



Note: The comment period for these rules has been extended 90 days to June 6, 2011.

Draft Rules – Surface Water Quality Section 401 Water Quality Certifications (OAC Chapters 3745-32 and 3745-45)

Note: This rule package along with the water quality standards and antidegradation rule packages are three of four interrelated rule packages that have been available for interested party review since the fall of 2008. The fourth rule package, stream mitigation, is now available for interested party review. The release of the stream mitigation rule package starts a 90-day comment period for all four rule packages. As part of the notice of the stream mitigation rule, updated versions of the draft Section 401 Water Quality Certification rules are being released for review and comment. This updated fact sheet outlines the updates that have been made to the draft rules. A link to each rule package is on the Division of Surface Water website at www.epa.ohio.gov/dsw/Home.aspx.

What is the Section 401 water quality certification program?

The federal Clean Water Act requires anyone discharging dredged or fill material into Ohio waters to obtain a water quality certification from Ohio EPA pursuant to Section 401 and a permit from the U.S. Army Corps of Engineers pursuant to Section 404. Ohio EPA's review is to ensure that the projects comply with Ohio's water quality standards.

Which rules are under review at this time?

All of OAC Chapters 3745-32 and 3745-45 are being reviewed. Chapter 3745-32 contains the administrative and technical requirements for submitting a Section 401 water quality certification application to Ohio EPA's Division of Surface Water. Rule 3745-32-01 (definitions) is being amended. The other six rules in Chapter 3745-32 are being combined into two new rules, 3745-32-02 and 3745-32-03. New rule 3745-32-04 contains antidegradation requirements moved from rule 3745-1-05.

Chapter 3745-45 consists of one rule, which