endangered species and a high level of biological integrity. The following factors shall be considered in determining exceptional ecological value: providing habitat for Ohio or federal endangered species; providing habitat for Ohio threatened species; harboring stable populations of a declining fish species that coincide with the presence of suitable habitat for that species, or that coincide with an essential migration path between areas of suitable habitat for that species; and displaying a level of biological integrity equivalent to the exceptional warmwater habitat index of biotic integrity and/or invertebrate community index criteria values listed in rule 3745-1-07 of the Administrative Code.
- Water bodies that exhibit a pattern of biological integrity equivalent to index of biotic integrity and, where applicable, invertebrate community index scores of fifty-six or greater at most sites are characteristic of a near-pristine aquatic habitat. Such waters, as well as other ecologically unique water bodies that have essentially undisturbed native faunas, but for which the biological criteria in rule 3745-1-07 of the Administrative Code do not apply, may be considered as possessing exceptional ecological values without the presence of threatened or endangered species.
- (c) "Outstanding state waters" are waters that have special significance for the state because of their exceptional ecological values and/or exceptional recreational values, and that have been so categorized pursuant to paragraph (E) of this rule. To qualify on the basis of exceptional ecological values they must meet the qualifications for superior high quality waters and be further distinguished as being demonstratively among the best waters of the state from an ecological perspective. To qualify on the basis of exceptional recreational values they must provide outstanding or unique opportunities for recreational boating, fishing or other personal enjoyment.
- (d) "Outstanding national resource waters" are surface waters that have a national ecological or recreational significance, and that have been so categorized pursuant to paragraph (E) of this rule. National ecological significance may include providing habitat for populations of federal endangered or threatened species or displaying some unique combination of biological characteristics in addition to those factors listed in paragraph (A)(10)(b) of this rule. National recreational significance may include designation in the national wild and scenic river system.
- (11) "Land application and controlled discharge system" means an innovative technology for the treatment of sewage that balances land application of treated wastewater with controlled discharges of wastewater under conditions that minimize stress on the aquatic

environment. The system shall be designed to allow a discharge during winter months and required land application of the wastewater during summer months.

- (12) "Limited quality waters" mean wetlands categorized as category 1 in accordance with rule 3745-1-54 of the Administrative Code and other surface waters of the state specifically designated in rules 3745-1-08 to 3745-1-30 of the Administrative Code as limited resource water, nuisance prevention, limited warmwater habitat, or modified warmwater habitat.
- (13) "Mass discharge limit" means for an existing source:
- (a) The average thirty-day mass limit specified in the national pollutant discharge elimination system permit; or
 - (b) The product of the average concentration limit specified in the permit and the permitted discharge flow, if no average mass limit is specified; or
 - (c) The product of an average concentration value derived from the maximum concentration limit specified in the permit using derivation methods established in the total maximum daily load procedures and the permitted discharge flow, if no average concentration or mass limit is specified.
- (14) "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.
- (15) "Mitigative technique alternative" means an alternative, other than the applicant's preferred alternative, or other on-site or off-site control measures designed to offset all or part of the lowering of water quality, preferably within the same watershed.
- (16) "Modification of a facility" means:
- (a) The addition of new wastewater or sources of pollutants to an existing source, including the addition of new industrial users; and
 - (b) Any other physical change at the facility from which the discharge is generated that increases the capacity of that facility to discharge a pollutant or results in the discharge of a pollutant not previously discharged, excluding the following:
 - (i) Routine repair, maintenance and replacement of existing equipment;
 - (ii) Increases in hours or rates of operation and the use of alternative fuels or raw materials that can be implemented without any physical changes to the facility; and

- (iii) Physical changes designed to restore previously existing production or treatment capacity.

An expansion of the wastewater treatment system is not considered a modification of the facility.

(17) "Net increase" means:

- (a) For a new source, any level of a regulated pollutant discharged to waters of the state as a result of the activity subject to this rule;

- (b) For an existing source:

- (i) The amount by which the sum of the following exceeds zero:

- (a) The increase in the mass discharge limit attributable to the activity subject to this rule; and

- (b) All other contemporaneous increases or decreases attributable to other pollutant source(s) affecting the surface water segment(s) under consideration and which are stipulated as a condition of the applicant's permit and which shall occur during the term of the applicant's permit;
or

- (ii) For heat, bacteria and any other regulated pollutant which, though not measurable as a mass level is nonetheless susceptible to determinations of net increase, the amount by which the sum of the following exceeds zero:

- (a) The increase in an authorized discharge level attributable to the activity subject to this rule; and

- (b) All other contemporaneous increases or decreases attributable to other pollutant source(s) affecting the surface water segment(s) under consideration and which are stipulated as a condition of the applicant's permit and which shall occur during the term of the applicant's permit.

(18) "New source" means any treatment works or disposal system other than an existing source, excluding new domestic sewage sources and industrial users tributary to a publicly owned treatment works. A new treatment works built to serve a home or homes with individual systems is considered a new source.

(19) "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.

- (20) "Permit modification" means an application filed by the permit holder pursuant to paragraph (D) of rule 3745-33-04 of the Administrative Code.
- (21) "Permitted discharge flow" means the discharge flow specified in the national pollutant discharge elimination system permit, or permit to install application if not specified in a national pollutant discharge elimination system permit, and shall be representative of the typical wastewater flow to be discharged by a facility when the wastewater facility is operating at full capacity, and considering, where applicable, discharge flows during wet weather events.
- (22) "Pollution prevention alternative" means the use of source reduction techniques in order to reduce risk to public health, safety, welfare and the environment and, as a second preference, the use of environmentally sound recycling to achieve these same goals. Pollution prevention avoids cross-media transfers of waste and/or pollutants and is multi-media in scope; it addresses all types of waste and environmental releases to the air, water and land.
- (23) "Regulated pollutant" means any parameter for which water quality criteria have been adopted in, or developed pursuant to, Chapter 3745-1 of the Administrative Code with the exception of biological criteria, and any other parameter that may be limited in a national pollutant discharge elimination system permit as a result of new source performance standards, best conventional pollutant control technology, best available technology economically achievable or best practicable control technology currently available for the appropriate categorical guidelines of 40 C.F.R. 400 to 40 C.F.R. 471. For the purposes of this rule, pH and dissolved oxygen are not considered "regulated pollutants".
- (24) "Remaining available pollutant assimilative capacity" means the available pollutant assimilative capacity for a substance minus the load already allocated to existing national pollutant discharge elimination system permits for dischargers in the water body segment receiving the allocation. This term is not used in the application of antidegradation for lake Erie.
- (25) "State resource water " is a designation of high quality waters that is being replaced by the categories of high quality waters described in paragraph (A)(10) of this rule. All water body segments currently designated state resource waters in rules 3745-1-08 to 3745-1-30 of the Administrative Code are categorized in this rule as general high quality waters, unless they are specifically listed in tables 5-4 to 5-7 of this rule. Waters designated state resource waters in rules 3745-1-08 to 3745-1-30 of the Administrative Code are subject to the considerations of paragraph (C)(5)(d) of this rule.
- (26) "Threatened species" mean those species listed in table 5-3 of this rule. A threatened

species is an indigenous species whose survival in Ohio is not in immediate jeopardy, but to which a threat exists. Continued or increased stress will result in its becoming endangered.

- (27) "Total maximum daily load procedures" mean the procedures for calculating wasteload allocations adopted in Chapter 3745-2 of the Administrative Code.
- (28) "Water body pollutant assimilative capacity" means the total maximum allowable load of a substance for a specific water body segment and is calculated as:
- (a) For a stream, the water quality criteria for a substance multiplied by the total applicable flow at the end of the segment being studied. The applicable flow is determined using the total maximum daily load procedures; and
 - (b) For a lake, a value equal to the permitted discharge flow times Y, where Y equals eleven times the water quality criteria for a substance minus ten times the background concentration for the substance.

Water body pollutant assimilative capacity for a lake can also be determined by any alternative method which the director determines to be appropriate and consistent with the total maximum daily load procedures.

(B) Applicability; responsibilities of the applicant.

Except as provided in paragraphs (B)(2), (D) and (F) of this rule, projects or activities covered under paragraph (B)(1) of this rule shall be subject to an antidegradation review described in paragraph (C) of this rule.

- (1) This rule shall apply to the following.
- (a) For existing sources, any re-issuance or modification of a national pollutant discharge elimination system permit that, if approved, would result in:
 - (i) Any net increase of a regulated pollutant;
 - (ii) If the national pollutant discharge elimination system permit specifies no limit for the pollutant, then the imposition of any effluent limit as a result of a modification of the facility; or
 - (iii) Approval of combined sewer overflow long term control plans and incorporation of the appropriate conditions into an NPDES permit. Long term control plans shall address planned sewer connections/development tributary to the collection system.

- (b) For new sources, any permit to install or national pollutant discharge elimination system permit application that, if approved, would result in a net increase in the discharge of any regulated pollutant. For these sources, if a national pollutant discharge elimination system permit application is submitted and approved under the provisions of this rule, a subsequent permit to install application proposing the selected alternative will not be subject to review under this rule.
 - (c) Any section 401 water quality certification application pursuant to Chapter 3745-32 of the Administrative Code.
 - (d) Any nonpoint source of pollution that results in a net increase in the release of any regulated pollutant, provided the director has separate authority to regulate the activity.
 - (e) Unless authorized by a section 404 permit and section 401 water quality certification or a state isolated wetland permit, any permit to install application reviewed pursuant to Chapter 6111. of the Revised Code that would authorize the placement of fill or the construction of any portion of a sewerage system in or near surface waters of the state, if the director determines that aquatic habitat alterations caused by the activity and associated construction disturbances would result in the loss of an existing or designated use as defined in this chapter.
 - (f) The transfer of all or a portion of the wastewater discharged by a treatment works to a different receiving water body, or to a different treatment works discharging to a different water body, unless the transfer is to a treatment works with capacity to accept the transferred wastewater within the terms of its existing national pollutant discharge elimination system permit. If a discharge is relocated on the same receiving water body within two miles of the original discharge then there is considered to be no net increase in the discharge.
 - (g) The issuance by the director of environmental protection, in accordance with Chapter 3745-38 of the Administrative Code, or by the director of agriculture, in accordance with Chapter 901:10-4 of the Administrative Code, of a general national pollutant discharge elimination system permit that would result in a net increase.
 - (h) Any state isolated wetland permit application submitted under section 6111.024 of the Revised Code.
- (2) The activities, permits, applications, certifications or other circumstances described in this paragraph are exempt from all provisions of this rule.
- (a) Any existing source discharging to waters of the state prior to July 1, 1993, or modifications of a facility made after July 1, 1993, that is not discharging under the

terms of a national pollutant discharge elimination system permit. Only the portion of the flow that the existing source was capable of discharging as of July 1, 1993 shall not be subject to the rule provisions.

- (b) Any existing source where the net increase is simply the result of allowing a previously authorized or documented production/treatment capacity to be achieved.
- (c) Any permit to install application for a sanitary sewer line extension or a new or expanding industrial user upstream of combined sewer overflows in a community operating a combined sewer system if:
 - (i) The application conforms to the conditions related to an approved long term development/planning documents associated with combined sewer overflow control measures incorporated into a national pollutant discharge elimination system permit as referenced in paragraph (B)(1)(a)(iii) of this rule; or
 - (ii) It can be documented that subsequent overflows from the combined sewer system will only occur in situations where the wet weather flows within the sanitary sewers exceed six times the average dry weather flows within the sanitary sewers; or
 - (iii) It can be documented that the combined sewers are and will continue to be operating at less than the original design dry weather capacity; or
 - (iv) There is an approved and ongoing flow/pollutant offset or infiltration/inflow reduction program for the collection system.
- (d) Any notice of intent filed with the director of environmental protection requesting coverage under a general national pollutant discharge elimination system permit issued in accordance with Chapter 3745-38 of the Administrative Code or notice of intent filed with the director of agriculture requesting coverage under a general national pollutant discharge elimination system permit issued in accordance with Chapter 901:10-4 of the Administrative Code.
- (e) Any discharge that, as the result of the addition of heat associated with the process or wastewater treatment system, increases the ambient temperature of the receiving water body by less than 1°F or is otherwise covered by the provisions of a section 316(a) variance.
- (f) The initial inclusion of whole effluent toxicity limitations in any national pollutant discharge elimination system permit or other control document, if there has been no change in discharge since July 1, 1993.

- (g) The addition or expansion of an industrial user to a publicly owned treatment works (POTW) collection system that does not trigger a permit limit for the POTW. Local limits shall be established for the POTW pretreatment program, or equivalent, utilizing a ten per cent safety factor when performing the evaluation related to effluent limitations to protect water quality standards.
 - (h) The addition of domestic sewage sources to the POTW within the design capacity of the POTW.
- (3) Except as provided in paragraphs (B)(2), (B)(4), (D) and (F) of this rule, the applicant covered by paragraph (B)(1) of this rule must submit documentation of the following.
- (a) Identification of the substances to be discharged, including the amount of regulated pollutants to be discharged in terms of mass and concentration, and, if paragraph (B)(1)(c) of this rule applies, the amount of dredged and fill material to be discharged.
 - (b) A description of any construction work, fill or other structures to occur or be placed in or near the stream bed.
 - (c) A description and schematic of the applicant's preferred alternative for design and operation, including appropriate cost estimates, of the activity.
 - (d) Description and analyses, including availability, cost effectiveness and technical feasibility, of the utilization of central or regional treatment facilities rather than creating a new point source discharge. This analysis shall include an evaluation of long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents.
 - (e) Descriptions, schematics and analyses of non-degradation alternatives, minimal degradation alternatives and mitigative technique alternatives for the design and operation, including appropriate cost estimates, of the activity that the applicant has considered.
 - (f) An estimate of the important social, economic and environmental benefits to be realized through the project or activity if the water quality is lowered, including, as appropriate, the number and types of jobs created and the tax revenues generated.
 - (g) An estimate of important social, economic and environmental benefits to be lost if water quality is lowered, such as lost or lowered recreational opportunities.
 - (h) To the extent that such information is known to those in the local community or is otherwise public, a listing and description of all government or privately sponsored

conservation projects that have specifically targeted improved water quality and/or enhanced recreational opportunities on the water body(ies) affected by the activity.

- (4) Applications for section 401 water quality certifications are exempt from paragraph (B)(3) of this rule. Required submissions should be determined in accordance with section 6111.30 of the Revised Code, Chapter 3745-32 of the Administrative Code and rules 3745-1-50 to 3745-1-56 of the Administrative Code.

(C) Antidegradation review requirements.

- (1) Protection of water body uses.

Existing uses, which are determined using the use designations defined in rule 3745-1-07 of the Administrative Code, and the level of water quality necessary to protect existing uses, shall be maintained and protected. There may be no degradation of water quality that results in either a violation of the applicable water quality criteria for the designated uses, unless authorized by a water quality standard variance issued in accordance with rule 3745-33-07 of the Administrative Code, or the elimination or substantial impairment of existing uses. The director shall, pursuant to paragraph (A)(6) of rule 3745-1-07 of the Administrative Code, prohibit increased concentrations of specific regulated pollutants that are incompatible with the attainment or restoration of the designated use. Existing wetland uses, as defined in rule 3745-1-53 of the Administrative Code, shall be maintained and protected in accordance with rules 3745-1-50 to ~~3745-1-54~~ 3745-1-56 of the Administrative Code.

- (2) Required treatment technology, nonpoint source controls.

Except as provided in paragraph (D)(2) of this rule, any net increase in the discharge of a specific regulated pollutant resulting from a modification or new source shall, as a minimum, be controlled through best available demonstrated control technology relative to the specific regulated pollutant. More stringent treatment may be required pursuant to paragraph (C)(8) of this rule, or if needed to meet water quality standards. Feasible management or regulatory programs pursuant to sections 208, 303 and 319 of the Act, 33 U.S.C. Sections 1288 (effective February 4, 1987), 1313 (effective October 10, 2000) and 1329 (effective February 4, 1987), shall be applied to nonpoint sources.

- (3) Public involvement.

Except as provided in paragraphs (B)(2) and (D) of this rule, the director shall provide for public participation and intergovernmental coordination prior to taking action on all activities covered by paragraph (B)(1) of this rule using the provisions of this paragraph.

- (a) In accordance with Chapter 3745-47 of the Administrative Code, the director shall publish a public notice within thirty days regarding receipt of any permit

application, ~~section 401 water quality certification application~~ or state isolated wetland permit application covered by paragraph (B)(1) of this rule. The purpose of such notice shall be to allow for inspection and review of the application, to indicate that the project is subject to the provisions of this rule and whether any of the exclusions or waivers described in paragraph (D) of this rule apply, to instruct people to contact the director within thirty days if they want to be on the interested parties mailing list for that application, and, on general high quality waters and limited quality waters, to determine whether there is interest in having a public hearing. Public notice for Section 401 water quality certification applications will be published pursuant to the requirements in section 6111.30 of the Revised Code.

Notices shall be sent by first class mail to all persons on the mailing list created pursuant to paragraph (C)(3)(d) of this rule.

- (b) The director shall develop an informational fact sheet for each permit or activity for which a public notice is issued in accordance with paragraph (C)(3)(a) of this rule, excluding section 401 water quality certification and state isolated wetland permit activities, within thirty days of receipt of the application. The purpose of such fact sheet shall be to: provide information to potentially affected parties; provide a description of the project; outline the review process and schedule; specify where the application/permits can be viewed; identify the waterbody(ies) potentially affected; instruct individuals how to request to be on the interested parties mailing list; provide an opportunity to request a public hearing pursuant to paragraph (C)(3)(f) of this rule; and advertise the date, time and location of a public hearing if one is scheduled pursuant to paragraph (C)(3)(e) of this rule. These fact sheets shall be sent by first class mail, or alternative means as requested, to all persons on the mailing list created pursuant to paragraph (C)(3)(d) of this rule.
- (c) All notices of public hearings required by paragraphs (C)(3)(e) and (C)(3)(f) of this rule shall be published once in a newspaper having general circulation in the county where the source, activity or facility is located. The notice shall be published at least forty-five days before the hearing. Notices of hearings shall also be sent by first class mail, or by alternative means as requested, to all persons on the mailing list created pursuant to paragraph (C)(3)(d) of this rule.
- (d) The director shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in antidegradation reviews. These persons and organizations may request that all fact sheets or public hearing public notices identified by this rule be forwarded to them by means other than first class mail (e.g., by electronic transmission).
- (e) Within ninety days of receipt of the application, the director shall hold a public

hearing for any permit application, section 401 water quality certification application or state isolated wetland permit application covered by paragraph (B)(1) of this rule whenever a water body categorized outstanding national resource water, outstanding state water, superior high quality water or category 3 wetland is affected. This public hearing shall be for the purpose of evaluating issues related to lower water quality and shall be prior to and separate from a public hearing on the proposed or draft action on the application. Section 401 water quality certifications impacting Lake Erie or its shoreline are exempt from this requirement. Public hearings for Section 401 water quality certifications impacting Lake Erie or its shoreline will be held at the discretion of the director and according to the time lines contained in section 6111.30 of the Revised Code.

- (f) For general high quality waters other than category 3 wetlands and for limited quality waters, the director shall hold a public hearing for any permit to install application, national pollutant discharge elimination system permit application, section 401 water quality certification application or state isolated wetland permit application covered by paragraph (B)(1) of this rule whenever the director determines there is significant public interest. A public hearing shall be held for the issuance of any draft general national pollutant discharge elimination system permit.

The director shall hold public hearings relative to issues of lower water quality as a concurrent hearing at the time of the draft or proposed action. However, if the application is not covered by paragraph (D) of this rule, the director may choose to hold a public hearing preceding the draft or proposed action if, at the director's discretion, the project is considered to be controversial or complex. For section 401 water quality certification applications and state isolated wetland permit applications, the public hearing shall precede any action of the director.

- (g) A public notice of the director's proposed or draft action regarding the activity and its potential to lower water quality shall be published following the procedures in Chapter 3745-47 of the Administrative Code. The director shall provide notification by first class mail, or alternative means as requested, to all interested parties identified through the procedures in paragraph (C)(3) of this rule. Additional procedures are described in paragraph (C)(8) of this rule.
- (h) The director shall notify the Ohio department of natural resources, the United States fish and wildlife service, the United States environmental protection agency and any affected local areawide planning agencies of all proposed activities that may lower water quality. In addition, for activities covered under paragraph (B)(1)(a), (B)(1)(b) or (B)(1)(f) of this rule, the director shall notify the Ohio department of development and any affected local governmental units. The director or the other agencies may initiate additional intergovernmental coordination.

(4) Outstanding national resource waters.

The director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule that discharge to outstanding national resource waters, or that discharge upstream of outstanding national resource waters.

- (a) Present ambient water quality in outstanding national resource waters shall not be degraded for any substance.
- (b) The director may re-issue permits for any source discharging to an outstanding national resource water if the source had a national pollutant discharge elimination system permit at the time the water body was categorized an outstanding national resource water as described in paragraph (E) of this rule, provided there is no increase in the permitted discharge concentrations or loads.
- (c) New sources may not discharge directly to outstanding national resource waters, and may not discharge at points located upstream from outstanding national resource waters unless it can be demonstrated by the applicant that the chemical and biological quality of the outstanding national resource water will not be adversely affected.
- (d) Notwithstanding the provisions stated in paragraphs (C)(4)(a) and (C)(4)(e) of this rule, activities that result in short-term changes in water quality in outstanding national resource waters may be allowed if the director determines there will be no long-term detrimental impact. Activities resulting in short-term impacts on outstanding national resource waters will be subject to a review of non-degradation alternatives, minimal degradation alternatives, mitigative technique alternatives, economic and social benefits, public participation and intergovernmental coordination.
- (e) Notwithstanding the provisions stated in paragraphs (C)(4)(a) and (C)(4)(d) of this rule discharges of dredged and fill material to outstanding national resource waters that are wetlands, and are owned and managed solely for natural area preservation, public recreation, education or scientific purposes, may be authorized provided the discharges and associated activities result in only a short-term disturbance to water quality and will not adversely affect the ecological quality of the wetland or other surface waters. Authorized discharges and associated activities include boardwalk construction, repair and maintenance of dikes and other hydrological controls, and removal of non-native and invasive plant species. For these discharges and associated activities the director may waive the need for the review outlined in paragraph (C)(4)(d) of this rule.

(5) Other waters.

For waters other than outstanding national resource waters and limited quality waters, the director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule, except that for section 401 water quality certifications and state isolated wetland permits pursuant to section 6111.024 of the Revised Code for high quality waters that are wetlands, the director shall impose the requirements specified in rules 3745-1-50 to 3745-1-54 of the Administrative Code in lieu of paragraphs (C)(5) and (C)(8) of this rule. In addition, the director may apply the items in paragraphs (C)(5)(a) to (C)(5)(f) and (C)(5)(k) to (C)(5)(m) of this rule, may consider cumulative impacts as defined in paragraph (I) of rule 3745-1-50 of the Administrative Code, and shall consider whether the wetland is scarce regionally or statewide and the feasibility of replacing that wetland type, in making a decision whether to allow the lowering of water quality.

The director may approve activities that lower water quality only if there has been an examination of non-degradation, minimal degradation and mitigative technique alternatives, a review of the social and economic issues related to the activity, a public participation process and appropriate intergovernmental coordination, and the director determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the water body is located.

The director may require the applicant to implement a non-degradation alternative, a minimal degradation alternative or a mitigative technique alternative to offset all or part of the proposed lowering of water quality, if the director determines that the alternative is technically feasible and economically justifiable. Any lowering of water quality shall not exceed the limitations specified in paragraph (C)(6) of this rule.

When making determinations regarding proposed activities that lower water quality the director shall consider the following:

- (a) The magnitude of the proposed lowering of water quality;
- (b) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;
- (c) The anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;
- (d) The degree to which water quality may be lowered in waters located within national, state or local parks, preserves or wildlife areas, waters listed as state resource waters in rules 3745-1-08 to 3745-1-30 of the Administrative Code, or waters categorized outstanding national resource waters, outstanding state waters

or superior high quality waters;

- (e) The effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;
 - (f) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;
 - (g) The cost of the water pollution controls associated with the proposed activity;
 - (h) The cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;
 - (i) The availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;
 - (j) The availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;
 - (k) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;
 - (l) The condition of the local economy, the number and types of new direct and indirect jobs to be created, state and local tax revenue to be generated, and other economic and social factors as the director deems appropriate; and
 - (m) Any other information regarding the proposed activities and the affected water body that the director deems appropriate.
- (6) Set asides to limit lower water quality.

In addition to the other provisions of paragraph (C) of this rule, the director shall not allow water quality to be lowered by more than as specified in this paragraph when acting on applications or activities covered by paragraph (B)(1) of this rule.

- (a) For outstanding state waters, the director shall reserve seventy per cent of the remaining available pollutant assimilative capacity for all regulated pollutants for which water quality criteria have been adopted in or developed pursuant to Chapter

3745-1 of the Administrative Code. The reserved portion shall not be allocated to any source unless the provisions of paragraph (C)(7) of this rule are applied. The requirements of this paragraph shall not apply to any water body categorized as outstanding state water solely because of its exceptional recreational value.

- (b) For lake Erie, new and existing sources shall be limited to the water body pollutant assimilative capacity as defined in paragraph (A)(28)(b) of this rule.
 - (c) For superior high quality waters, other than lake Erie and those waters covered by paragraph (C)(6)(e) of this rule, the director shall reserve thirty-five per cent of the remaining available pollutant assimilative capacity for all regulated pollutants for which water quality criteria have been established in Chapter 3745-1 of the Administrative Code. The reserved portion shall not be allocated to any source unless the provisions of paragraph (C)(7) of this rule are applied. The director may reserve a higher percentage of the remaining available pollutant assimilative capacity if there is scientific evidence that strongly suggests that resident or representative species are more sensitive to a pollutant or class of pollutants and may be inadequately protected using the applicable water quality criteria and the standard set aside provision. The higher set aside shall be established for specific pollutant(s) or classes of pollutants through rule making pursuant to paragraph (E) of this rule.
 - (d) For general high quality waters and limited quality waters, water quality may not be lower than the applicable water quality criteria for the water body, unless authorized by a water quality standard variance issued in accordance with appropriate rules.
 - (e) For outstanding state waters so categorized because of exceptional recreational value the director shall:
 - (i) Evaluate, or cause the applicant to evaluate, the impact of the project on bacteriological contamination for any project covered under paragraph (B)(1) of this rule. No permit shall be granted if the director finds that the project or discharge will result in a significant long term increase in the frequency and duration of bacteriological pollution.
 - (ii) Review all permit actions, covered under paragraph (B)(1) of this rule, to minimize the introduction of pollutants or floating debris and materials which may affect the aesthetic quality of the receiving waters.
- (7) Credit projects.

An applicant for a project covered under paragraph (B)(1) of this rule may request that the director approve a credit project in lieu of the set asides described in paragraphs

(C)(6)(a) and (C)(6)(c) of this rule. In order for a credit project to be considered for approval, the proposal must:

- (a) Occur in the same water body where the proposed lowering of water quality is to take place; and
- (b) Not necessarily offset the proposed pollutant load being pursued, but address an existing or potential threat to the water body. This may include providing for water body enhancement or restoration activities.

If the director determines to approve a credit project in lieu of the set asides described in paragraphs (C)(6)(a) and (C)(6)(c), he may include, at his discretion, an alternative lower set aside to accompany the credit project. A lower set aside must be established through rule making and incorporated into tables established in paragraph (E) of this rule.

(8) Procedures.

- (a) The director shall assess each proposed activity covered by paragraph (B)(1) or (F) of this rule on a case-by-case basis. For each proposed activity, the director shall weigh the information acquired relative to the proposal, that submitted by the applicant or otherwise obtained by the director, and all comments presented during the public review period, including intergovernmental comments, and make a determination to:
 - (i) Allow the applicant's preferred alternative with appropriate conditions, if applicable, and the lower water quality as proposed because it has been determined that a discharge or the activity is necessary;
 - (ii) Deny the applicant's preferred alternative as proposed; or
 - (iii) Require a cost beneficial, technically feasible and/or available non-degradation, minimal degradation or mitigative technique alternative that would result in no or a lesser lowering of water quality.
- (b) Any action of the director issuing a permit to install or a national pollutant discharge elimination system permit covered under paragraph (B)(1) or (F) of this rule shall be preceded by a draft action and shall be issued in accordance with Chapter 3745-47 of the Administrative Code.
- (c) Any action of the director denying a permit to install or a national pollutant discharge elimination system permit covered under paragraph (B)(1) or (F) of this rule shall be preceded by a proposed action and shall be issued in accordance with Chapter 3745-47 of the Administrative Code.

- (d) Any action of the director on a section 401 water quality certification covered under paragraph (B)(1) or (F) of this rule shall be taken in accordance with Chapters 3745-32 and 3745-47 of the Administrative Code.
- (e) Any action of the director on a state isolated wetland permit application submitted pursuant to section 6111.024 of the Revised Code and covered under paragraph (B)(1) or (F) of this rule shall be taken in accordance with Chapter 3745-47 of the Administrative Code.

(D) Exclusions and waivers.

The exclusions and waivers described in paragraphs (D)(1)(a), (D)(1)(b), (D)(1)(d), (D)(1)(e) and (D)(3) of this rule do not apply to bioaccumulative chemicals of concern within the lake Erie basin.

- (1) The following situations are excluded from the submittal and review requirements listed in paragraphs (B)(3)(e) to (B)(3)(h) and (C)(5) of this rule. In determining the applicability of any of the following exclusions, the evaluation shall not only consider potential effects or impacts to the receiving waters, but also to any subsequent waters potentially affected by the discharge or activity.
 - (a) Any source discharging to limited quality waters.
 - (b) Any de minimis net increase determined using the following criteria. For the discharge of primarily sanitary wastewaters, only ammonia-nitrogen will be evaluated to determine the applicability of the appropriate exclusion.
 - (i) For general high quality waters, any net increase in the discharge of a regulated pollutant that is less than ten per cent of the wasteload allocation to maintain water quality standards calculated using total maximum daily load procedures, provided the proposed lowering of water quality does not exceed eighty per cent of the wasteload allocation to maintain water quality standards calculated using total maximum daily load procedures.
 - (ii) For superior high quality waters, other than lake Erie, and outstanding state waters any net increase in the discharge of a regulated pollutant that results in less than a five per cent change in the ambient water quality concentration of the receiving water as projected to occur using total maximum daily load procedures, provided the proposed lowering of water quality does not exceed the portion of the remaining available assimilative capacity specified by the director pursuant to paragraphs (C)(6)(a) or (C)(6)(c) and (E) of this rule.

- (iii) For lake Erie any net increase in the discharge of a regulated pollutant that is less than ten per cent of the water body pollutant assimilative capacity.
 - (c) Combined sewer overflow elimination or reduction projects affecting one or more water bodies where there will be a net decrease in the overall pollutant loadings discharged to surface waters of the state. Treatment byproducts of combined sewer overflow discharges (e.g., chlorine for disinfection) shall be excluded from review.
 - (d) Any disposal system built and operated exclusively for the treatment of contaminated groundwater at response action clean-up sites.
 - (e) Any disposal system built and operated as a land application and controlled discharge system as defined in paragraph (A)(11) of this rule.
 - (f) Any net increase in the discharge of a regulated pollutant resulting from a change in fuel used by the discharger, provided the discharger was capable of accommodating the new fuel on the effective date of this rule.
 - (g) Any imposition of mercury effluent limitations in an NPDES permit for an existing source where the mercury limitations are based on a variance pursuant to paragraph (D)(10) of rule 3745-33-07 of the Administrative Code.
 - (h) Any discharge of the following regulated pollutants within the range indicated:
 - (i) Total suspended solids at or below sixty-five mg/l; or
 - (ii) Oil and grease at or below ten mg/l.
 - (i) Any discharge that, as the result of the addition of heat associated with the process or wastewater treatment system, increases the ambient temperature of the receiving stream greater than or equal to 1°F, as calculated using total maximum daily load procedures, up to that allowed through water quality standards.
 - (j) Any general permit developed by the director in accordance with the provisions of Chapter 3745-38 of the Administrative Code.
- (2) The director may waive the requirement to install best available demonstrated control technology for new sources discharging sanitary wastewater if:
- (a) The modification, new source or national pollutant discharge elimination system application is for a project designed exclusively to restore, maintain or ensure design capacity and associated pollutant discharge levels already authorized in an effective national pollutant discharge elimination system permit; or

- (b) The modification, new source or national pollutant discharge elimination system application is the direct and sole result of a proposed transfer of pollutant loading from an existing direct discharge of pollution to waters of the state, and the director has determined that the transfer will result in overall environmental improvement. The director's determination on this matter shall be based upon the antidegradation review process specified in paragraph (C) of this rule, unless otherwise excluded from such review pursuant to paragraph (D) of this rule.
- (3) The director may waive the submittal and review requirements listed in paragraphs (B)(3)(f) to (B)(3)(h) and (C)(5) of this rule if it is determined that:
 - (a) The proposed net increase in the discharge of a regulated pollutant does not result in an increase in the ambient water quality concentration of the receiving water after mixing as projected to occur under the total maximum daily load procedures;
 - (b) Any proposed net increase in the discharge of nutrients (such as, but not limited to, phosphorus and nitrogen) or toxic substances complies with all applicable water quality standards and will not threaten environmentally sensitive areas such as downstream lakes, reservoirs, wetlands, exceptional warmwater habitats, coldwater habitats, outstanding national resource waters, outstanding state waters, or superior high quality waters; and
 - (c) The requirements of paragraphs (B)(3)(d) and (B)(3)(e) of this rule have been met and the director determines that none of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives for the design and operation of the activity are technically feasible and economically justifiable.
- (4) Nothing in this rule shall prohibit the director from approving activities that lower water quality on a temporary basis whenever the director determines that an emergency exists requiring immediate action to protect public health and welfare. The director shall issue any such approval in accordance with division (C) of section 6111.06 of the Revised Code and rule 3745-47-29 of the Administrative Code.
- (5) The director may waive the submittal and review requirements listed in paragraphs (B)(3)(f) to (B)(3)(h) and (C)(5) of this rule if the applicant is seeking a revised water quality based effluent limit based upon the results of either a site specific study of the water quality criteria or a change in the water quality criteria found in Chapter 3745-1 of the Administrative Code and the applicant demonstrates that the facility has not complied with the existing water quality based permit limit. The following conditions must be met for this waiver to apply:
 - (a) Any proposed net increase in the discharge of regulated pollutants complies with all applicable water quality standards and will not threaten environmentally sensitive areas such as downstream lakes, reservoirs, wetlands, exceptional

warmwater habitats, coldwater habitats, outstanding national resource waters, outstanding state waters, or superior high quality waters; and

- (b) The requirements of paragraphs (B)(3)(d) and (B)(3)(e) of this rule have been met and the director determines that none of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives for the design and operation of the activity are technically feasible and economically justifiable.

(E) Categorization of waters.

- (1) All surface waters are categorized as general high quality waters except as follows.

- (a) Lake Erie is categorized as a superior high quality water.
- (b) All surface waters of the state meeting the definition of limited quality waters are so categorized, unless the water body is the source of drinking water for a public water supply, in which case it shall be considered a general high quality water for the purposes of this rule.
- (c) The water bodies listed in table 5-4 of this rule are categorized superior high quality waters. The reserved set aside percentage established pursuant to paragraph (C)(6)(c) of this rule is thirty-five per cent unless indicated otherwise in table 5-4 of this rule.
- (d) The water bodies listed in table 5-5 of this rule are categorized outstanding state waters due to exceptional ecological values. The reserved set aside percentage established pursuant to paragraph (C)(6)(a) of this rule is seventy per cent of the remaining available pollutant assimilative capacity.
- (e) The water bodies listed in table 5-6 of this rule are categorized outstanding state waters due to exceptional recreational values. The provisions of paragraph (C)(6)(e) of this rule apply.
- (f) The water bodies listed in table 5-7 of this rule are categorized outstanding national resource waters.

- (2) At least once every three years, the director, in consultation with the director of the department of natural resources, shall consider available information on water bodies in Ohio and determine appropriate high quality water categorizations. Each determination shall consider attributes of exceptional recreational or ecological value, the national significance of the water body, and other existing and planned uses of the water body. If the director identifies any waters not properly categorized, he shall public notice his intent to categorize them to the appropriate category upon consideration of public comment. The director shall categorize outstanding national resource waters,

outstanding state waters and superior high quality waters in tables 5-4 to 5-7 of this rule.

- (3) A person adversely affected by the high quality water categorization of a water body pursuant to paragraph (E)(1) or (E)(2) of this rule may petition the director to revise that categorization. Any such petition shall detail the basis for the petition and contain, at a minimum, new relevant and factual information, or relevant and factual information not previously available to the director at the time of the categorization described in paragraph (E)(1) or (E)(2) of this rule. The petition must contain sufficient information, or such additional information as the director may request, to justify a decision by the director to either revise or retain the categorization under paragraph (E)(1) or (E)(2) of this rule. Within three months of receiving a petition containing complete and adequate information, or within such longer time as the director and the petitioner may agree, the director shall either approve or propose to deny the petition in accordance with Chapter 119. of the Revised Code. The director shall subsequently make appropriate revisions to the high quality water categorization of the water body in tables 5-4 to 5-7 of this rule, as appropriate, in accordance with Chapter 119. of the Revised Code.
 - (4) A person adversely affected by the set aside percentage established pursuant to paragraph (C)(6)(a) or (C)(6)(c) of this rule may petition the director to revise that set aside percentage. Any such petition shall detail the basis for the petition and contain, at a minimum, new relevant and factual information, or relevant and factual information not previously available to the director. The petition must contain sufficient information, or such additional information as the director may request, to justify a decision by the director to either retain the set aside percentage or establish site specific set asides for one or more pollutants. Within three months of receiving a petition containing complete and adequate information, or within such longer time as the director and the petitioner may agree, the director shall either approve or propose to deny the petition in accordance with Chapter 119. of the Revised Code. The director shall subsequently make appropriate revision to the high quality water categorization of the water body in tables 5-4 to 5-7 of this rule, as appropriate, in accordance with Chapter 119. of the Revised Code.
- (F) Special provisions for bioaccumulative chemicals of concern in the lake Erie drainage basin.

The following special provisions are applicable to the discharge or release to the environment of any bioaccumulative chemical of concern in the lake Erie drainage basin. Unless otherwise noted, these requirements shall apply in addition to the provisions found in paragraphs (A) to (E) of this rule.

- (1) In lieu of the requirements of paragraph (B)(1) of this rule, any significant lowering of water quality as described in paragraph (F)(2) of this rule shall require the applicant to submit the information required by paragraph (B)(3) of this rule and to complete the demonstration required by paragraph (F)(3) of this rule. The director shall establish conditions in the control document that meet the requirements of paragraph (F)(4) of this

rule.

- (2) Significant lowering of water quality.
 - (a) A significant lowering of water quality occurs when there is a new or increased loading of any bioaccumulative chemical of concern from any regulated existing or new facility, either point source or nonpoint source for which there is a control document or reviewable action, as a result of any activity including, but not limited to:
 - (i) Construction of a new regulated facility or modification of an existing regulated facility such that a new or modified control document is required;
 - (ii) Modification of an existing regulated facility operating under a current control document such that the production capacity of the facility is increased;
 - (iii) Addition of a new source of untreated or pretreated effluent containing or expected to contain any bioaccumulative chemical of concern to an existing wastewater treatment works, whether public or private;
 - (iv) A request for an increased limit in an applicable control document; and
 - (v) Other deliberate activities that, based on the information available, could be reasonably expected to result in an increased loading of any bioaccumulative chemical of concern to any waters of the Great Lakes system.
 - (b) Notwithstanding the above, changes in loadings of any bioaccumulative chemical of concern within the existing capacity and processes that are covered by the existing applicable control document, are not subject to an antidegradation review. These changes include, but are not limited to:
 - (i) Normal operational variability including, but not limited to, intermittent increased loadings related to wet weather conditions;
 - (ii) Changes in intake water pollutants;
 - (iii) Increasing the production hours of the facility, (e.g., adding a second shift), provided production hours do not exceed those described in, or used to derive, the existing control document;
 - (iv) Increasing the rate of production, provided production rates do not exceed those described in, or used to derive, the existing control document;

- (v) Discharges of quantities of a bioaccumulative chemical of concern in the intake water at a facility proposing a new or increased discharge, provided that the new or increased discharge is not expected to result in a net increase in the total load of the bioaccumulative chemical of concern in the receiving water body;
 - (vi) Increasing the sewerage area, connection of new sewers and customers, or acceptance of trucked-in wastes such as septage and holding tank wastes by a POTW unless, for a bioaccumulative chemical of concern, there is increased loading due to the collection of wastewater from a significant industrial user and, based on the industry's raw materials and processes, the wastewater is expected to have quantifiable concentrations of the bioaccumulative chemical of concern significantly above levels typically associated with domestic wastewater and non-industrial stormwater;
 - (vii) Increased discharge of a bioaccumulative chemical of concern due to implementation of controls on wet weather-related flows, including, but not limited to, combined sewer overflows and industrial stormwater; and
 - (viii) Increased discharges of a bioaccumulative chemical of concern resulting from a change in fuel used by the discharger, provided that the discharger was capable of accommodating the new fuel on the effective date of this rule.
- (c) Also excluded from an antidegradation review are new effluent limits based on improved monitoring data or new water quality criteria or values that are not a result of changes in pollutant loading.
 - (d) Also excluded from the antidegradation submittal and review requirements listed in paragraphs (B)(3)(c) to (B)(3)(h) and (C)(5) of this rule is any imposition of mercury effluent limitations in an NPDES permit for an existing source, where the mercury effluent limitations are based on a variance pursuant to paragraph (D)(10) of rule 3745-33-07 of the Administrative Code.
- (3) Antidegradation demonstration.

Any entity seeking to significantly lower water quality for a bioaccumulative chemical of concern, as defined in paragraph (F)(2) of this rule, in a limited quality water or high quality water must, in addition to the requirement in paragraph (B)(3) of this rule, submit an antidegradation demonstration for consideration by the director pursuant to the review requirements of this paragraph and paragraph (C) of this rule. The antidegradation demonstration shall include the following:

- (a) Pollution prevention alternatives analysis. Identify any cost-effective pollution prevention alternatives and techniques that are available to the entity, that would eliminate or significantly reduce the loadings of bioaccumulative chemical(s) of concern; and
 - (b) Alternative or enhanced treatment analysis. Identify alternative or enhanced treatment techniques that are available to the entity that would eliminate the lowering of water quality and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.
- (4) For limited quality waters and high quality waters, the director shall ensure that no action resulting in a lowering of water quality occurs unless an antidegradation demonstration has been completed pursuant to paragraphs (B)(3) and (F)(3) of this rule and the information thus provided is determined by the director pursuant paragraph (C) of this rule to adequately support the lowering of water quality.
- (a) The director shall establish conditions in the control document applicable to the regulated facility that prohibit the regulated facility from undertaking any deliberate action, such that there would be an increase in the rate of mass loading of any bioaccumulative chemical of concern, unless an antidegradation demonstration is provided to the director and approved pursuant to paragraph (C) of this rule prior to commencement of the action. Imposition of limits due to improved monitoring data or new water quality criteria or values, or changes in loadings of any bioaccumulative chemical of concern within the existing capacity and processes that are covered by the existing applicable control document, are not subject to an antidegradation review.
 - (b) For bioaccumulative chemicals of concern known or believed to be present in a discharge, from a point or nonpoint source, a monitoring requirement shall be included in the control document. The control document shall also include a provision requiring the source to notify the director of any increased loadings that would be subject to the provisions of the paragraph (F)(2) of this rule and which have not received approval from the director under the conditions specified in this rule. Upon notification, the director shall require actions as necessary to reduce or eliminate the increased loading if the increase is subject to the provisions of the paragraph (F)(2) of this rule. Requirements to reduce or eliminate the increased loading imposed by the director pursuant to this paragraph shall apply unless or until the director approves the increased loadings under the provisions specified in this rule.
 - (c) Fact sheets prepared pursuant to 40 C.F.R. 124.8 and 124.56 shall reflect any conditions developed under paragraph (F) of this rule and included in a permit.

Table 5-1. Best available demonstrated control technology for new sources discharging sanitary wastewater.

Parameter	Thirty-day Limit	Daily or Seven-day Limit	Maximum/Minimum Limit
CBOD ₅	10 mg/l	15 mg/l	n/a
Total suspended solids	12 mg/l	18 mg/l	n/a
Ammonia			
(Summer)	1.0 mg/l	1.5 mg/l	n/a
(Winter)	3.0 mg/l	4.5 mg/l	
Dissolved oxygen	n/a	n/a	6.0 mg/l (minimum)
Total residual chlorine	n/a	n/a	0.038 mg/l (maximum)
E. coli*	126 / 100 ml	235 / 100 ml	n/a
* E. coli is to be considered a design standard only. Effluent limitations will not be incorporated into permits.			

Table 5-2. Declining fish species.

Common name	Latin name	Comment
Bigeye chub	Notropis amblops	
Bigeye shiner	Notropis boops	
Blacknose shiner	Notropis heterolepis	
Bluebreast darter	Etheostoma camurum	
Brindled madtom	Noturus miurus	
Brook trout	Salvelinus fontinalis	Natives only
Creek chubsucker	Erimyzon oblongus	
Eastern sand darter	Ammocrypta pellucida	
Goldeye	Hiodon alosoides	
Hornyhead chub	Nocomis biguttatus	

Lake chubsucker	<i>Erimyzon sucetta</i>	
Least brook lamprey	<i>Lampetra aepyptera</i>	
Least darter	<i>Etheostoma microperca</i>	
Mimic shiner	<i>Notropis volucellus</i>	
Mooneye	<i>Hiodon tergisus</i>	Lake Erie drainage basin
Mountain madtom	<i>Noturus eleutherus</i>	
Muskellunge	<i>Esox masquinongy</i>	Natives only
North brook lamprey	<i>Ichthyomyzon fossor</i>	
Northern madtom	<i>Noturus stigmosus</i>	
Popeye shiner	<i>Notropis ariommus</i>	
Pugnose minnow	<i>Opsopoeodus emiliae</i>	
Redside dace	<i>Clinostomus elongatus</i>	
River chub	<i>Nocomis micropogon</i>	
River darter	<i>Percina schumardi</i>	Lake Erie drainage basin
Rosyface shiner	<i>Notropis rubellus</i>	
Silver lamprey	<i>Ichthyomyzon unicuspis</i>	
South redbelly dace	<i>Phoxinus erythrogaster</i>	
Streamline chub	<i>Erimystax dissimilis</i>	
Tonguetied minnow	<i>Exoglossum laurae</i>	
Variegated darter	<i>Etheostoma variatum</i>	
Western banded killifish	<i>Fundulus diaphanus menona</i>	

Table 5-3. Threatened species.

Common name	Latin name	Comment
Fish		
Bigmouth shiner	<i>Notropis dorsalis</i>	
Bluebreast darter	<i>Etheostoma camurum</i>	
Lake chubsucker	<i>Erimyzon sucetta</i>	
Paddlefish	<i>Polyodon spathula</i>	
River darter	<i>Percina shumardi</i>	
Rosyside dace	<i>Clinostomus funduloides</i>	
Silver lamprey	<i>Ichthyomyzon unicuspis</i>	
Tippecanoe darter	<i>Etheostoma tippencanoe</i>	
Mollusks		
Black sandshell	<i>Liquimia recta</i>	
Ebonysshell	<i>Fusconaia ebena</i>	
Fawnsfoot	<i>Truncilla donaciformis</i>	
Pondhorn	<i>Uniomerus tetralasmus</i>	
Snuffbox	<i>Epioblasma triquetra</i>	
Threehorn wartyback	<i>Obliquaria reflexa</i>	
Other		
Sloan's crayfish	<i>Orconectes sloanii</i>	

Table 5-4. Superior high quality waters.

Water body name	Flows into	Drainage basin
Alum creek - headwaters to West branch (RM 42.8)	Big Walnut creek	Scioto
Anderson fork - Grog run (RM 11.02) to the mouth	Caesar creek	Little Miami
Archers fork	Little Muskingum river	Central Ohio tributaries
Arney run - Black run (RM 2.2) to the mouth	Clear creek	Hocking
Ashtabula river - confluence of East and West fork (RM 27.54) to adjacent East 23 rd street (RM 2.00)	Lake Erie	Ashtabula
Auglaize river - Kelly road (RM 77.32) to Jennings creek (RM 47.02)	Maumee	Maumee
Baughman creek	Grand river	Grand
Beech fork	Salt creek	Scioto
Bend fork - Joy fork (RM 4.0) to the mouth	Captina creek	Central Ohio tributaries
Big run	Federal creek	Hocking
Big Walnut creek - Rocky fork (RM 28.3) to the mouth	Scioto river	Scioto
Blue creek	Churn creek	Scioto
Brill run	Marietta run	Hocking
Buskirk creek	Deer creek	Scioto
Caesar creek - Caesar Creek lake (RM 13.92) to the mouth	Little Miami river	Little Miami
Cedar fork	Clear Fork Mohican river	Muskingum
Cedar Lick creek	Cross creek	Central Ohio tributaries

Center fork	Elkhorn creek	Central Ohio tributaries
Chapman creek	Mad river	Great Miami
Clear creek	Rocky fork	Scioto
Clear creek - Cattail creek (RM 9.52) to the mouth	Hocking river	Hocking
Compton creek	North Fork Paint creek	Scioto
Congo creek	Scippo creek	Scioto
Deer creek - Bradford/Sugar creek confluence (RM 41.22) to Deer creek reservoir (RM 29.40)	Scioto river	Scioto
Dismal creek	Witten Fork	Central Ohio tributaries
East Branch Jelloway creek	Jelloway creek	Muskingum
East Fork Little Miami river - East Fork lake (RM 20.5) to the mouth	Little Miami river	Little Miami
East Fork Little Miami river - Howard run (RM 45.18) to Tunnel Mill road (RM 30.1)	Little Miami river	Little Miami
East Fork Queer creek	Queer creek	Scioto
Elkhorn creek	Yellow creek	Central Ohio tributaries
Federal creek - Hyde fork (RM 16.21) to the mouth	Hocking river	Hocking
Fish Creek - headwaters to the Indiana state line (RM 29.37)	St. Joseph river	Maumee
Furnace run	Cuyahoga river	Cuyahoga
Goose run - downstream Winnerline road (RM 3.00) to the mouth	Bantas fork	Great Miami
Grace run	Cherry fork	Southwest Ohio tributaries

Great Miami river - Quincy dam (RM 143.4) to Pasco-Montra road (RM 134.8)	Ohio river	Great Miami
Great Miami river - Sidney water works dam (RM 130.2) to Loramie creek RM (119.9)	Ohio river	Great Miami
Great Miami river - Lost creek (RM 100.0) to the CSX railroad bridge (RM 84.5)	Ohio river	Great Miami
Hay run	Deer creek	Scioto
Hellbranch run - Kropp road RM (5.04) to the mouth	Big Darby creek	Scioto
Honey creek	Great Miami river	Great Miami
Huron river - East/West branch confluence (RM 14.7) to the Ohio turnpike (RM 9.1)	Lake Erie	Huron
Indianfield run	Kokosing river	Muskingum
Jelloway creek	Kokosing river	Muskingum
Joes run	Big run	Hocking
Laurel run	Salt creek	Scioto
Leith run	Ohio river	Central Ohio tributaries
Little Darby creek	Big Darby creek	Scioto
Little Muskingum river - Witten fork (RM 46.44) to Fifteen Mile creek (RM 14.75)	Ohio river	Central Ohio tributaries
Lower Twin creek	Ohio river	Southwest Ohio tributaries
Lost creek	Great Miami river	Great Miami
Long run	Rocky fork	Muskingum
Lost run	Rocky fork	Muskingum
Mac-o-chee creek	Mad river	Great Miami

Mad river - headwaters to Mac-o-chee creek (RM 51.75)	Great Miami river	Great Miami
Marietta run	Federal creek	Hocking
Massie creek	Little Miami river	Little Miami
McCullough creek	Scioto Brush creek	Scioto
McKee creek	Stony creek	Great Miami
Middle Fork Laurel run	Laurel run	Scioto
Middle Fork Salt creek	Salt creek	Scioto
Mill creek	South Fork Scioto Brush creek	Scioto
Mohican river - Rocky fork (RM 27.60) to an unnamed tributary (RM 16.10)	Walhonding river	Muskingum
Morgan fork	Sunfish creek	Scioto
Muskingum river - confluence of Tuscarawas and Walhonding rivers (RM 111.13) to state route 208 (RM 92.0)	Ohio river	Muskingum
Muskingum river - Licking river (RM 76.20) to Moxahala creek (RM 73.50)	Ohio river	Muskingum
Muskingum river - Salt creek (RM 67.03) to Branch run (RM 52.58)	Ohio river	Muskingum
Muskingum river - McConnellsville dam (RM 49.0) to Madison run (RM 34.4)	Ohio river	Muskingum
Muskingum river - Beverly dam (RM 24.9) to Cushing run (RM 18.77)	Ohio river	Muskingum

Muskingum river - Lowell dam (RM 14.1) to Rainbow creek (RM 7.7)	Ohio river	Muskingum
Muskingum river - Devola dam (RM 5.77) to the mouth	Ohio river	Muskingum
Nancy run	North Fork Yellow creek	Central Ohio tributaries
Nellis run	Big run	Hocking
North Fork Captina creek - Long run (RM 4.0) to the mouth	Captina creek	Central Ohio tributaries
North Fork Yellow creek	Yellow creek	Cuyahoga
Ohio Brush creek - headwaters to Beasley Fork road (RM 6.30)	Ohio river	Southwest Ohio tributaries
Opossum creek	Ohio river	Central Ohio tributaries
Painter run	Rocky fork	Muskingum
Pine creek	Salt creek	Scioto
Pine creek - Hales creek (RM 38.15) to the mouth	Ohio river	Southeast Ohio tributaries
Piney fork	Sunfish creek	Central Ohio tributaries
Pretty run	Salt creek	Scioto
Proctor run	Treacle creek	Scioto
Queer creek	Salt creek	Scioto
Randall run	Mill creek	Scioto
Rarden creek	Scioto Brush creek	Scioto
Rocky fork - U.S. route 62 (RM 5.1) to the mouth	Big Walnut creek	Scioto
Rocky fork - headwaters to Rocky fork lake (RM 16.88)	Paint creek	Scioto
Schenck creek	Kokosing river	Muskingum

Scioto Brush creek - headwaters to McCullough creek (RM 10.2)	Scioto river	Scioto
Scioto river - Indian run (RM 145.18) to Olentangy river (RM 132.33)	Ohio river	Scioto
Scioto river - Scioto Big run (RM 124.40) to Scippo creek (RM 89.61)	Ohio river	Scioto
Scioto river - Paint creek (RM 63.50) to Salt creek (RM 51.18)	Ohio river	Scioto
Scioto river - Scioto Brush creek (RM 9.2) to the mouth	Ohio river	Scioto
Scippo creek - Old Tarlton pike (RM 14.80) to the mouth	Scioto river	Scioto
Sevenmile creek	Fourmile creek	Great Miami
South Fork Captina creek	Captina creek	Central Ohio tributaries
South Fork Eagle creek	Eagle creek	Mahoning
South Fork Scioto Brush creek - Shawnee creek (RM 8.3) to the mouth	Scioto Brush creek	Scioto
Spain creek	Big Darby creek	Scioto
Spring fork	Little Darby creek	Scioto
Spring run	Federal creek	Hocking
Stillwater river - Englewood dam (RM 9.0) to the mouth	Great Miami river	Great Miami
Strawcamp run	Elkhorn creek	Central Ohio tributaries
Sunfish creek - headwaters to Negro run (RM 1.7)	Ohio river	Central Ohio tributaries
Trail run	Center fork	Central Ohio tributaries
Turkey creek	Ohio river	Southwest Ohio tributaries

Turkey run	Sugartree fork	Muskingum
Unnamed tributary to East Branch Black river at RM 41.41	East Branch Black river	Black
Upper Twin creek	Ohio river	Southwest Ohio tributaries
West Branch Alum creek - Ashley West Liberty road (RM 5.09) to the mouth	Alum creek	Scioto
West Branch Huron river - Slate run (RM 10.52) to the mouth	Huron river	Huron
West Branch St. Joseph river - Michigan state line (RM 11.41) to the mouth	St. Joseph river	Maumee
West fork - Buck run (RM 9.0) to the mouth	Ohio Brush creek	Southwest Ohio tributaries
Whitewater river - Indiana state line (RM 8.26) to the mouth	Great Miami river	Great Miami
Wildcat run	Big run	Hocking
Winding fork	Wakatomika creek	Muskingum
Winterstein run	South Fork Scioto Brush creek	Scioto
Witten fork	Little Muskingum river	Central Ohio tributaries
Witten run	Clear Fork Little Muskingum river	Central Ohio tributaries
Yellow creek	Cuyahoga river	Cuyahoga
Yellow Springs creek	Little Miami river	Little Miami

Table 5-5. Outstanding state waters based on exceptional ecological values.

Water body name	Flows into	Drainage basin
Aurora branch - state route 82 (RM 17.08) to the mouth	Chagrin river	Chagrin
Bantas fork	Twin creek	Great Miami
Big Darby creek	Scioto river	Scioto
Captina creek - North/South forks (RM 25.42) to state route 7 (RM 0.70)	Ohio river	Central Ohio tributaries
Chagrin river - Woodiebrook road (RM 49.14) to state route 6 (RM 11.1)	Lake Erie	Chagrin
Conneaut creek - state line (RM 23.83) to the mouth	Lake Erie	Ashtabula
Cuyahoga river - Troy-Burton township line (RM 83.9) to U.S. route 14 (RM 60.75)	Lake Erie	Cuyahoga
Deer creek - Deer creek dam (RM 23.89) to the mouth	Scioto river	Scioto
East Branch Chagrin river - Heath road (RM 14.49) to the mouth	Chagrin river	Chagrin
Fish creek - Indiana state line (RM 5.57) to the mouth	St. Joseph river	Maumee
Grand river - state route 322 (RM 67.08) to U.S. route 20 (RM 5.67)	Lake Erie	Grand
Greenville creek - Indiana state line (RM 34.48) to the mouth	Stillwater river	Great Miami
Kokosing river	Walhonding river	Muskingum
Little Beaver creek	Ohio river	Little Beaver creek

Little Darby creek	Big Darby creek	Scioto
Little Miami river	Ohio river	Little Miami
Middle Fork Little Beaver creek - Middle run (RM 8.57) to the mouth	Little Beaver creek	Little Beaver creek
North Branch Kokosing river	Kokosing river	Muskingum
North Fork Little Beaver creek - Pennsylvania state line (RM 7.75) to the mouth	Little Beaver creek	Little Beaver creek
North Fork Little Miami river	Little Miami river	Little Miami
North Fork Paint creek - Compton creek (RM 24.57) to the mouth	Paint creek	Scioto
Olentangy river - Delaware dam (RM 32.35) to Old Wilson Bridge road (RM 11.45)	Scioto river	Scioto
Paint creek - Rocky fork (RM 37.12) to North fork (RM 3.80)	Scioto river	Scioto
Pleasant run	Big Darby creek	Scioto
Rocky fork	Licking river	Muskingum
Salt creek	Scioto river	Scioto
Sandusky river - U.S. route 30 (RM 82.1) to Roger Young Memorial park in Fremont (RM 16.6)	Lake Erie	Sandusky
Scioto Brush Creek - McCullough creek (RM 10.20) to the mouth	Scioto river	Scioto
South Fork Scioto Brush creek - Shawnee creek (RM 8.30) to the mouth	Scioto Brush creek	Scioto

Stillwater river - Riffle road (RM 55.90) to the Englewood dam (RM 9.01)	Great Miami river	Great Miami
Twin creek	Great Miami river	Great Miami
Unnamed tributary to East Branch Black river at RM 39.06	East Branch Black river	Black
Vermilion river - Southwest branch (RM 47.66) to state route 2 (RM 3.15)	Lake Erie	Vermilion
Wakatomika creek	Muskingum river	Muskingum
Walhonding river	Tuscarawas river	Muskingum
West Fork Little Beaver creek - Brush creek (RM 15.99) to the mouth	Little Beaver creek	Little Beaver creek

Table 5-6. Outstanding state waters based on exceptional recreational values.

Water body name	Flows into	Drainage basin
Cuyahoga river - Sand run (RM 39.12) to Rockside road (RM 13.13)	Lake Erie	Cuyahoga
Maumee river - Indiana state line (RM 108.1) to the U.S. route 25 bridge (RM 15.05)	Maumee bay	Maumee

Table 5-7. Outstanding national resource waters.

Water body name	Flows into	Drainage basin
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Effective:

R.C. 119.032 rule review date: 7/01/2008

Certification

Date

Promulgated Under: 119.03
 Statutory Authority: 6111.041
 Rule Amplifies: 6111.041
 Prior Effective Dates: 2/14/1978, 4/4/1985, 10/1/1996, 10/31/1997, 5/1/1998, 4/17/2001
 (Emer.), 7/1/2003

For Interested Party Review - February 2006 Draft

3745-1-50 Definitions.

In addition to the definitions in ~~rule~~ rules 3745-1-02 and 3745-32-01 of the Administrative Code ~~technical words used in rule 3745-1-05 of the Administrative Code and in rules 3745-1-50 to 3745-1-54~~ 3745-1-56 of the Administrative Code shall be defined as follows:

- (A) “Alternatives analysis” means a systematic review and evaluation of practicable alternatives including avoidance, minimization and/or compensatory mitigation ~~for impacts to a wetland.~~
- (B) “Applicant” means, for the purposes of rules 3745-1-50 to 3745-1-56 of the Administrative Code only, any person required to obtain a section 401 water quality certification from Ohio EPA.
- ~~(B)~~(C) “Areal cover” means the per cent of vegetation covering any area of vegetated wetland. Areal measurements are those made as if the wetland were being viewed from the air.
- ~~(C)~~(D) “Avoidance” is the first step in the alternatives analysis and means that the applicant must demonstrate that alternatives ~~which that~~ fulfill the basic project purpose and have less or no impacts to the wetland are not practicable, so long as the alternative does not have other significant adverse environmental consequences.
- ~~(D)~~(E) “Biodiversity” means the number of community types, different species, and genetic variants of species found in a given area.
- (E) ~~“Bog” means a peat-accumulating wetland that has no significant inflows or outflows and supports acidophilic mosses, particularly Sphagnum spp.~~
- (F) “Compensatory mitigation” refers to the final step in the alternatives analysis and means restoration, creation, enhancement or, in exceptional circumstances, preservation of ~~wetlands~~ a wetland, including natural upland buffer areas around the wetland sufficient to ensure the success of the mitigation, expressly for the purpose of compensating for unavoidable adverse impacts ~~which that~~ remain after all appropriate and practicable avoidance and minimization have been achieved.
- (G) “Creation” means the establishment of a wetland where one did not formerly exist. ~~This would involve~~ “Creation” includes wetland construction on non-hydric soils, wetland construction on non-hydric soils with hydric inclusions, and the reestablishment of hydrologically atypical wetlands (e.g., permanent impoundments, non-natural hydroperiods, and wetland type not found in that landscape naturally).
- (H) “Critical habitat” means:

- (1) The specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Endangered Species Act (~~16 U.S.C.A. section~~ U.S.C. 1531 et seq., as amended through July 1, 2005) on which are found those physical or biological features essential to the conservation of the species, and that may require special management considerations or protection; and
- (2) Specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the Endangered Species Act (16 U.S.C. 1531 et seq., as amended through July 1, 2005), upon a determination by the secretary of the department of the interior, that such areas are essential for the conservation of the species.
- (I) “Cumulative impacts” ~~mean~~ means the impact on the environment ~~which that~~ results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts shall be considered on a watershed basis. Cumulative impacts include the effect of multiple previously approved impacts to a stream or wetland such that additional impacts, if approved, would result in a change in existing or designated uses or wetland category.
- (J) “Direct impacts” ~~mean~~ means effects which are caused by the action and occur at the same time and place.
- (K) “Dispersal corridor” means a linear area that is used by organisms to move from one place of suitable habitat to another.
- (L) “Endangered species” means a native Ohio plant species listed or designated by the Ohio department of natural resources as endangered pursuant to section 1518.01 of the Revised Code, and animal species listed or designated as endangered by the Ohio department of natural resources pursuant to section 1531.25 of the Revised Code; or any plant or animal species that is native to Ohio or that migrates or is otherwise reasonably likely to occur within the state ~~which and that~~ has been listed as endangered pursuant to section 4 of the Endangered Species Act; (~~16 U.S.C.A. U.S.C.~~ U.S.C. 1531 et seq., as amended through July 1, 2005).
- (M) “Enhancement” means activities conducted in existing wetlands to improve or repair existing or natural wetland functions and values of that wetland. Enhancement is achieved by removing causes of past or present degradation in order to improve the ecological quality of the wetland.
- (N) “Fen” means a carbon accumulating (peat, muck) wetland that is saturated, primarily by a discharge of free flowing ground water during most of the year. Fens are rarely inundated. Fens often have a sloped surface which prevents the accumulation of stagnant or ponded water. The water of fens is usually mineral rich and has a circumneutral pH (5.5-9.0). In

calcareous fens, soil may be dominated by deposits of calcium carbonate rich sediments (marl). Characteristic indicator vegetation species of calcareous fens may include, but are not limited to *Potentilla fruticosa*, *Solidago ohioensis*, *Lobelia kalmii*, *Cacalia plantaginea*, *Deschampsia cespitosa*, *Triglochin* spp., *Parnassia glauca*, *Gentianopsis* spp., *Rhynchospora* spp., and some *Eleocharis* spp. Other fen species include *Carex stricta*, *Carex hystericina*, *Carex interior*, *Carex leptalea*, *Carex pellita*, *Carex prairea*, *Carex sterilis*, other *Carex* spp., *Solidago patula*, *Aster puniceus*, *Schoenoplectus acutus*, *Thelypteris palustris*, *Bromus ciliatus*, and *Campanula aparinoides*.

- (~~Θ~~) “Forested wetland” means a wetland class characterized by woody vegetation that is twenty feet tall or taller.
- (~~P~~)(O) “Floodplain” means the relatively level land next to a stream or river channel that is periodically submerged by flood waters. It is composed of alluvium deposited by the present stream or river when it floods.
- (~~Θ~~)(P) “Function” means natural processes occurring in, or because of, the presence of a wetland the wetland ranging from highly specific nutrient cycling processes to processes that maintain the overall ecological integrity of the wetland ecosystem. Function also includes processes that occur at larger scales of watersheds or ecological regions that contribute to a larger ecological condition of those watersheds or regions—such as water quality improvement, flood control and/or biodiversity maintenance. Examples of functions of a wetland include, but are not limited to, ground water exchange, nutrient removal and/or transformation, sediment and/or contaminant retention, water storage, sediment stabilization, shoreline stabilization, and maintenance of biodiversity.
- (~~R~~)(Q) “Ground water discharge” means water flowing out of a ground water zone. In regards to wetlands, ground water discharge occurs when water flows from a ground water zone to a wetland.
- (~~S~~)(R) “Ground water recharge” means water flow into a ground water zone. In regards to wetlands, ground water recharge occurs when water flows from a wetland to a ground water zone.
- (S) “Hydrogeomorphic class” describes the landscape position of a wetland and its dominant hydrologic regime (hydroperiod and water budget of precipitation, evapotranspiration, overbank flooding, surface inflows and outflows, groundwater fluxes, Lake Erie seiches and cycles, etc.). Hydrogeomorphic classes include the following:
- (1) Depressions, which are wetlands that have a mostly vertical hydrologic pathway dominated by precipitation (including sheet flow and overland flow) and evapotranspiration during the growing season, and sometimes shallow ground water inputs and outputs;

- (2) Impoundments, which are wetlands created or modified by the impounding of water behind roads, railroad embankments, etc. or by the natural activity of beavers;
 - (3) Riverine wetlands, which are wetlands associated with rivers or streams where the predominant source of water is derived from the river or stream. Riverine wetlands include riverine mainstem depressions associated with third or fourth order streams and rivers that receive seasonal or intermittent overbank flooding, riverine headwater depressions associated with first or second order streams, and riverine channels (“wetland streams”) with perennial connections with third or fourth order streams;
 - (4) Slope wetlands, which are wetlands with a hydrology dominated by horizontal or occasionally vertical (mound fens) ground water discharge and include fens and forest seeps. Slope wetlands also include lacustrine fens located on the margins of natural lakes;
 - (5) Fringing wetlands, which are wetlands located around the perimeter of inland lakes and reservoirs;
 - (6) Coastal marshes, which are wetlands subject to Lake Erie water inputs and fluctuations and include diked marshes; and
 - (7) Bogs, which are peat-accumulating wetlands that have a high predominance of acidophilic mosses, particularly Sphagnum spp. with usually minor surface water inflows and outflows. Types of bogs include tamarack bogs, tamarack-hardwood bogs, leatherleaf bogs, sphagnum bogs, and tall shrub bogs.
- (T) “Hydrologically isolated wetlands” means those wetlands ~~which~~ that:
- (1) Have no surface water connection to a surface water of the state;
 - (2) Are outside of, and not contiguous to, any one hundred-year “floodplain” as that term is defined in this rule; and
 - (3) Have no contiguous hydric soil between the wetland and any surface water of the state.
- (U) “Indirect impacts” means effects ~~which~~ that are caused by the project and that occur farther removed in distance from the project outside the jurisdictional limits of the wetland, but are still reasonably foreseeable to have an impact on the wetland. Indirect impacts may include related effects on air and water and other natural systems, including ecosystems, and other adverse environmental impacts that may be a consequence of the project.
- (V) “In-kind” means compensatory mitigation of wetland losses by restoring or creating a ~~forested wetland for a forested wetland and a non-forested wetland for a non-forested wetland~~ wetland of the same hydrogeomorphic and plant community class as defined in this

rule unless out-of-kind compensatory mitigation is specifically approved on a case by case basis.

(W) “Mature forests” means forests where more than fifty per cent of the forest canopy is dominated by large diameter-at-breast- height trees (generally forty-five centimeters (17.7 inches) or greater. In some instances the wetland itself may have few large trees but may be surrounded by a mature forest.

~~(W)~~(X) “Minimization” refers to a step in the alternatives analysis and means that unavoidable impacts are reduced to the maximum extent practicable.

~~(X)~~(Y) “Mitigation bank” means a site where wetlands have been restored, created, enhanced or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation generally in advance of authorizing impacts.

~~(Y)~~(Z) “Mitigation bank service area” ~~means the designated area where a mitigation bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and other aquatic resources.~~ is defined in section 6111.02 of the Revised Code.

~~(Z)~~(AA) “Mitigation ratio” means the rate at which wetland units (e.g., acres) will be restored, created, enhanced or preserved to provide for compensation of unavoidable wetland losses.

~~(AA)~~(BB) “Native species” means a species ~~which that~~, by scientific evidence, was present in Ohio just prior to European exploration and settlement.

~~(BB)~~(CC) “Non-native species” means a species ~~which that~~, by scientific evidence, was not present in Ohio just prior to European exploration and settlement.

~~(CC)~~(DD) “Nuisance organisms” means organisms that are primarily vegetative ~~organisms, that are~~ generally ~~are~~ non-native and have opportunistic growth patterns ~~and~~ that displace more diverse assemblages.

~~(DD)~~ “Off-site mitigation” ~~means wetland restoration, creation, enhancement or preservation occurring farther than one mile from the project boundary but within the same watershed.~~

(EE) “Old-growth forests” means forests characterized by, but not limited to, the following characteristics: overstory canopy trees of great age (exceeding at least fifty per cent of a projected maximum attainable age for a species); little or no evidence of human-caused understory disturbance during the past eighty to one hundred years; an all-aged structure and multilayered canopies; aggregations of canopy trees interspersed with canopy gaps; and significant numbers of standing dead snags and downed logs.

- (FF) ~~“On-site mitigation” means wetland restoration, creation, enhancement or preservation occurring within one mile of the project boundary but within the same watershed.~~
- (FF) “Plant community” means the dominant or codominant plant communities occurring in a wetland. Wetlands characterized by particular types of plant communities include.
- (1) “Swamp forests” are wetlands dominated by tree species which are or will result in a closed canopy forest. Swamp forests can occur in every landscape position and can be variously referred to as bottomland swamp forests, vernal pools, wet woods, and pin oak flats. Some bog communities are also swamp forests.
 - (2) “Shrub swamps” are wetlands dominated by plant species that are shrubs, that result in a closed to open canopy of shrubs species (often less than six meters or twenty feet tall). Shrub swamps can occur in every landscape position and can be variously referred to as buttonbush swamps, alder swamps, vernal pools, or mixed shrub swamps. Some bog and fen communities can also be shrub dominated communities.
 - (3) “Marshes” are wetlands dominated by submersed, floating, or emergent herbaceous or graminoid vegetation, that may include some sedge or grass species but that are not dominated by sedges or grasses.
 - (4) “Wet meadows” are wetlands that are dominated by sedge (cyperaceae) or grass (poaceae) species and include most fens, wet prairies, lake plain sand prairies, prairie sedge meadows, reed canary grass meadows, and other sedge or grass dominated communities.
- (GG) “Practicable” means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall and basic project purposes. For the purposes of this definition:
- (1) “Available” means an alternative ~~which~~ location within or outside the property or project boundary where the wetland is located or an alternative design configuration within the property or project boundary where the wetland is located, that is obtainable for the purpose of the project;
 - (2) “Basic project purpose” means the generic function of the project; and
 - (3) “Overall project purpose” means the basic project purpose plus consideration of costs and technical and logistical feasibility.
- (HH) “Preservation” means protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal mechanisms to prevent harm to the wetland. Preservation may include protection of adjacent upland areas as necessary to

ensure protection of the wetland.

- (II) ~~“Public need” consists of means an activity or project that provides important tangible and intangible gains to society, that satisfies the expressed or observed needs of the public where accrued benefits significantly outweigh reasonably foreseeable detriments~~ all of the following:
- (1) Important tangible or intangible gains to the society of the state of Ohio (purely local gains in the area of the project are not societal gains, although societal gains may also be local gains);
 - (2) Gains that satisfy the expressed or observed needs of the public; and
 - (3) Benefits to society that significantly outweigh the reasonably foreseeable detriments of the activity to the environment including the degradation or destruction of a category 3 wetland.
- (JJ) ~~“Restoration” means the re-establishment of a previously existing wetland at a site where it has ceased to exist. The re-established wetland must be of an equivalent hydrogeomorphic class as the wetland that previously existed as determined by the predominance of hydric soils and other historical information as to previously existing wetland. Re-establishment of hydrologically atypical wetlands (e.g., permanent impoundments, non-natural hydroperiods, wetland types not found in that landscape naturally), or re-establishment of wetlands on non-hydric soils or non-hydric soils with hydric inclusions is defined as wetland “creation” in this rule.~~
- (KK) ~~“State isolated wetland permit” means a permit, issued pursuant to Chapter 6111. of the Revised Code, that authorizes the “discharge of dredged material” or the “discharge of fill material” into an isolated wetland.~~
- ~~(KK)~~(LL) ~~“Substrate” means solid material, such as soil, on or within which organisms can live.~~
- ~~(LL)~~(MM) ~~“Threatened species” means: a native Ohio plant species listed or designated by the Ohio department of natural resources as threatened with extirpation pursuant to section 1518.01 of the Revised Code; or an animal species listed or designated as threatened with statewide extinction by the Ohio department of natural resources pursuant to section 1531.25 of the Revised Code; or a species that appears on the threatened species registry, as defined in rule 3745-1-05 of the Administrative Code; or any plant or animal species that is native to Ohio or that migrates or is otherwise reasonably likely to occur within the state and which that has been listed as threatened pursuant to section 4 of the Endangered Species Act (16 U.S.C.A. U.S.C. 1531 et seq., as amended through July 1, 2005).~~

- (NN) “Upland buffer” means land surrounding the jurisdictional edge of a wetland that consists of natural, upland grassland, shrub, or forest vegetation that is not maintained through mowing, application of herbicide or other means that would result in deleterious effects to either the upland buffer or the adjacent wetland.
- (OO) “Values” means the ecological services that wetlands provide to human society. Examples of wetland values include flood control, nutrient retention and transformation from polluted waters, recreation, and education.
- ~~(MM)~~(PP) “Vernal pools” means shallow, temporarily flooded, depression forested or forest edge wetlands, that are typically dry for most of the summer and fall. These wetlands are generally inundated in the late winter and spring when they are subject to a burst of biological activity, including amphibian breeding. When flooded, vernal pools are often comprised of areas of open water that are not densely vegetated. They also tend to accumulate organic (woody) debris shallow pools that are often seasonally inundated and are usually located within forests. Vernal pools are often sparsely vegetated in the herb layer and can have shrub or tree dominated canopies (swamp forests or shrub swamps). Vernal pools are important amphibian breeding habitats both locally and from a regional meta-population perspective.
- ~~(NN)~~~~(OO)~~ “Watershed” means a common surface drainage area corresponding to one from the list of thirty-seven adapted from the forty-four cataloging units as depicted on the hydrologic unit map of Ohio, U.S. geological survey, 1988, and as described in paragraph (F)(2) of rule 3745-1-54 of the Administrative Code or as otherwise shown on map number 1 found in rule 3745-1-54 of the Administrative Code. Watersheds are limited to those parts of the cataloging units that geographically lie within the borders of the state of Ohio.

Effective:

R.C. 119.032 rule review date: 9/30/2005

Certification

Date

Promulgated Under: 119.03

3745-1-50

9

Statutory Authority: 6111.041, 6111.12

Rule Amplifies: 6111.041, 6111.12

Prior Effective Date: 5/1/1998

For Interested Party Review - February 2006 Draft

3745-1-51 Wetland narrative criteria.

~~[Comment: to the extent the director has specific authority under Chapter 6111. of the Revised Code, including sections 6111.03 and 6111.041 of the Revised Code, the criteria specified in this rule are applicable to the maintenance or enhancement of wetland functions. Such authority includes the issuance of certifications under section 401 of the Clean Water Act, 33 U.S.C. section 1341 (effective December 27, 1977), and Chapter 3745-32 of the Administrative Code, the issuance of NPDES permits under section 402 of the Clean Water Act, 33 U.S.C. section 1342 (effective December 21, 2000), and Chapter 3745-33 of the Administrative Code, and the issuance of permits and plan approvals under Chapter 3745-42 of the Administrative Code and sections 6111.44 and 6111.45 of the Revised Code.]~~

~~In The following narrative criteria, in addition to the criteria listed in rule 3745-1-04 of the Administrative Code shall apply to wetlands, to every extent practicable and possible as determined by the director in accordance with sections 6111.03, 6111.04, 6111.041, and 6111.12 of the Revised Code, and except as authorized in accordance with rule 3745-1-54 of the Administrative Code, the following narrative criteria shall apply to wetlands.~~

- (A) The hydrology necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent significant adverse impacts on:
- (1) Water currents, erosion or sedimentation patterns;
 - (2) Natural water temperature variations;
 - (3) Chemical, nutrient and dissolved oxygen regimes of the wetland;
 - (4) The movement of aquatic fauna;
 - (5) The pH of the wetland; ~~and~~
 - (6) Water levels or elevations, including those resulting from ground water recharge and discharge; and
 - (7) Integrity of natural plant communities.
- (B) Water quality.
- (1) Water quality necessary to support existing habitats and the populations of wetland flora and fauna shall be protected to prevent significant adverse impacts on:
 - (a) Food supplies for fish and wildlife;

- (b) Reproductive and nursery areas; ~~and~~
 - (c) Dispersal corridors, as that term is defined in rule 3745-1-50 of the Administrative Code; and
 - (d) Vegetation for faunal shelter.
- (2) Water quality shall be protected to prevent conditions conducive to the establishment or proliferation of nuisance organisms, as that term is defined in rule 3745-1-50 of the Administrative Code.
- (C) Conditions shall not occur that will have a significant adverse impact on the ability of the wetland to be used for wetland-dependent recreational opportunities in or on the water.

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For Interested Party Review - February 2006 Draft

3745-1-52 **Numeric chemical criteria for waste water discharges to wetlands.**

- (A) Default criteria. For the purposes of establishing waste water discharge permit limits for waste water discharges to wetlands pursuant to Chapter 6111. of the Revised Code, numeric chemical criteria associated with the “warmwater aquatic life habitat” use designation, as specified in this chapter of the ~~Administrative Code~~, shall apply at the “end of pipe.”
- (B) Alternate criteria. The applicant may submit a request, in writing, to the director to use alternate criteria. The applicant shall include sufficient information and analysis for the director to make the determination in paragraph (C) of this rule and may include, but is not limited to, submission and analysis of previously collected data, discussion and review of applicable scientific literature, ecological monitoring, collection of data on hydrologic characteristics, vegetation communities and soils, an assessment using an appropriate wetland evaluation method acceptable to the director including wetland indices of biotic integrity, and post-approval monitoring.
- (C) The director may approve the request if ~~the use of alternative criteria is deemed not to be injurious to the wetland’s designated use and assigned category, as specified in rule 3745-1-54 of the Administrative Code;~~ the applicant demonstrates the following:
- (1) The alternative criteria will not result in a violation of the narrative criteria in rule 3745-1-51 of the Administrative Code; and
 - (2) The alternative criteria will not degrade or change the wetland’s use and assigned category as specified in rules 3745-1-51 and 3745-1-54 of the Administrative Code.

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3745-1-52

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Rule Amplifies: 6111.041, 6111.12

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For Interested Party Review - February 2006 Draft

3745-1-53 Wetland use designation.

- (A) All surface waters of the state of Ohio ~~which that~~ meet the definition of a wetland in rule 3745-1-02 of the Administrative Code are assigned the wetland ~~designated~~ use.
- (B) Wetland classification use. All wetlands are assigned a wetland classification use based on the landscape position (hydrogeomorphic or HGM class) and dominant vegetation of the wetland. Wetland classification uses are listed in tables 1a and 1b of this rule.
- (C) Wetland tiered aquatic life use (WTALU) designations. The following tiered aquatic life use designations are specified for wetlands.
- (1) Superior wetland habitat (SWLH) - wetlands that are capable of supporting and maintaining a high quality community with species composition, diversity, and functional organization comparable to a wetland index of biotic integrity (IBI) score of at least eighty-three per cent (five-sixths) of the ninety-fifth percentile for the appropriate wetland type and region as specified in table 2a (vegetation IBI) or 2b (amphibian IBI) of this rule.
 - (2) Wetland habitat (WLH) - wetlands that are capable of supporting and maintaining a balanced, integrated, adaptive community having a species composition, diversity, and functional organization comparable to a wetland IBI score of at least sixty-six per cent (two-thirds) of the ninety-fifth percentile for the appropriate wetland type and region as specified in table 2a (vegetation IBI) or 2b (amphibian IBI) of this rule.
 - (3) Restorable wetland habitat (RWLH) - wetlands that are degraded but have a reasonable potential for regaining the capability of supporting and maintaining a balanced, integrated, adaptive community having a species composition, diversity, and functional organization comparable to a wetland IBI score of at least thirty-three per cent (one-third) of the ninety-fifth percentile for the appropriate wetland type and region as specified in table 2a (vegetation IBI) or 2b (amphibian IBI) of this rule.
 - (4) Limited quality wetland habitat (LQWLH) - wetlands that are seriously degraded and that do not have a reasonable potential for regaining the capability of supporting and maintaining a balanced, integrated, adaptive community having a species composition, diversity, and functional organization comparable to a wetland IBI score of less than thirty-three per cent (one-third) of the ninety-fifth percentile for the appropriate wetland type and region as specified in table 2a (vegetation IBI) or 2b (amphibian IBI) of this rule.
- (D) Equivalency to wetland antidegradation categories.
- (1) Wetlands with the SWLH aquatic life use are category 3 wetlands in accordance with

- rule 3745-1-54 of the Administrative Code. Wetlands that are category 3 wetlands pursuant to rule 3745-1-54 of the Administrative Code only because they support one or more superior functions or values but that have had their ecological condition degraded may or may not have the SWLH aquatic life use. For the purposes of determining attainment of water quality goals under the Clean Water Act (33 U.S.C. 1251 et seq., as amended through July 1, 2005) and performance standards for restoration or creation of wetlands, WLH is the minimum aquatic life use that shall be attained unless attainment of SWLH is otherwise required by the director.
- (2) Wetlands with the WLH aquatic life use are category 2 wetlands in accordance with rule 3745-1-54 of the Administrative Code. Wetlands that are category 2 wetlands pursuant to rule 3745-1-54 of the Administrative Code only because they support one or more moderate functions or values but that have had their ecological condition degraded may or may not have the WLH aquatic life use.
 - (3) Wetlands with the RWLH aquatic life use are category 2 wetlands in accordance with rule 3745-1-54 of the Administrative Code.
 - (4) Wetlands with the LQWLH aquatic life use are category 1 wetlands in accordance with rule 3745-1-54 of the Administrative Code.
- (E) Special wetland use designations. In addition to aquatic life uses, wetlands may provide specific functions or values that are special wetland uses as listed in this paragraph.
- (1) Recreation - wetlands with known, publicly available recreational uses including hunting, fishing, and birdwatching.
 - (2) Education - wetlands with known educational uses (e.g., nature centers or schools).
 - (3) Fish reproduction habitat - wetlands that provide important reproductive habitat for fish.
 - (4) Threatened or endangered species habitat - wetlands that provide known habitat for federal or state endangered or threatened species.
 - (5) Flood storage - wetlands located in landscape positions such that they have substantial flood storage functions at the local or regional level.
 - (6) Water quality improvement - wetlands that are located in landscape positions such that they can perform water quality improvement functions for other waters of the state.

[Comment: using tables 1a, 1b, 2a, and 3, a WTALU can be assigned as described in the following example. The wetland being evaluated is a pumpkin ash (*Fraxinus profunda*) swamp in Fowler Woods state nature preserve. This is a swamp forest in a depressional landscape position. After a detailed vegetation survey, a vegetation IBI score of seventy-six is calculated. Referring to tables

1a and 1b of this rule, this wetland is classified as “depression/swamp forest” and receives the use code “IA1a.” Referring to table 2a, a vegetation IBI score of seventy-six is in the SWLH (superior wetland habitat) use range. Finally, table 3 is consulted and it is determined that the wetland has educational uses as a state nature preserve that is open to the public. The wetland aquatic life use designation can then summarized as, “SWLH-IA1a_b,” where SWLH = superior wetland habitat, IA1a = surface water depression swamp forest, and the subscript b = a special use of “educational.”]

Table 1a. Hydrogeomorphic classes for wetland classification system for Ohio wetlands.

Class	Class modifiers
I <u>Depression (includes areas that could be considered flats (e.g., “wet woods”))</u>	(A) <u>Surface water (sheet flow, precipitation)</u> (B) <u>Ground water (seasonal to permanent input)</u>
II <u>Impoundment</u>	(A) <u>Beaver</u> (B) <u>Human</u>
III <u>Riverine</u>	(A) <u>Headwater depression (1st or 2nd order)</u> (B) <u>Mainstem depression (3rd order or larger)</u> (C) <u>Channel</u>
IV <u>Slope (includes hillside fens, mound fens, and lacustrine fens)</u>	(A) <u>Headwater (1st or 2nd order)</u> (B) <u>Mainstem (3rd order or larger)</u> (C) <u>Isolated</u> (D) <u>Fringing</u>
V <u>Fringing (does not include lacustrine fens)</u>	(A) <u>Reservoir</u> (B) <u>Natural lake</u>
VI <u>Coastal</u>	(A) <u>Open embayment</u> (B) <u>Closed embayment</u> (C) <u>Barrier-protected</u> (D) <u>River mouth</u> (E) <u>Diked - managed</u> (F) <u>Diked - unmanaged</u> (G) <u>Diked - failed</u>
VII <u>Bog</u>	(A) <u>Strongly ombrotrophic</u> (B) <u>Moderately ombrotrophic</u> (C) <u>Weakly ombrotrophic</u>
add code <u>Mitigation</u>	Add appropriate pre-code to HGM class: <u>mr - mitigation, restoration</u> <u>mc - mitigation, creation</u> e.g. “mrII” = <u>mitigation, restoration, impoundment</u>

Table 1b. Plant community modifiers for wetland classification system for Ohio wetlands.

(1) <u>Forest</u>	(2) <u>Emergent</u>	(3) <u>Shrub</u>
(a) <u>Swamp forest. Includes all types of forested wetlands other than bog forests and forest seeps including but not limited to oak-maple, oak-maple-ash, maple-ash, pin oak, ash, pumpkin ash, mixed forest, red maple, white pine, cottonwood, and river birch.</u>	(a) <u>Marsh. Includes submergent marsh, floating-leaved marsh, mixed emergent marsh, and cattail marsh.</u>	(a) <u>Shrub swamp. Includes buttonbush swamp, alder swamp, mixed shrub swamp, and other shrub dominated wetlands.</u>
(b) <u>Bog Forest. Includes tamarack bog and tamarack-hardwood bog forests.</u>	(b) <u>Wet meadow. Includes wet prairie, lake plains (oak openings) sand prairie, prairie sedge meadow, fen, reed canary grass meadow, and other sedge or grass dominated wetlands.</u>	(b) <u>Bog shrub swamp. Includes tall shrub bog and leatherleaf bog.</u>
(c) <u>Forest seep. Includes forested skunk cabbage seeps, forested sedge seeps, and forested skunk cabbage-sedge seeps, and other forested wetlands with groundwater hydrologies.</u>	(c) <u>Sphagnum bog. Includes open kettle bogs with scattered shrubs, classic ringed bogs with open water centers and perimeters of shrubs and tamarack.</u>	(c) <u>Tall shrub fen.</u>

Table 2a. Vegetation index of biotic integrity (IBI) scores for wetland tiered aquatic life uses (WTALUs), and specific plant communities and landscape positions. TBD = to be developed. LQWLH = limited quality wetland habitat. RWLH = restorable wetland habitat. WLH = wetland habitat. SWLH = superior wetland habitat. Equivalent antidegradation categories as specified in rule 3745-1-54 of the Administrative Code are indicated in parentheses below the WTALU category.

<u>HGM class</u>	<u>HGM subclass</u>	<u>Plant community</u>	<u>Ecoregion</u>	<u>LQWLH</u> <u>(category 1)</u>	<u>RWLH</u> <u>(modified</u> <u>category 2)</u>	<u>WLH</u> <u>(category 2)</u>	<u>SWLH</u> <u>(category 3)</u>
<u>Depression</u>	<u>All</u>	<u>Swamp forest, marsh,</u> <u>shrub swamp</u>	<u>EOLP</u>	<u>0 - 30</u>	<u>31 - 60</u>	<u>61 - 75</u>	<u>76 - 100</u>
			<u>All others</u>	<u>0 - 24</u>	<u>25 - 50</u>	<u>51 - 62</u>	<u>63 - 100</u>
	<u>All</u>	<u>Wet meadow (non-</u> <u>slope sedge/grass</u> <u>community)</u>	<u>All</u>	<u>0 - 29</u>	<u>30 - 59</u>	<u>60 - 75</u>	<u>76 - 100</u>
<u>Impoundment</u>	<u>All</u>	<u>Marsh, shrub swamp</u>	<u>EOLP</u>	<u>0 - 26</u>	<u>27 - 52</u>	<u>53 - 66</u>	<u>67 - 100</u>
			<u>All others</u>	<u>0 - 24</u>	<u>25 - 47</u>	<u>48 - 63</u>	<u>64 - 100</u>
		<u>Wet meadow (non-</u> <u>slope sedge/grass</u> <u>community)</u>	<u>All</u>	<u>0 - 29</u>	<u>30 - 59</u>	<u>60 - 75</u>	<u>76 - 100</u>
<u>Riverine</u>	<u>Headwater</u>	<u>All</u>	<u>EOLP</u>	<u>0 - 27</u>	<u>28 - 56</u>	<u>57 - 69</u>	<u>70 - 100</u>
			<u>All others</u>	<u>0 - 23</u>	<u>24 - 47</u>	<u>48 - 59</u>	<u>60 - 100</u>
	<u>Mainstem</u>	<u>All</u>	<u>EOLP</u>	<u>0 - 29</u>	<u>30 - 56</u>	<u>57 - 73</u>	<u>74 - 100</u>
			<u>All others</u>	<u>0 - 20</u>	<u>21 - 41</u>	<u>42 - 52</u>	<u>53 - 100</u>
	<u>Headwater or</u> <u>mainstem</u>	<u>Wet meadow (non-</u> <u>slope sedge/grass</u> <u>community)</u>	<u>All</u>	<u>0 - 29</u>	<u>30 - 59</u>	<u>60 - 75</u>	<u>76 - 100</u>

<u>HGM class</u>	<u>HGM subclass</u>	<u>Plant community</u>	<u>Ecoregion</u>	<u>LQWLH</u> (category 1)	<u>RWLH</u> (modified category 2)	<u>WLH</u> (category 2)	<u>SWLH</u> (category 3)
<u>Slope</u>	<u>All</u>	<u>Wet meadow (fens), tall shrub fen, forest seep</u>	<u>All</u>	<u>0 - 29</u>	<u>30 - 59</u>	<u>60 - 75</u>	<u>76 - 100</u>
<u>Fringing¹</u>	<u>Natural lakes (excluding lacustrine fens) and reservoirs</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>
<u>Coastal²</u>	<u>Closed embayment, barrier-protected, river mouth</u>	<u>All</u>	<u>All</u>	<u>0 - 24</u>	<u>25 - 49</u>	<u>50 - 61</u>	<u>62 - 100</u>
	<u>open embayment, diked (managed unmanaged failed)</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>
<u>Bog</u>	<u>Weakly ombrotrophic</u>	<u>Tamarack-hardwood bog, tall shrub bog</u>	<u>All</u>	<u>0 - 32</u>	<u>33 - 65</u>	<u>66 - 82</u>	<u>83 - 100</u>
	<u>moderate-strongly ombrotrophic</u>	<u>Tamarack forest, leatherleaf/sphagnum bog</u>	<u>All</u>	<u>0 - 23</u>	<u>24 - 47</u>	<u>48 - 59</u>	<u>60 - 100</u>

1. Depending on the circumstances, scoring breaks for depression, impoundment, or riverine may be used.
2. Scoring breaks for coastal embayment, barrier-protected, and river mouth may be usable.

Table 2b. Tiered aquatic life uses based on amphibian index of biotic integrity (IBI) scores.

<u>Aquatic life use</u>	<u>Amphibian IBI score</u>
<u>Limited wetland habitat (LWLH)</u>	<u><10</u>
<u>Restorable wetland habitat (RWLH)</u>	<u>10 - 19</u>
<u>Wetland habitat (WLH)</u>	<u>20 - 39</u>
<u>Superior wetland habitat (SWLH)</u>	<u>40 - 50</u>

Table 3. Special wetland use designations.

<u>Subscript</u>	<u>Special uses</u>	<u>Description</u>
<u>A</u>	<u>Recreation</u>	<u>Wetlands with known recreational uses including hunting, fishing, birdwatching, etc. that are publicly available</u>
<u>B</u>	<u>Education</u>	<u>Wetlands with known educational uses, e.g. nature centers, schools, etc.</u>
<u>C</u>	<u>Fish reproduction habitat</u>	<u>Wetlands that provide important reproductive habitat for fish</u>
<u>D</u>	<u>Bird habitat</u>	<u>Wetlands that provide important breeding and nonbreeding habitat for birds</u>
<u>E</u>	<u>Threatened or endangered species habitat</u>	<u>Wetlands that provide habitat for federal or state endangered or threatened species</u>
<u>F</u>	<u>Flood storage</u>	<u>Wetlands located in landscape positions such that they have flood retention functions</u>
<u>G</u>	<u>Water quality improvement</u>	<u>Wetlands located in landscape positions such that they can perform water quality improvement functions for streams, lakes, or other wetlands</u>

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3745-1-54 **Wetland antidegradation.**

(A) Applicability.

[Comment: the demonstrations and analysis required by this rule will generally occur in the context of an application for a permit to install or plan approval, a section 401 water quality certification, or an Ohio NPDES permit pursuant to Chapter 3745-42, 3745-32, or 3745-33 of the Administrative Code.]

The provisions requirements in this rule apply in addition to the provisions requirements in rule rules 3745-1-05 and 3745-33-05 of the Administrative Code.

(B) General antidegradation requirements.

(1) Protection of wetland uses. ~~The wetland designated use~~ Existing and designated uses of wetlands shall be maintained and protected such that degradation of surface waters through direct, indirect, or cumulative impacts does not result in the net loss of wetland acreage, quality or functions in accordance with ~~paragraphs (D) and (E) of this rule~~ this rule and rule 3745-1-55 of the Administrative Code.

(2)

~~(a) Each wetland shall be assigned a category by Ohio EPA for the purposes of reviews of projects pursuant to this rule:~~

~~(i) A category will be assigned based on the wetland's relative functions and values, sensitivity to disturbance, rarity, and potential to be adequately compensated for by wetland mitigation:~~

~~(ii) In assigning a wetland category, the director will consider the results of an appropriate wetland evaluation method(s) acceptable to the director, and other information necessary in order to fully assess the wetland's functions and values:~~

~~(iii) Wetland antidegradation categories, and the requirements for an antidegradation review for wetlands in each category, are outlined in paragraphs (C), (D) and (E) of this rule:~~

~~(b) The functions of a wetland may include, but are not limited to, the following:~~

~~(i) Ground water exchange, including the discharge and recharge of ground water;~~

- ~~(ii) Nutrient removal and/or transformation;~~
- ~~(iii) Sediment and/or contaminant retention;~~
- ~~(iv) Water storage;~~
- ~~(v) Sediment stabilization;~~
- ~~(vi) Shoreline stabilization;~~
- ~~(vii) Maintenance of biodiversity, as that term is defined in rule 3745-1-50 of the Administrative Code;~~
- ~~(viii) Recreation;~~
- ~~(ix) Education and research; and~~
- ~~(x) Habitat for threatened or endangered species.~~

~~(3)(2)~~ The director may consider the regional significance of the ~~function(s)~~ functions a wetland performs (e.g., wetlands recognized as providing important hydrological functions in watershed management plans) when determining whether degradation of the wetland can be authorized.

~~(4)(3)~~ Threatened or endangered species.

~~(a) The applicant shall provide Ohio EPA with written comments from both the Ohio department of natural resources and the United States fish and wildlife service, regarding threatened and endangered species, including the presence or absence of critical habitat, for all wetlands under review~~

~~(b) In making determinations regarding the lowering of water quality in wetlands ~~which~~ that contain critical habitat for threatened or endangered species, or either the permanent or seasonal presence of a threatened or endangered species, the director shall consider the anticipated impact of the proposed lowering of water quality on the threatened or endangered species.~~

~~(5)(4)~~ Indirect impacts. In making determinations regarding the lowering of water quality in a wetland, the director may take into consideration other environmental impacts that may be a consequence of approving the request.

~~(6)(5)~~ Wetlands impacted without prior authorization.

~~(a) Where a wetland has been degraded or destroyed without prior authorization, the~~

wetland will be considered a category 3 wetland, unless the applicant demonstrates that a lower category is appropriate based on other information including, but not limited to, adjacent vegetation, aerial photographs, U.S. fish and wildlife service national wetland inventory maps, Ohio wetland inventory maps, public information, on-site inspections, previous site descriptions, and soil maps.

- (b) The director may consider other information in determining whether a lower category is appropriate.
- (c) When reviewing applications for discharges to wetlands ~~which~~ that have occurred without prior authorization, the fact that the discharge has already occurred shall have no bearing on the decision of whether to allow lower water quality. Ohio EPA shall review the impacts based on pre-discharge conditions.
- (d) The director may require compensatory mitigation, if approved in accordance with other provisions of this rule, at the same mitigation ratios as required for impacts to category 3 wetlands, as indicated in ~~paragraph (F)(1) of this rule~~ 3745-1-55 of the Administrative Code.
- (e) Nothing in paragraph (B)(5) of this rule relieves any person from liability for degrading or destroying a wetland without prior authorization or in violation of any applicable laws.

(C) Wetland categories.

(1) Wetlands assigned to category 1

- (a) Wetlands assigned to category 1 support minimal wildlife habitat, and minimal hydrological and recreational functions as determined by an appropriate wetland evaluation methodology acceptable to the director. Wetlands assigned to category 1 do not provide critical habitat for threatened or endangered species or contain rare, threatened or endangered species.
- (b) Wetlands assigned to category 1 may be typified by some or all of the following characteristics: hydrologic isolation, low species diversity, a predominance of non-native species (greater than fifty per cent areal cover for vegetative species), no significant habitat or wildlife use, and limited potential to achieve beneficial wetland functions.
- (c) Wetlands assigned to category 1 may include, but are not limited to, wetlands that are acidic ponds created or excavated on mined lands without a connection to other surface waters throughout the year and that have little or no vegetation and wetlands that are hydrologically isolated and comprised of vegetation that is dominated (greater than eighty per cent areal cover) by species including, but not

limited to: *Lythrum salicaria*; *Phalaris arundinacea*; and *Phragmites australis*.

- (2) Wetlands assigned to category 2.
 - (a) Wetlands assigned to category 2 support moderate wildlife habitat, or hydrological or recreational functions as determined by an appropriate wetland evaluation methodology acceptable to the director or his authorized representative.
 - (b) Wetlands assigned to category 2 may include, but are not limited to: wetlands dominated by native species but generally without the presence of, or habitat for, rare, threatened or endangered species; and wetlands which are degraded but have a reasonable potential for reestablishing lost wetland functions.
- (3) Wetlands assigned to category 3
 - (a) Wetlands assigned to category 3 support superior habitat, or hydrological or recreational functions as determined by an appropriate wetland evaluation methodology acceptable to the director or his authorized representative.
 - (b) Wetlands assigned to category 3 may be typified by some or all of the following characteristics: high levels of diversity, a high proportion of native species, or high functional values.
 - (c) Wetlands assigned to category 3 may include, but are not limited to: wetlands which contain or provide habitat for threatened or endangered species; high quality forested wetlands, including old growth forested wetlands, and mature forested riparian wetlands; vernal pools; and wetlands which are scarce regionally and/or statewide including, but not limited to, bogs and fens.
- (4) In addition to assigning a wetland a category pursuant to this rule, the director may designate a wetland which has national ecological or recreational significance as an outstanding national resource water pursuant to rule 3745-1-05 of the Administrative Code. Requests to undertake activities which will result in short-term disturbances to water quality in wetlands which are designated as outstanding national resource waters shall be evaluated in accordance with rule 3745-1-05 of the Administrative Code.

(D) Procedure for determining wetland antidegradation categories.

- (1) General requirements. An antidegradation category will be assigned based on the wetland's quality, functions and values, sensitivity to disturbance, rarity, and potential to be adequately compensated for by wetland mitigation.
- (2) In assigning an antidegradation category, the director will consider the results of an appropriate wetland evaluation method acceptable to the director, and other information

necessary to fully assess the wetland's quality, functions, sensitivity to disturbance, rarity, potential to be adequately compensated for by mitigation, and values. Appropriate wetland evaluation methods include indices of biotic integrity and condition-based rapid wetland assessment methods.

- (3) In addition to assigning a wetland an antidegradation category pursuant to this rule, the director may categorize a wetland that has national ecological or recreational significance as an outstanding national resource water pursuant to rule 3745-1-05 of the Administrative Code. Requests to undertake activities that will result in short-term disturbances to water quality in wetlands categorized as outstanding national resource water shall be evaluated in accordance with rule 3745-1-05 of the Administrative Code.

~~(D)~~(E) Wetland Alternatives analysis. Antidegradation protections for Ohio wetlands shall be implemented by a sequenced alternatives analysis review. The review shall consist of an examination, in the following order, of avoidance, minimization, and compensatory mitigation, social and economic justification and, in the case of category 3 wetlands, public need determination.

(1) ~~Alternatives analysis:~~

- (a) ~~Category 1 wetlands. The wetland designated use shall be maintained and protected for wetlands assigned to category 1 unless the applicant demonstrates, to the satisfaction of the director the following:~~
- (a) ~~(i) Avoidance. There is no practicable alternative which would have less or no adverse impact on the wetland ecosystem; and~~
- (b) ~~(ii) Minimization. Storm water and water quality controls will be installed in accordance with paragraph ~~(D)~~(3) (E)(4) of this rule and adequate buffers have been provided on avoided category 2 and category 3 wetlands on the site; and~~
- (c) ~~(iii) The impact would not result in significant degradation to the aquatic ecosystem, as determined consistent with 40 CFR part 230.10(c) (45 FR 85336, December 24, 1980); and~~
- (d) ~~(iv) Compensatory mitigation. The wetland designated use is replaced by a category 2 or category 3 wetland in accordance with paragraph (E) of this rule 3745-1-55 of the Administrative Code.~~
- (2) ~~(b) Category 2 and category 3 wetlands. The wetland designated use shall be maintained and protected for wetlands assigned to category 2 or category 3, and no lowering of water quality shall be allowed, unless the applicant demonstrates to the satisfaction of the director the following:~~

- (a) (i) Avoidance. There is no practicable alternative, based on technical, social and economic criteria, ~~which that~~ would have less or no adverse impact on the wetland ecosystem, so long as the alternative does not have other significant adverse environmental impacts as determined through an off-site and on-site alternatives analysis. Less damaging upland alternatives are presumed to be available for category 2 and category 3 wetlands, unless clearly demonstrated otherwise; and
- (b) (ii) Minimization. Appropriate and practicable steps have been taken to minimize potential adverse impacts on the wetland ecosystem. ~~For category 2 wetlands, the~~ The applicant shall minimize all potential adverse impacts foreseeable caused by the project and each application shall include an evaluation of the following:
- (i) ~~(a)~~ The spatial requirements of the project;
 - (ii) ~~(b)~~ The location of existing structural or natural features that may dictate the placement or configuration of the proposed project;
 - (iii) ~~(c)~~ The overall and basic purpose of the project and how the purpose relates to the placement, configuration or density of the project;
 - (iv) ~~(d)~~ The sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing flora and fauna; and
 - (v) ~~(e)~~ Direct and indirect cumulative impacts; and
- (c) (iii) The lowering of water quality is necessary to accommodate important social or economic development in the area in which the water body is located; and
- (d) (iv) Storm water and water quality controls will be installed in accordance with paragraph ~~(D)(3)~~ (E)(4) of this rule and adequate buffers have been provided on avoided category 2 and category 3 wetlands on the site; and
- (e) (v) Compensatory mitigation. ~~The~~ In the case of impacts to a category 2 wetland, the wetland designated use is replaced by a category 2 wetland, of equal or higher quality, or a category 3 wetland in accordance with paragraph (E) of this rule 3745-1-55 of the Administrative Code. In the case of impacts to a category 3 wetland, the wetland designated use is replaced by a category 3 wetland in accordance rule 3745-1-55 of the Administrative Code. For projects which are linear projects, the designated use is replaced by a category 2 wetland, of equal or higher quality, or a category 3 wetland and the mitigation may take place in accordance with

paragraph (D)(2) of this rule:

- (3) (c) Category 3 wetlands. In addition to the requirements specified in paragraph (E)(2) of this rule, the proposed activity is necessary to meet a demonstrated public need, as defined in rule 3745-1-50 of the Administrative Code. For the purposes of this rule, “necessary” is defined as absolutely required or indispensable, such that the public need could not be achieved by any other means. The wetland designated use shall be maintained and protected in wetlands assigned to category 3, and no lowering of water quality shall be allowed, unless it is demonstrated to the satisfaction of the director that:
- (i) ~~Avoidance. There is no practicable alternative, based on technical, social and economic criteria, which would have less adverse impact on the wetland ecosystem, so long as the alternative does not have other significant adverse environmental impacts as determined through an off-site and on-site alternatives analysis. Less damaging upland alternatives are presumed to be available for category 3 wetlands, unless clearly demonstrated otherwise; and~~
 - (ii) ~~Minimization. Appropriate and practicable steps have been taken to minimize potential adverse impacts on the wetland ecosystem. For category 3 wetlands, the applicant shall minimize all potential adverse impacts foreseeable caused by the project and each application shall include an evaluation of:~~
 - (a) ~~The spatial requirements of the project;~~
 - (b) ~~The location of existing structural or natural features that may dictate the placement or configuration of the proposed project;~~
 - (c) ~~The overall and basic purpose of the project and how the purpose relates to the placement, configuration or density of the project;~~
 - (d) ~~The sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing flora and fauna;~~
 - (e) ~~Direct and in-direct impacts; and~~
 - (iii) ~~The proposed activity is necessary to meet a demonstrated public need, as defined in rule 3745-1-50 of the Administrative Code; and~~
 - (iv) ~~The lowering of water quality is necessary to accommodate important social or economic development in the area in which the water body is located; and~~

- (v) Storm water and water quality controls will be installed in accordance with paragraph (D)(3) of this rule; and
 - (vi) The wetland is not scarce regionally and/or statewide, or if the wetland is scarce, the project will cause only a short-term disturbance of water quality that will not cause long-term detrimental effects; and
 - (vii) Compensatory mitigation. The designated use is replaced by a category 3 wetland, of equal or higher quality, in accordance with paragraph (E) of this rule. For projects which are linear projects, the designated use is replaced by a category 3 wetland, of equal or higher quality, and the mitigation may take place in accordance with paragraph (D)(2) of this rule.
- (2) Compensatory mitigation for linear projects (e.g., highways) in wetlands, as allowed by paragraphs (D)(1)(b)(v) and (D)(1)(c)(vii) of this rule, may be mitigated for by the following, in descending order of practicability:
- (a) In accordance with paragraph (E) of this rule; or
 - (b) Wetland impacts associated with a linear project may be mitigated at a single mitigation location or wetland mitigation bank, acceptable to the director, within each watershed in which such impacts occur; or
 - (c) If no wetland mitigation bank acceptable to the director is located within the watershed in which the impact occurs, then mitigation may occur in another watershed impacted by the linear project; at a single mitigation location, or a wetland mitigation bank, acceptable to the director; or
 - (d) If no wetland mitigation bank occurs within any of the watersheds connected with the linear project, then mitigation may occur within the watershed in which the largest impacts (in terms of area) occur.
- (3)(4) Appropriate storm water control measures shall be installed to ensure that peak post-development rates of surface water runoff from the impacted wetland site do not exceed the peak pre-development rates of runoff from the on-site wetlands, for all categories of wetlands. Water quality improvement measures shall be incorporated into the design of the storm water control measures to the maximum extent practicable. Examples of these measures include, but are not limited to, incorporating vegetated areas in the storm water control plans.
- (E) Compensatory mitigation ratio, replacement category, and mitigation location requirements: Compensatory mitigation ratio, replacement category, and mitigation location requirements for antidegradation categories 1 to 3 are listed in the table 1 of this rule. Options for mitigation projects which may be acceptable to the director are described in paragraphs (E)(3) to (E)(6)

of this rule:

- (1) ~~When compensatory mitigation is approved:~~
 - (a) ~~For category 2 wetlands and category 3 wetlands, if compensatory mitigation is to be off-site, the applicant shall demonstrate the impracticability of mitigating on-site.~~
 - (b) ~~Compensatory mitigation shall be in-kind unless there is a compelling ecological reason that it should not be.~~
 - (c) ~~The mitigation location shall be as defined in paragraph (F) of this rule unless the applicant demonstrates:~~
 - (i) ~~The mitigation is located at a mitigation bank, acceptable to the director, and the wetland which is proposed to be impacted is within the mitigation service area for the mitigation bank, and the director determines that mitigation at the mitigation bank is acceptable; or~~
 - (ii) ~~There is a significant ecological reason that the mitigation location should not be limited to the mitigation location specified in table 1 and the proposed mitigation will result in a substantially greater ecological benefit. Generally, if compensatory mitigation is approved to occur outside of the watershed specified in paragraph (F) of this rule, it shall be located in a watershed which is adjacent to the watershed where the impact is proposed to occur, or has occurred.~~
 - (d) ~~Restoration or creation of wetlands as the sole component of compensatory mitigation shall be in accordance with the ratios and other provisions in paragraph (F) of this rule.~~
 - (e) ~~The director shall require the applicant to conduct ecological monitoring of the compensatory mitigation project and submit annual reports detailing the results of the ecological monitoring for a period of at least five years following construction of the compensatory mitigation. The ecological monitoring may include, but is not limited to, collection of data on hydrologic characteristics, vegetation communities and soils at the compensatory mitigation site and conducting an assessment of the compensatory mitigation wetlands using an appropriate wetland evaluation method acceptable to the director. The director may reduce or increase the number of years for which ecological monitoring is required to be conducted based on the effectiveness of the compensatory mitigation project.~~
 - (f) ~~The applicant must demonstrate that the compensatory mitigation site will be protected in perpetuity and that appropriate management measures are, or will be,~~

in place to restrict harmful activities that may jeopardize the mitigation wetland:

- (2) ~~Wetland restoration shall be the form of compensatory mitigation unless it can be demonstrated by the applicant that wetland restoration is impracticable. Alternative compensatory mitigation options include wetland creation, and wetland enhancement. These and other alternative compensatory mitigation options, including preservation of high quality wetlands and non-wetland buffers adjacent to wetlands assigned to category 2 or category 3 which have been avoided in accordance with other provisions of this rule, may be considered on a case-by-case basis.~~
- (3) ~~Restoration or creation of wetlands as compensatory mitigation shall replace the impacted wetland with an equivalent or higher quality wetland.~~
- (4) ~~Wetland enhancement:~~
 - (a) ~~Wetland enhancement may be a component of acceptable compensatory mitigation. In determining the acceptability of wetlands enhancement as compensatory mitigation, the director shall consider the extent to which the enhancement activities will improve or repair the existing or natural functions and values of the wetland.~~
 - (b) ~~Wetland enhancement will be considered most favorably as a component of compensatory mitigation when it is located adjacent to a wetlands restoration project.~~
 - (c) ~~When wetland enhancement is a component of acceptable compensatory mitigation, wetlands restoration or creation must also be a component of the compensatory mitigation and shall result in at least one acre of restored or created wetland for each acre of wetland that is impacted. Wetland enhancement must occur at a rate of at least two acres of wetland enhancement for every remaining acre of the compensatory wetland mitigation requirement. The wetland enhancement requirement can be calculated using the following equation:~~

$$E = [(LMR - 1) \times 2] \times N; \text{ where}$$

E = minimum number of acres of wetlands required to be enhanced;

LMR = left side of mitigation ratio, from the wetland mitigation table of paragraph (F)(1) of this rule; and

N = number of acres of impacted wetlands.

For example, if the required mitigation ratio is 3:1 for an impact to two acres of wetland, an acceptable mitigation plan may include at least two acres of restored

or created wetlands and at least eight acres of enhanced wetlands.

(5) ~~Wetland preservation:~~

(a) ~~The director may, in exceptional circumstances, consider wetland preservation, as defined in rule 3745-1-50 of the Administrative Code, for mitigation if the applicant can demonstrate the following:~~

(i) ~~The wetland to be preserved is a category 3 wetland which will be preserved in perpetuity, or the wetland to be preserved is pivotal in protecting a category 3 wetland and both wetlands will be preserved in perpetuity; and~~

(ii) ~~There is concurrence with the decision to accept the wetland to be preserved for mitigation purposes by the Ohio department of natural resources, and other environmental resource agencies the director deems necessary; and~~

(iii) ~~The wetland to be preserved for mitigation purposes should have important habitat and/or water quality characteristics which are imminently threatened; and~~

(iv) ~~The wetland to be preserved for mitigation purposes shall be decided to a responsible party for management and/or enhancement in accordance with a plan approved by the director; and~~

(v) ~~Purchase and transfer of the deed for the wetland to be preserved for mitigation purposes shall occur prior to any filling of wetlands at the project site.~~

(b) ~~When preservation is a component of acceptable compensatory mitigation, wetlands restoration or creation must also be a component of the mitigation and shall result in at least one acre of restored or created wetland for each acre of wetland that is impacted, unless the director determines that restoration or creation need not be a component of compensatory mitigation based on significant ecological reasons. Wetland preservation must occur at a rate of two acres of preservation for every remaining acre of the compensatory wetland mitigation requirement. The wetland preservation requirement can be calculated using the following equation:~~

$$P = [(LMR - 1) \times 2] \times N, \text{ where}$$

~~P = minimum number of acres of wetlands required to be preserved;~~

~~LMR = left side of mitigation ratio, from wetland mitigation table in paragraph (F)(1) of this rule; and~~

~~N = number of acres of impacted wetlands.~~

~~For example, if the required mitigation ratio is 3:1 for an impact to two acres of wetland, an acceptable mitigation plan may include at least two acres of restored wetlands and at least eight acres of preserved wetlands.~~

- ~~(6) Non-wetland buffers which are adjacent to wetlands assigned to category 2 or category 3 and which are avoided in accordance with the requirements of paragraph (D)(1)(b)(i) or (D)(1)(c)(i) of this rule, may be a component of acceptable compensatory mitigation, if the applicant can demonstrate the following:~~
- ~~(a) The non-wetland buffer and the wetland are preserved in perpetuity;~~
 - ~~(b) The non-wetland buffer consists of natural vegetation which is not maintained through mowing, application of herbicide or other means which would result in deleterious effects to either the non-wetland buffer or the adjacent wetland; and~~
 - ~~(c) When non-wetland buffers are a component of acceptable compensatory mitigation, the buffers shall not be considered to fulfill more than 0.5 units of the required mitigation ratio, as identified in table 1 of this rule. For example, non-wetland buffers could be used to reduce the mitigation requirement from 2.0:1 to 1.5:1.~~
- ~~(F) Wetland compensatory mitigation criteria for mitigation ratio, replacement category, and location for antidegradation categories 1 to 3. Note "mitigation ratio," "compensatory mitigation," "forested wetland," "off-site mitigation," "on-site mitigation," and "watershed" are defined in rule 3745-1-50 of the Administrative Code. Wetland categories are discussed in paragraph (C) of this rule.~~

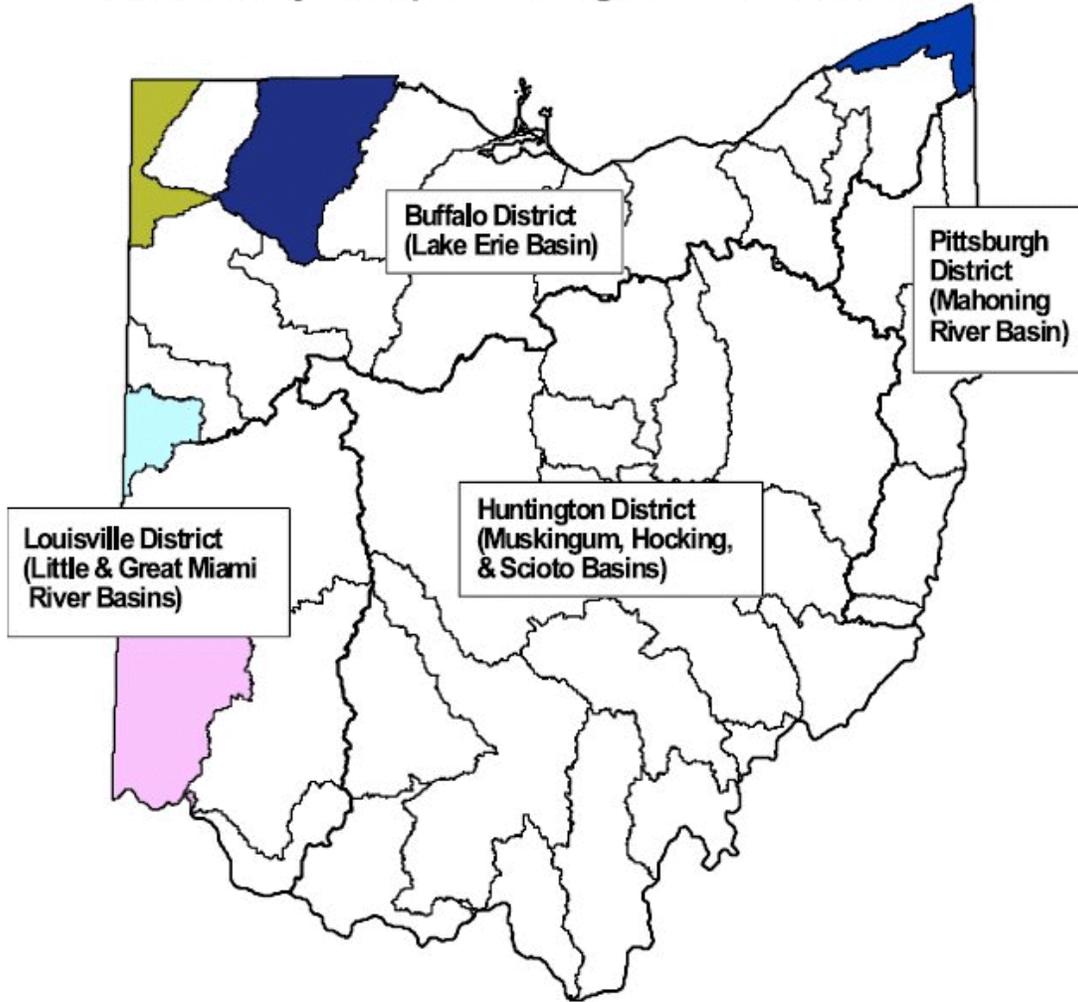
(1) Wetland mitigation table:

Wetland category	On-site mitigation ratio	Off-site mitigation ratio	Replacement category	Compensatory Mitigation location- (Off-site)
1	1.5:1 Non-forested & Forested	1.5:1 Non-forested & Forested	2 and 3	Within the U.S. army corps of engineers district
2	1.5:1 Non-forested 2.0:1 Forested	2.0:1 Non-forested 2.5:1 Forested	2 and 3	Within watershed
3	2.0:1 Non-forested 2.5:1 Forested	2.5:1 Non-forested 3.0:1 Forested	3	Within watershed

- (2) The following thirty-seven groupings of cataloging units from the hydrologic unit map of Ohio, U.S. geological survey, 1988, shall be the watersheds for the purposes of location of compensatory mitigation for impacts to category 2 and 3 wetlands: (04100001, 04100002, and 04100009 - combined); (0410003, 04100005 - combined); 04100004; 04100006; 04100007; 04100008; 04100010; 04100011; 04100012; 04110001; 04110002; (04110003 (minus the Chagrin river watershed) and 04110101 - combined); 04110003 (Chagrin river watershed only); 04110004; 05030101; 05030102; 05030103; 05030106; 05030201; 05030202; 05030204; 05040001; 05040002; 05040003; 05040004; 05040005; 05040006; 05060001; 05060002; 05060003; 05080001; (05080002, 05080003, and 05090203 - combined); 05090101; 05090103; 05090201; 05090202; and (05120101 and 05120103 - combined). This information is also depicted in map 1 of this rule.

Map 2: U.S. army corps of engineers district boundaries map, prepared by Ohio EPA, May 1997.

U.S. Army Corps of Engineers Boundaries



Effective:

R.C. 119.032 rule review date: 9/30/2005

Certification

Date

Promulgated Under: 119.03

Statutory Authority: 6111.041, 6111.12

Rule Amplifies: 6111.03, 6111.041, 6111.12

Prior Effective Dates: 5/1/1998, 10/17/2003

For Interested Party Review - February 2006 Draft

3745-1-55 Compensatory mitigation requirements for wetlands.

(A) Applicability. Compensatory mitigation is the final step in the sequenced alternatives analysis review. Compensatory mitigation is required and will be considered only after a determination that unavoidable impacts have been minimized in accordance with paragraph (E) of rule 3745-1-54 of the Administrative Code. The goal of compensatory mitigation is the ecological replacement of the impacted wetland, including its functions and values. Approval of compensatory mitigation requires the following steps:

- (1) As part of the application process, the hydrogeomorphic (HGM) class or classes and dominant plant community or communities of the impacted wetland shall be specified. Identifying the type of wetland allows enumeration of a list of functions and ecological services provided by wetland;
- (2) Evaluation of the quality of the impacted wetland using wetland assessment methodologies acceptable to the director, including the use of wetland indices of biotic integrity;
- (3) Enumeration of the area of wetland to be impacted, both directly and indirectly;
- (4) Evaluation of any residual moderate to high functions or values, as those terms are defined in rule 3745-1-50 of the Administrative Code, that the wetland is providing despite moderate to severe degradation of its condition, using a checklist with narrative discussion or, if necessary, more detailed quantification of residual functions;

[Comment: summary steps 1 to 4. The HGM class and dominant plant community allow specification of functions to be lost. Condition assessment provides a measure of existing overall wetland ecological condition (functional performance is then equated with the level of condition: good condition = good functional performance; excellent condition = excellent functional performance; etc.). Evaluation of any residual functions or ecological services (values) provides safeguard against situations where moderate to severely degraded wetlands still have a single “good” function left.]

- (5) Replacement of impacted wetland at a minimum ratio of 2:1 for category 1 or 2 wetlands and a minimum ratio of 3:1 for category 3 wetlands with at least 1:1 replacement of impact acreage through restoration or creation. Replacement is in-kind replacement based on the dominant landscape position and plant community of the impacted wetland;
- (6) Mitigation wetland must be of equal or higher quality as impacted wetland as measured by quantitative ecological performance targets for mitigation.

[Comment: with at least 1:1 replacement of area impacted, mitigation of a wetland in same landscape position with same dominant plant community, measurement of performance based

on quantitative condition-based ecological performance targets, there is very strong assurance of areal and functional replacement since: there was “no net loss” of wetland acreage; a mitigation wetland of the same HGM class and dominant plant community was created with a similar list of functions and values to the impact wetland; and a mitigation wetland of equivalent “quality” was created (and therefore of equivalent functional performance).]

- (B) Amount and kind of compensatory mitigation. The ratios of compensatory mitigation are 2:1 (two acres of mitigation for each acre of impact) for unavoidable impacts to category 1 and category 2 wetlands and 3:1 (three acres of mitigation for each acre of impact) for unavoidable impacts to category 3 wetlands, as follows:
- (1) Wetland restoration or creation shall occur at a ratio of at least 1:1 (one acre of restored or created wetland for each acre of wetland that is impacted);
 - (2) Preservation of natural upland buffers, as specified in paragraph (F) of this rule, around the restored or created wetland may occur at a ratio of up to 1:1 (one acre of natural upland buffer for each acre of wetland that is impacted) for unavoidable impacts to category 1 and category 2 wetlands and up to 2:1 (two acres of natural upland buffer for each acre of wetland that is impacted) for unavoidable impacts to category 3 wetlands;
 - (3) Wetland enhancement or preservation as specified in paragraph (F) of this rule may occur at a ratio of up to 1:1 (one acre of enhancement or preservation for each acre of wetland that is impacted) for unavoidable impacts to category 1 and category 2 wetlands and up to 2:1 (two acres of enhancement or preservation for each acre of wetland that is impacted) for unavoidable impacts to category 3 wetlands;
 - (4) Compensatory mitigation for linear projects (e.g., highways) in wetlands may occur in the following order:
 - (a) In accordance with paragraphs (B)(1) to (B)(3) of this rule; or
 - (b) Wetland impacts associated with a linear project may be mitigated at a single mitigation location or wetland mitigation bank, acceptable to the director, within each watershed in which the impacts occur; or
 - (c) If no wetland mitigation bank acceptable to the director is located within the watershed in which the impact occurs, then mitigation may occur in another watershed impacted by the linear project, at a single mitigation location, or at a wetland mitigation bank, acceptable to the director; or
 - (d) If no wetland mitigation bank occurs within any of the watersheds connected with the linear project, then mitigation may occur within the watershed in which the largest impacts (in terms of area) occur.

(C) Where compensatory mitigation is required to occur. A goal of compensatory mitigation is to locate mitigation sites in watersheds, regions, and landscape positions where they can replace the functions, as that term is defined in rule 3745-1-50 of the Administrative Code, of the impacted wetlands. Compensatory mitigation sites shall be located as follows:

- (1) Category 1 wetlands. Compensatory mitigation for category 1 wetlands may be located anywhere within the boundaries of the U.S. army corps of engineers district in which the impacted wetlands are located (see map 2 in the appendix to this rule).
- (2) Category 2 or category 3 wetlands. For category 2 and category 3 wetlands, compensatory mitigation sites shall be located as follows in descending order of preference:
 - (a) Within the 14-digit hydrologic unit code (HUC) watershed in which the impact wetland is located unless the applicant demonstrates the inability of mitigating with the 14-digit HUC watershed;
 - (b) Within the 8-digit HUC watershed in which the impact wetland is located (see map 1 in the appendix to this rule);
 - (c) Within a mitigation bank, acceptable to the director, if the wetland that is proposed to be impacted is within the mitigation service area for the mitigation bank, and the director determines on a project-by-project basis that it is appropriate to locate mitigation at the mitigation bank; or
 - (d) Outside the 8-digit HUC watershed if there is a significant ecological reason that the mitigation location should be located outside the 8-digit HUC watershed and the proposed mitigation will result in a substantially greater ecological benefit. Generally, if compensatory mitigation is approved to occur outside the watershed, it shall be located in a watershed that is adjacent to the watershed where the impact is proposed to occur, or has occurred.

(D) Performance of compensatory mitigation.

- (1) Restoration or creation of wetlands as compensatory mitigation shall replace the impacted wetland with an equivalent or higher quality wetland.
- (2) Compensatory mitigation shall be in-kind unless the applicant demonstrates, and the director specifically determines, that in-kind mitigation is not practicable or unless there is a compelling ecological reason that it should not be. Such reasons may include, but are not limited to, the following:
 - (a) The impacted wetland is common in the watershed where it is located and non-in-kind mitigation will restore an uncommon wetland type that was historically

present in the watershed;

- (b) A watershed management or restoration plan or a total maximum daily load (TMDL) review has recommended the restoration of wetlands in the watershed that are non-in-kind; or
 - (c) Plans for the restoration or preservation of habitat for rare, threatened, or endangered plant or animal species have recommended the restoration of wetlands that are non-in-kind.
- (3) Determining mitigation performance.
- (a) The performance and success of compensatory mitigation shall be evaluated by quantitatively comparing the biological, physical, and chemical characteristics of the restored, created, enhanced, or preserved wetlands to the characteristics of natural wetlands of the same type using appropriate wetland assessment methods acceptable to the director, including wetland indices of biotic integrity.
 - (b) Where the compensatory mitigation involves the restoration, creation, or enhancement of specific wetland functions or values (e.g., creation of endangered species habitat or increasing flood storage in a watershed), performance and success shall be quantitatively evaluated using methods and measures appropriate to evaluating whether the specific function or value was created and to what extent.

[Comment: mitigation plans, design requirements, and monitoring requirements are found in rule 3745-32-04 of the Administrative Code.]

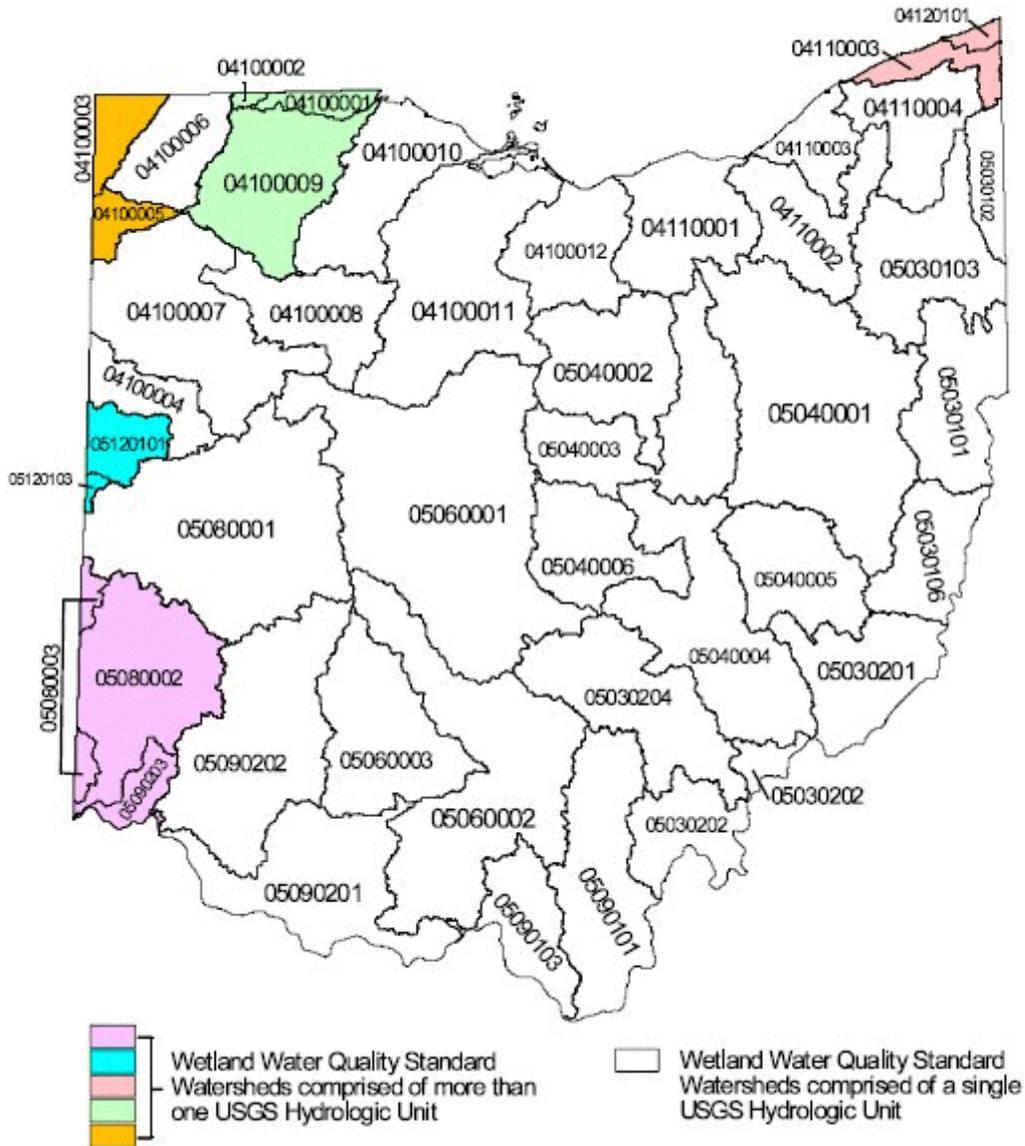
- (E) Long-term management and protection of mitigation sites. The applicant must demonstrate that the compensatory mitigation site will be protected in perpetuity and that appropriate management measures are, or will be, in place to restrict harmful activities that may jeopardize the mitigation wetland.
- (F) Types of possible compensatory mitigation.
- (1) Restoration. Wetland restoration, as that term is defined in rule 3745-1-50 of the Administrative Code, is the preferred form of compensatory mitigation.
 - (2) Creation. The director may consider wetland creation, as that term is defined in rule 3745-1-50 of the Administrative Code, in lieu of wetland restoration.
 - (3) Upland buffer. Preservation of upland buffer, as that term is defined in rule 3745-1-50 of the Administrative Code, is a required component of acceptable compensatory mitigation.

- (4) Enhancement. The director may consider wetland enhancement, as that term is defined in rule 3745-1-50 of the Administrative Code, as a component of acceptable compensatory mitigation. Wetland enhancement will be considered most favorably as a component of compensatory mitigation when it is located adjacent to a wetlands restoration project.
- (5) Preservation. The director may consider wetland preservation, as that term is defined in rule 3745-1-50 of the Administrative Code, for mitigation if the applicant can demonstrate the following:
 - (a) The wetland to be preserved is a high quality category 2 wetland or a category 3 wetland that will be preserved in perpetuity, or the wetland to be preserved is pivotal in protecting a category 3 wetland and both wetlands will be preserved in perpetuity; and
 - (b) The wetland to be preserved for mitigation purposes shall be deeded to a responsible party; and
 - (c) Purchase and transfer of the deed for the wetland to be preserved for mitigation purposes shall occur prior to any filling of wetlands at the project site.
- (6) The director may determine that restoration or creation need not be a component of compensatory mitigation based on significant ecological reasons and authorize preservation as the sole component of compensatory mitigation.

TO BE ENACTED

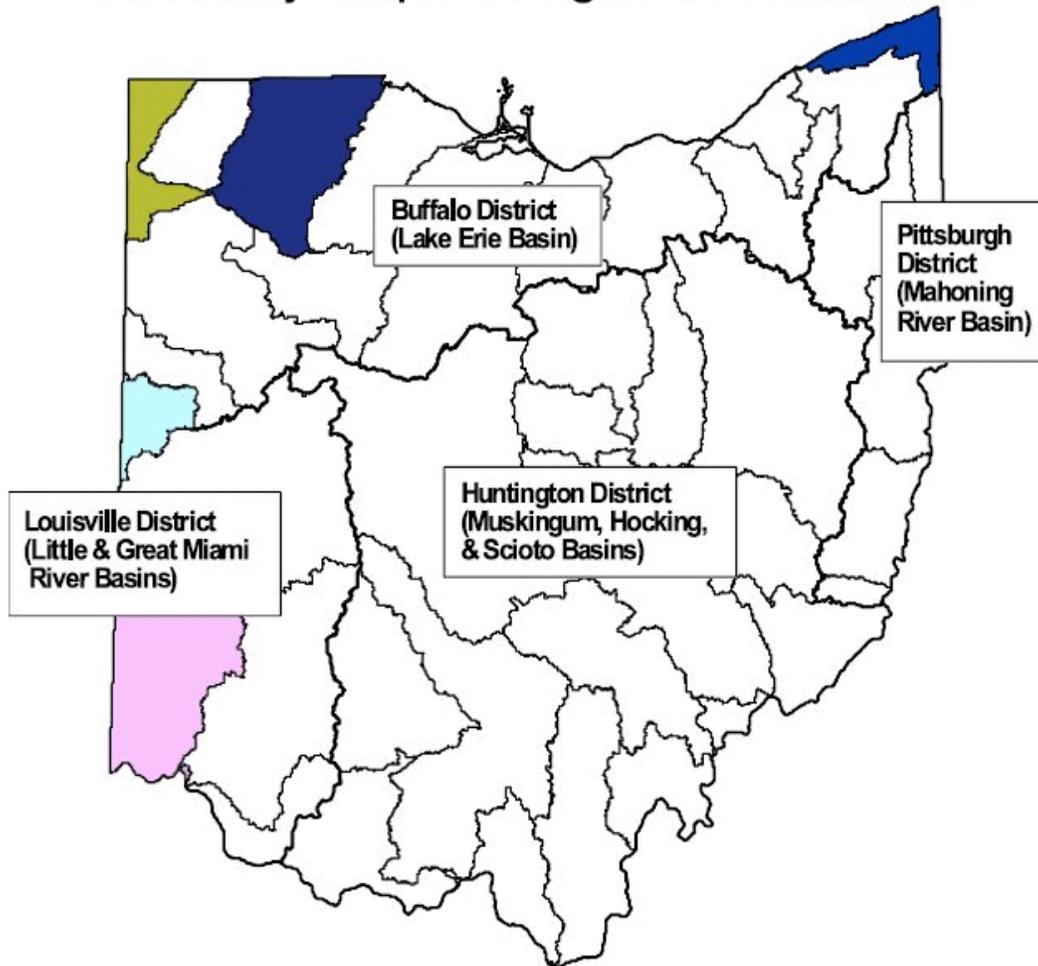
APPENDIX

Watersheds for Wetland Water Quality Standards



Map 1. Hydrologic unit map of Ohio, U.S. geological survey, 1988, as modified by Ohio EPA. 1997.

U.S. Army Corps of Engineers Boundaries



Map 2. U.S. army corps of engineers district boundaries map, prepared by Ohio EPA, May 1997.

Replaces: Part of 3745-1-54

Effective:

R.C. 119.032 rule review date: None

Certification

Date

Promulgated Under: 119.03

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Prior Effective Date: None

For Interested Party Review - February 2006 Draft

3745-1-56 Stream antidegradation and mitigation.

- (A) The provisions in this rule apply in addition to the provisions in rule 3745-1-05 of the Administrative Code.
- (B) The designated use defined in rule 3745-1-02 of the Administrative Code and the existing stream use shall be maintained and protected such that degradation of surface waters through direct, indirect, or cumulative impacts does not result in the net loss of stream functions in accordance with paragraphs (C) and (D) of this rule.
- (C) Stream avoidance and minimization.

The designated and existing stream uses shall be maintained and protected unless the applicant demonstrates, to the satisfaction of the director, the following:

- (1) Avoidance. There is no practicable alternative that would avoid all or some adverse impact on the stream ecosystem; and
 - (2) Minimization. There is no practicable alternative that would have less adverse impact on the stream ecosystem; and
 - (3) The impact would not result in significant degradation to the aquatic ecosystem, as determined consistent with 40 C.F.R. 230.10(c) (45 Fed. Reg. 85336, December 24, 1980); and
 - (4) Compensatory mitigation. Potential impacts on the stream ecosystem are compensated for in accordance with paragraph (D) of this rule.
- (D) Stream mitigation requirements.
- (1) When compensatory mitigation is approved, it shall be approved in accordance with “Compensatory Mitigation Requirements for Stream Impacts in the State of Ohio, Revision 4.0, (add date)” for all applications submitted on or after (date certain).
 - (2) Mitigation requirements on any application submitted prior to (date certain) shall be determined on a case-by-case basis.

Effective:

R.C. 119.032 rule review date: None

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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) “Applicant” means any person required to obtain a section 401 water quality certification from the Ohio EPA.
- (B) “Director” means the director of the Ohio EPA or his duly authorized representative.
- (C) “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. The term includes, without limitation, the addition of dredged material to a specified disposal site which is located in waters of the state, or 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.~~ any addition of dredged material into waters of the state, including redeposit of dredged material other than incidental fallback. The term includes, but is not limited to, the addition of dredged material to a specified discharge site located in waters of the state; the runoff or overflow from a contained land or water disposal area; and any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the state which is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation. For the purposes of this rule, the director considers any amount of dredged material less than one cubic yard to be incidental fallback.
- (D) “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) “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) “Federal Water Pollution Control Act” means the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 886, 33 U.S.C. 1251 et seq., as amended through July 1, 2005.
- (G) “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) “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.
- (I) “Nationwide permit” means a department of the army authorization that has been issued for certain specified activities nationwide.
- (J) “Ohio EPA” means the Ohio environmental protection agency or its director, as the context or other law or regulations may require.
- (K) ““Person” means ~~the state of Ohio, or any municipal corporation, political subdivision of the state, person as defined in section 1.59 of the Revised Code, or 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.~~
- (L) “Section 401 water quality certification” means 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, will comply with sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act.
- (M) “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, 2005.

- (N) ~~“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) ~~“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 section 6111.02 of the Revised Code and rule 3745-1-02 of the Administrative Code.~~

Effective:

R.C. 119.032 rule review date: 9/30/2005

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 6111.03
Rule Amplifies: 6111.03
Prior Effective Date: 9/15/1982

To Be Rescinded

3745-32-02 Section 401 water quality certification required.

- (A) A section 401 water quality certification is required to obtain the following:
- (1) A permit from the army corps of engineers pursuant to section 10 of the Rivers and Harbors Act;
 - (2) A permit from the army corps of engineers pursuant to section 404 of the Federal Water Pollution Control Act;
 - (3) A permit from the army corps of engineers pursuant to both section 10 of the Rivers and Harbors Act and section 404 of the Federal Water Pollution Control Act; and
 - (4) Any other federal permit or license to conduct any activity which may result in any discharge to waters of the state.
- (B) No certification issued pursuant to this chapter shall be effective until all applicable fees have been paid.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03
Rule authorized by: R.C. Section 6111.03
Rule amplifies: R.C. Section 6111.03
Prior effective dates: none

For Interested Party Review - February 2006 Draft

3745-32-02 **Applicability.**

- (A) Every applicant for a federal license or permit that authorizes any activity that may result in a discharge of dredged or fill material into waters of the state shall apply for and obtain a section 401 water quality certification from the director. The federal licenses and permits that require a section 401 water quality certification include, without limitation, the following:
- (1) A permit from the U.S. army corps of engineers pursuant to section 404 of the Federal Water Pollution Control Act; and
 - (2) A permit from the U.S. army corps of engineers pursuant to both section 10 of the Rivers and Harbors Act and section 404 of the Federal Water Pollution Control Act.
- (B) Every applicant for a permit from the U.S. army corps of engineers pursuant to section 10 of the Rivers and Harbors Act shall apply for and obtain a section 401 water quality certification from the director.
- (C) Any activity that, as a result of a discharge of sewage, industrial waste or other wastes, including dredged material released in the process of dredging, which will result in the loss of wetlands or otherwise impact waters of the state may require a section 401 water quality certification, which may be issued in such cases in addition to, or in lieu of, an NPDES permit pursuant to chapter 3745-33 of the Administrative Code.
- (D) No person shall engage in an activity requiring a section 401 water quality certification prior to obtaining that certification from the director.
- (E) No section 401 water quality certification need be obtained if the discharge of dredged or fill material is part of the construction of a federal project specifically authorized by congress, provided the effects of such discharge are included in an environmental impact statement submitted to congress prior to the actual discharge.

Replaces: 3745-32-02, 3745-32-03

Effective:

R.C. 119.032 rule review date: None

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 6111.03
Rule Amplifies: 6111.03
Prior Effective Date: 9/15/1982

To Be Rescinded

3745-32-03 Section 401 water quality certification exemptions.

No section 401 water quality certification need be obtained if:

- (A) The secretary of the army has issued a general permit pursuant to section 404(e) of the Federal Water Pollution Control Act; or
- (B) The discharge of dredged or fill material is part of the construction of a federal project specifically authorized by congress, provided the effects of such discharge are included in an environmental impact statement submitted to congress prior to the actual discharge.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03
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Rule amplifies: R.C. Section 6111.03
Prior effective dates: none

For Interested Party Review - February 2006 Draft

3745-32-03 401 certification application requirements and procedures.

- (A) The filing of an application for a federal permit or license for which a section 401 water quality certification is required does not constitute an application for such certification with the state of Ohio.
- (1) Application for a section 401 water quality certification must be on forms provided by the director and must include all the items identified in paragraph (B) of this rule.
 - (2) The director may waive the application requirement if, in the judgment of the director, the activity for which a federal permit or license is sought will not result in a discharge to the waters of the state.
- (B) Application requirements.
- (1) Any person requesting authorization for an activity that requires a section 401 water quality certification shall comply with the application procedures set forth in this rule. The director shall prescribe the form of the application for a section 401 water quality certification. Additional information shall be submitted in accordance with the antidegradation requirements in rules 3745-1-54 and 3745-1-56 of the Administrative Code.
 - (2) Any application for a section 401 water quality certification subject to the provisions of this rule and impacting waters of the state shall include:
 - (a) A copy of a letter from the U.S. army corps of engineers documenting its jurisdiction over the wetlands, streams, or other waters of the state that are the subject of the section 401 water quality certification application;
 - (b) If the project involves impacts to a wetland, a wetland characterization analysis consistent with version 5.0 of the Ohio Rapid Assessment Method;
 - (c) If the project involves a stream for which a specific aquatic life use designation has not been made, a use attainability analysis;
 - (d) A specific and detailed mitigation proposal, consistent with the requirements of rule 3745-32-04 of the Administrative Code, including the location and proposed legal mechanism for protecting the property in perpetuity;
 - (e) Applicable fees;
 - (f) Site photographs;

- (g) Adequate documentation confirming that the applicant has requested written comments from both the Ohio department of natural resources and the U.S. fish and wildlife service, regarding threatened and endangered species, including the presence or absence of critical habitat;
 - (h) Descriptions, schematics, and appropriate economic information concerning the applicant's preferred alternative, nondegradation alternative, and minimum degradation alternative for the design and operation of the project;
 - (i) The applicant's investigation report of the waters of the United States, in support of the section 404 permit application for the proposed project;
 - (j) A copy of the U.S. army corps of engineers public notice regarding the section 404 permit application for the proposed project or other notification from the corps that the project will be authorized under a general permit.
- (3) The requirements in parts (B)(2)(a) and (B)(2)(i) of this rule may be satisfied by the U.S. army corps of engineers public notice in the event that no jurisdictional determination is required.
- (4) Use attainability analysis.
- (a) The use attainability analysis required by paragraph (B)(2) of this rule shall consist of the following:
 - (i) A description of the drainage area of each impacted stream or streams, above the most downstream impact proposed in the application;
 - (ii) A determination of the hydrological classification (perennial, intermittent, or ephemeral as defined in section 3745.114 of the Revised Code) for each stream to be impacted;
 - (iii) Documentation of the qualitative habitat evaluation index (QHEI) assessment or the headwater habitat evaluation index (HHEI) assessment conducted on the impacted streams, as appropriate;
 - (iv) If the QHEI score is greater than forty for a given stream, a representative number of qualitative macroinvertebrate and fish samples for that stream must be provided; and
 - (v) A representative number of qualitative macroinvertebrate, fish, or amphibian samples for a stream may be provided by the applicant to supplement the HHEI or QHEI assessment for that stream.

- (b) All sampling submitted pursuant to paragraphs (B)(3)(a)(iv) and (B)(3)(a)(v) of this rule shall be according to the procedures dictated by rule 3745-1-03 of the Administrative Code.
 - (c) All habitat evaluation indices required in paragraph (B)(3)(a)(iii) of this rule shall be determined according to the following documents:
 - (i) Ohio EPA (2002a). Technical Report: Ohio's primary headwater streams - fish and amphibian assemblages. Ohio EPA Division of Surface Water, Columbus, Ohio. 41 pp.
 - (ii) Ohio EPA (2002b). Technical Report: Ohio's primary headwater streams - macroinvertebrate assemblages. Ohio EPA Division of Surface Water, Columbus, Ohio. 25 pp.
 - (iii) Ohio EPA (2002c). Primary Headwater Habitat Assessment Program Field Evaluation Manual. Ohio EPA Division of Surface Water, Columbus, Ohio. 60 pp.
 - (iv) Rankin, E.T. (1989). The Qualitative Habitat Evaluation Index [QHEI]: Rationale, Methods, and Application. Ohio EPA Division of Water Quality Planning and Assessment, Columbus, Ohio. 54 pp.
 - (d) If multiple streams are proposed to be impacted, the sampling submitted under paragraphs (B)(4)(a)(iii), (B)(4)(a)(iv), and (B)(4)(a)(v) of this rule may be conducted on a representative subset of the streams impacted. Ohio EPA reserves the right to require additional sampling after conducting an inspection of the site.
 - (5) Within fifteen business days after the receipt of an application for an individual 401 certification, the director shall notify the applicant whether the application is complete. If the application is not complete, the director shall include in the notice an itemized list of the information or materials that are necessary to complete the application. No additional review of the application shall take place until complete and accurate information is provided such that the application is deemed complete. As it is used in this rule, "complete application" means an application in which all of the items required by paragraph (B) of this rule have been provided and the items are both complete and accurate.
 - (6) Applicants regulated under rule 1501:13 of the Administrative Code may elect to utilize alternate, consolidated application procedures as approved by the director, the director of natural resources, and the U.S. army corps of engineers.
- (C) Criteria for decision by the director.

- (1) The director shall not issue a section 401 water quality certification unless the applicant has demonstrated to the director's satisfaction that the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state will not, alone or in conjunction with other conditions:
 - (a) Prevent or interfere with the attainment or maintenance of applicable water quality standards in Chapter 3745-1 of the Administrative Code; or
 - (b) Result in a violation of any applicable provision of the Federal Water Pollution Control Act.
- (2) Notwithstanding an applicant's demonstration of the criteria in paragraph (C)(1) of this rule, the director may deny an application for a section 401 water quality certification if the director concludes that issuing the certification will result in adverse long term or short term impacts on water quality.
- (3) The director may consider whether the applicant is currently in significant noncompliance of the terms and conditions of any previously issued section 401 water quality certification or state isolated wetland permit for another project or activity, and may deny such application based on the existence of any such outstanding significant noncompliance.

(D) Time frames for issuing or denying certification.

- (1) The director shall issue or deny a section 401 water quality certification for an activity in waters of the state within one hundred eighty days of receipt of a complete application pursuant to paragraph (A) of this rule.
- (2) The one hundred eighty day review period may be restarted by the director upon submission of substantial revisions to the application originally submitted to Ohio EPA.
- (3) A section 401 water quality certification shall be issued and may be challenged in accordance with the provisions of the rules of procedure of Ohio EPA, Chapter 3745-47 of the Administrative Code.

(E) Modifications and transfers.

- (1) Before modifying a project or activity authorized in a section 401 water quality certification, the applicant shall notify Ohio EPA in writing, setting forth a description of the proposed modifications and the reasons therefor. The director may approve, approve with conditions, or deny any request for modification, or require the applicant to apply for and obtain a new section 401 water quality certification if the scope of the project is changed beyond that authorized in the original section 401 water quality certification.

- (a) Approvals or approvals with conditions, of the modification, shall be issued as draft actions and subject to the public notice requirements of the Administrative Code.
 - (b) Applications for modification of previously issued section 401 water quality certifications will be subject to all the requirements of rule 3745-1-05 of the Administrative Code.
 - (2) A person authorized to conduct any project or activity pursuant to a section 401 water quality certification may transfer the section 401 water quality certification to a third party provided that the original certification holder submits to the director the following:
 - (a) Advance written notice of the proposed transfer; and
 - (b) A signed and notarized statement by the transferee assuming the obligations of the section 401 water quality certification; and
 - (c) A signed and notarized statement by the original certification holder regarding project status and compliance with the terms of the certification.
 - (3) The person to whom the section 401 water quality certification was originally issued shall continue to be responsible for ensuring that the conditions of the section 401 water quality certification are fulfilled, and shall be liable for any violations thereof, until such time as Ohio EPA receives documentation required by paragraph (E)(2)(b) of this rule and a revised 401 water quality certification is issued identifying the new holder of the certification.
 - (4) The director may modify a section 401 water quality certification, absent any request from the section 401 water quality certification holder, if the director concludes at any time that any applicable laws or rules have been violated as a result of that certification.
- (F) Revocation.
- (1) The director may revoke and subsequently deny a section 401 water quality certification if the director concludes at any time that any applicable laws or rules have been violated, or when the director determines that the section 401 water quality certification approval was based on false or misleading information at the time that the application was originally submitted to Ohio EPA.
 - (2) A section 401 water quality certification shall be revoked and may be challenged in accordance with the provisions of the rules of procedure of Ohio EPA, Chapter 3745-47 of the Administrative Code.

(G) Expiration and renewal.

- (1) A section 401 water quality certification shall expire within five years of the date of issuance or upon the expiration of the applicable federal license or permit, whichever is less.
- (2) A section 401 water quality certification may be renewed for a period not to exceed five years under the following conditions:
 - (a) The section 401 water quality certification has not already expired; and
 - (b) No renewal of the section 401 water quality certification has previously been granted; and
 - (c) No additional water quality impacts beyond those authorized in the original section 401 water quality certification will result from the renewal of that certification.
- (3) Requests for renewal of section 401 water quality certifications must include a notarized statement that the conditions contained in paragraph (G)(2) of this rule have been met.
- (4) Renewals of section 401 water quality certifications shall be issued as draft actions and subject to the public notice requirements of Chapter 3745-47 of the Administrative Code.

(H) Denial.

- (1) Any application that fails to achieve the criteria established in paragraph (C) of this rule may be denied.
- (2) The director shall provide an explanation to an applicant for a section 401 water quality certification of the basis for the proposed denial of the application if applicable.
- (3) A section 401 water quality certification shall be denied and may be challenged in accordance with Chapter 3745-47 of the Administrative Code.

(I) Waiver of certification.

- (1) The director may, pursuant to division (O) of section 6111.03 of Revised Code and section 401 of the Federal Water Pollution Control Act, waive certification of any application submitted.

(J) Conditions of certification.

- (1) The director may impose such terms and conditions as part of a section 401 water quality certification as are appropriate or necessary to ensure compliance with applicable laws

and to ensure adequate protection of water quality and human health.

- (2) Prior to the issuance of a section 401 water quality certification or as a condition of any section 401 water quality certification, the director may require that the applicant perform various environmental quality tests to ensure adequate protection of water quality and human health, including, but not limited to, chemical analyses of water, sediment or fill material, and bioassays and biological monitoring.
- (3) The director may enter into any legally binding agreements, such as mitigation banking agreements or in lieu fee agreements, as he deems appropriate to ensure the protection of Ohio's water resources, within the authorities granted under section 6111.03 of the Revised Code.

(K) Emergency certification.

- (1) If the director issues an administrative order, pursuant to section 6111.06 of the Revised Code, that requires the placement of fill or dredged material into waters of the state, such order will constitute the issuance of a section 401 water quality certification for the purposes of the Federal Water Pollution Control Act.
- (2) Upon the expiration of such order, the applicant shall submit a complete application for a section 401 water quality certification that addresses any additional placement of fill or dredged material into waters of the state, beyond that authorized by the administrative order, as well as any mitigation requirements generated as a result of the activities authorized by the administrative order, pursuant to rules 3745-32-04 and 3745-32-05 of the Administrative Code.

(L) U.S. army corps of engineers general permits.

- (1) The director may certify, deny certification, or waive certification of general permits (including nationwide permits, regional general permits, and letters of permission) issued by the U.S. army corps of engineers under section 404 of the Federal Water Pollution Control Act.
- (2) The director may impose such terms and conditions as part of a general certification as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of water quality and human health.
- (3) Applicants applying for coverage under the section 404 general permits are not required to comply with the application requirements contained in this rule unless the director determines that an individual section 401 water quality certification is required.

3745-32-03

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Replaces: 3745-32-04, 3745-32-05, 3745-32-06, 3745-32-07

Effective:

R.C. 119.032 rule review date: None

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 6111.03
Rule Amplifies: 6111.03
Prior Effective Date: 9/15/1982

To Be Rescinded

3745-32-04 Section 401 water quality certification applications.

- (A) Filing an application with the army corps of engineers for any permit set forth in paragraphs (A)(1) to (A)(3) of rule 3745-32-02 of the Administrative Code constitutes application for a section 401 water quality certification from the Ohio EPA. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director.

- (B) Any person filing an application for any other federal permit or license to conduct an activity which may result in a discharge to waters of the state must submit an application to the director for a section 401 water quality certification. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director. The director may waive the application requirement if, in the judgment of the director, the activity for which a federal permit or license is sought will not result in a discharge to the waters of the state.

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R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

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Rule amplifies: R.C. Section 6111.03

Prior effective dates: none

For Interested Party Review - February 2006 Draft

3745-32-04 Plans, design and monitoring for mitigation.

(A) Mitigation proposals submitted pursuant to this paragraph must be accompanied by a comprehensive plan to achieve that proposal in accordance with the requirements of rules 3745-1-55 and 3745-1-56 of the Administrative Code and must address each of the following topics:

(1) Mitigation goals and objectives.

(a) Impact sites. An applicant shall:

(i) Describe and quantify the aquatic resource type and functions that will be impacted at the proposed impact site, including temporary and permanent impacts to the aquatic environment.

(ii) Describe aquatic resource concerns in the watershed (e.g., flooding, water quality, habitat) and how the impact site contributes to overall watershed and regional functions, and identify watershed or other regional plans that describe aquatic resource objectives.

(b) Mitigation sites. An applicant shall:

(i) Describe and quantify the aquatic resource type and functions for which the mitigation project is intended to compensate.

(ii) Describe the contribution to overall watershed and regional functions that the mitigation site or sites are intended to provide.

(2) Baseline information for each type of site: proposed impact sites, proposed mitigation sites and, if applicable, proposed reference sites.

(a) Location. An applicant shall provide the following for each of the proposed impact sites, proposed mitigation sites and, if applicable, proposed reference sites:

(i) Coordinates, preferably using differential global positioning system (DGPS), and written location description including block, lot, township, county, and hydrologic unit code (HUC) number, as appropriate and pertinent;

(ii) Maps (e.g., site map with delineation verified by the U.S. army corps of engineers, map of vicinity, map identifying location within the watershed, national wetlands inventory map, natural resources conservation service soils map, zoning or planning maps) indicating the area of proposed fill on the site; and

- (iii) Aerial or satellite photos.
- (b) Classification. An applicant shall identify hydrogeomorphic classification, as well as Cowardin classification, Rosgen stream type, and natural resources conservation service classification, as appropriate.
- (c) An applicant shall identify the quantity of wetland resources (acreage) or stream resources (linear feet) by type or types.
- (d) An applicant shall describe the assessment method or methods, such as hydrogeomorphic (HGM), index of biotic integrity (IBI), and wetland rapid assessment procedure (WRAP), used to quantify impacts to aquatic resource functions. The applicant shall explain the findings. The same method or methods should be used at both impact and mitigation sites.
- (e) Existing hydrology. An applicant shall identify the following:
 - (i) Water budget. An applicant shall include water sources (e.g., precipitation, surface runoff, ground water, and streams) and losses. Provide budgets for both wet and dry years;
 - (ii) Hydroperiod (e.g., seasonal depth, duration, and timing of inundation and saturation) and per cent open water;
 - (iii) Historical hydrology of mitigation site if different than present conditions;
 - (iv) Contributing drainage area (acres); and
 - (v) Results of water quality analyses (e.g., data on surface water, ground water, and tides for such attributes as pH, redox, nutrients, organic content, suspended matter, dissolved oxygen, and heavy metals) of samples taken from the site.
- (f) Existing vegetation. An applicant shall provide the following:
 - (i) A list of species on site, indicating dominants;
 - (ii) Species characteristics such as densities, general age and health, and native, nonnative, and invasive status;
 - (iii) Percentage of vegetative cover and community structure (canopy stratification); and

- (iv) Map showing locations of plant communities.
- (g) Existing soils. An applicant shall provide the following:
 - (i) Soil profile description (e.g., soil survey classification and series) or stream substrate identification. Soil sample locations shall be identified on the site map;
 - (ii) Results of standard soils analyses, including per cent organic matter, structure, texture, and permeability; and
 - (iii) Description of existing wildlife usage. An applicant shall indicate possible threatened and endangered species habitat.
- (h) An applicant shall identify the historic and current land use, noting prior converted cropland.
- (i) An applicant shall list the name and address of current owner or owners.
- (j) An applicant shall describe the watershed context and surrounding land use, including:
 - (i) Impairment status of aquatic resources and impairment type (e.g., determinations made under section 303(d) of the Federal Water Pollution Control Act);
 - (ii) Description of watershed land uses (including the percentages of land uses that are agricultural, forested, wetland, and developed);
 - (iii) Sizes and widths of natural buffers. An applicant shall describe the buffers and show them on a map;
 - (iv) Description of landscape connectivity such as proximity and connectivity of existing aquatic resources and natural upland areas. An applicant shall show connectivity on a map; and
 - (v) Relative amounts of aquatic resource areas, by individual type and overall resources, that the impact site represents for the watershed or region.
- (3) Mitigation site selection and justification. In the mitigation proposal, the applicant shall:
 - (a) Describe site-specific objectives, including mitigation types, acreages, and proposed compensation ratios.

- (b) Describe watershed and regional objectives. An applicant shall describe how the mitigation project will compensate for the functions identified in the paragraph (A)(1) of this rule.
 - (c) Describe how the mitigation project will contribute to aquatic resource functions within the watershed or region (i.e., sustain and protect existing watershed functions) identified in paragraph (A)(1)(d) of this rule. An applicant shall describe how the planned mitigation project will contribute to landscape connectivity.
 - (d) Show on a map or aerial photo the likely future adjacent land uses and compatibility.
 - (e) Describe site selection practicability in terms of cost, existing technology, and logistics.
 - (f) If the proposed mitigation is off-site or out-of-kind, explain why on-site or in-kind options are not practicable or environmentally preferable.
 - (g) Identify existing and proposed mitigation site deed restrictions, easements and rights-of-way and describe how the existence of any such restrictions, easements and rights-of-way will be addressed, particularly in the context of incompatible uses.
 - (h) Explain how the design is sustainable and self-maintaining. An applicant shall show, by means of a water budget, that there is sufficient water available to sustain long-term wetland or stream hydrology and provide evidence that a legally defensible, adequate and reliable source of water exists.
 - (i) Provide a U.S. fish and wildlife service and national oceanic and atmospheric administration fisheries listed species clearance letter or biological opinion, as appropriate.
 - (j) Provide a state historic preservation office cultural resource clearance letter.
- (4) Mitigation work plan. An applicant shall provide the following:
- (a) Maps marking the boundaries of the proposed mitigation types, including DGPS coordinates;
 - (b) A description of the timing of mitigation: before, concurrent or after authorized impacts. If mitigation is not in advance or concurrent with impacts, the applicant shall explain why it is not practicable and describe other measures to compensate for the consequences of temporal losses;

- (c) A grading plan that:
 - (i) Indicates existing and proposed elevations and slopes; and
 - (ii) Describes plans for establishing appropriate microtopography. Reference wetland can provide design templates;
- (d) A description of construction methods (e.g., equipment to be used);
- (e) A construction schedule, including expected start and end dates of each construction phase and the expected date for as-built plan;
- (f) A description of the planned hydrology for the mitigation site, including:
 - (i) Source of water;
 - (ii) Connections to existing waters;
 - (iii) Hydroperiod (seasonal depth, duration, and timing of inundation and saturation), per cent open water, and water velocity;
 - (iv) Potential interaction with ground water;
 - (v) Existing monitoring data, if applicable, indicating the location of monitoring wells and stream gauges on a site map;
 - (vi) Stream or other open water geomorphic features (e.g., riffles, pools, bends, and deflectors); and
 - (vii) Structures requiring maintenance. An applicant shall show the structures on a map and explain structure maintenance as required in paragraph (A) of this rule;
- (g) A description of the planned vegetation, including:
 - (i) Native plant species composition (e.g., list of acceptable native hydrophytic vegetation);
 - (ii) Sources of native plant species (e.g., salvaged from impact site, local source, seed bank), stock types (bare root, potted, seed), and plant ages and sizes;
 - (iii) Plant zonation and location map (refer to grading plan to ensure plants will have an acceptable hydrological environment);

- (iv) Plant spatial structure including quantities and densities, per cent cover, and community structure (e.g., canopy stratification); and
 - (v) Expected natural regeneration from existing seed bank, plantings, and natural recruitment;
 - (h) A description of the soils planned for the mitigation site, including:
 - (i) Soil profile;
 - (ii) Source of soils (e.g., existing soil or imported impact site hydric soil), target soil characteristics (e.g., organic content, structure, texture, and permeability), and soil amendments (e.g., organic material or topsoil); and
 - (iii) Erosion and soil compaction control measures;
 - (i) A description of planned habitat features. Identify large woody debris, rock mounds, etc. on a map;
 - (j) A description of the planned buffer (identify on a map), including:
 - (i) An evaluation of the buffer's expected contribution to aquatic resource functions; and
 - (ii) The physical characteristics (e.g., location, dimensions, native plant composition, spatial and vertical structure); and
 - (k) Other planned features, such as interpretive signs, trails, and fences.
 - (5) Performance standards.
 - (a) An applicant shall identify clear, precise, quantifiable parameters that can be used to evaluate the status of desired functions. These may include hydrological, vegetative, faunal, and soil measures (e.g., plant richness, per cent exotic and invasive species, water inundation and saturation levels). The applicant shall describe how performance standards will be used to verify that objectives identified in paragraphs (A)(3)(b) and (A)(3)(c) of this rule have been attained.
 - (b) An applicant shall set target values or ranges for the parameters identified. These targets should be set to mimic the trends and eventually approximate the values of a reference wetland.
 - (6) Site protection and maintenance. An applicant shall:

- (a) Identify the long-term legal protection instrument (e.g., conservation easement, deed restriction, or transfer of title);
 - (b) Identify the party or parties responsible, their addresses, and their roles (e.g., site owner, easement owner, or maintenance implementation). If there is more than one party, the applicant shall identify the primary party;
 - (c) Provide a plan and schedule for maintenance of the mitigation site (e.g., measures to control predation and grazing of mitigation plantings, temporary irrigation for plant establishment, replacement planting, and structure maintenance and repair); and
 - (d) Provide an invasive species control plan (plant and animal).
- (7) Monitoring plan. The applicant shall identify the following:
- (a) The party or parties responsible for monitoring. If there is more than one party, the applicant shall identify the primary party;
 - (b) The data to be collected and reported, including how often and for how long it will be collected. The applicant shall identify proposed monitoring stations, including transect locations on map;
 - (c) The assessment tools and methods to be used for data collection and monitoring the progress towards attainment of performance standard targets;
 - (d) The format for reporting monitoring data and assessing mitigation status; and
 - (e) A monitoring schedule.
- (8) Adaptive management plan. The applicant shall identify the following:
- (a) The party or parties responsible for adaptive management;
 - (b) Potential challenges (e.g., flooding, drought, invasive species, seriously degraded site, or extensively developed landscape) that pose a risk to project success. The applicant shall discuss how the design accommodates these challenges;
 - (c) Potential remedial measures in the event mitigation does not meet performance standards in a timely manner; and
 - (d) A proposed set of procedures to allow for modifications of performance standards if mitigation projects are meeting mitigation goals, but in unanticipated ways.

- (9) Financial assurances. The applicant shall identify the following:
- (a) The party or parties responsible to establish and manage the financial assurance, the specific type of financial instrument, the method used to estimate assurance amount, the date of establishment, and the release and forfeiture conditions for each of the following:
 - (i) Construction phase;
 - (ii) Maintenance;
 - (iii) Monitoring;
 - (iv) Remedial measures; and
 - (v) Project success;
 - (b) The types of assurances (e.g., performance bonds, irrevocable trusts, escrow accounts, casualty insurance, or letters of credit); and
 - (c) The schedule for reviewing and adjusting financial assurance to reflect current economic factors.
- (B) The applicant shall conduct ecological monitoring of the compensatory mitigation project and submit annual reports detailing the results of the ecological monitoring for a period of at least five years following construction of the compensatory mitigation. The ecological monitoring may include, but is not limited to:
- (1) Collection of data on hydrologic characteristics;
 - (2) Collection of data on vegetation communities and soils at the compensatory mitigation site; and
 - (3) Conducting an assessment of the compensatory mitigation wetlands using an appropriate wetland evaluation method acceptable to the director.

The director may reduce or increase the number of years for which ecological monitoring is required to be conducted based on the effectiveness of the compensatory mitigation project.

Effective:

R.C. 119.032 rule review date: None

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 6111.03
Rule Amplifies: 6111.03
Prior Effective Date: None

To Be Rescinded

3745-32-05 Criteria for decision by director.

- (A) The director shall not issue a section 401 water quality certification unless he determines that the applicant has demonstrated that the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state will:
 - (1) Not prevent or interfere with the attainment or maintenance of applicable water quality standards;
 - (2) Not result in a violation of any applicable provision of the following sections of the Federal Water Pollution Control Act including:
 - (a) Effluent limitations as described in section 301;
 - (b) Water quality related effluent limitations as described in section 302;
 - (c) Water quality standards and implementation plans as described in section 303;
 - (d) National standards of performance as described in section 306; or
 - (e) Toxic and pretreatment effluent standards as described in section 307.
- (B) Notwithstanding an applicant's demonstration of the criteria in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director may deny an application for a section 401 water quality certification if the director concludes that the discharge of dredged or fill material or obstructions or alterations in waters of the state will result in adverse long or short term impact on water quality.
- (C) The director may impose such terms and conditions as part of a section 401 water quality certification as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality.
- (D) Prior to the issuance of a section 401 water quality certification or prior to, during, or after the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests including, but not limited to, chemical analyses of water, sediment or fill material, and bioassays.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

3745-32-05

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Promulgated under: R.C. Section 119.03
Rule authorized by: R.C. Section 6111.03
Rule amplifies: R.C. Section 6111.03
Prior effective dates: none

To Be Rescinded

3745-32-06 Revocation of section 401 water quality certification.

The director may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03
Rule authorized by: R.C. Section 6111.03
Rule amplifies: R.C. Section 6111.03
Prior effective dates: none

To Be Rescinded

3745-32-07 Procedure for decision by director.

A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03
Rule authorized by: R.C. Section 6111.03
Rule amplifies: R.C. Section 6111.03
Prior effective dates: none

To Be Rescinded

3745-45-02 Certification fees.

(A) Any certification issued pursuant to Chapter 3745-32 of the Administrative Code shall not be effective until the fees required by the rule are paid. Prior to the issuance of the certification, the person receiving the certification shall pay the amounts specified in the table below:

- (1) Certifications for dredge or fill projects such as any dredging, fastland creations; shoreline protection such as riprap, jetties, groins, cribs, stone breakwaters, cofferdams, temporary or permanent haul roads; fills incidental to any construction activity such as pier construction, construction of outfalls, or placement of concrete shall be:

Cubic yardage removed or added	Fee
Less than 500	\$15
500 - 5,000	25
5,001 - 15,000	50
15,001 - 30,000	75
30,001 - 50,000	100
More than 50,000	200

- (2) Certifications for bulkhead and modular breakwater placements such as sheet steel pile, concrete or timber bulkheading as the primary activity, or the placement of a modular breakwater but excluding stone bulkheads shall be fifty cents per linear foot of bulkhead or modular breakwater subject to a minimum of fifteen dollars.
 - (3) Certifications for bulk commodity facilities (transfer sites) for materials such as coal, sand, gravel, and grains shall be one hundred dollars.
 - (4) Certifications pursuant to section 10 of the Rivers and Harbors Act for projects such as small recreational floating boat docks, the placement of navigation or mooring buoys, piles ski ramps, and fleeting facilities shall be fifteen dollars.
- (B) The total combined fee for any residential use project for which no revenue is generated shall not exceed one hundred dollars unless the total discharge of dredged or fill materials exceeds fifty thousand cubic yards, then the fee shall not exceed two hundred dollars.
- (C) The total combined fee for any project other than those projects under paragraph (B) of this rule shall not exceed two hundred dollars.

- (D) No fee shall be assessed if the project is to be authorized under a general permit or nationwide permit as defined in rule 3745-32-01 of the Administrative Code.
- (E) Notwithstanding any other provision of this rule, no fee shall be assessed for any project constructed by an agency or department of the state of Ohio.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03
Rule authorized by: R.C. Section 3745.11
Rule amplifies: R.C. Section 3745.11
Prior effective dates: none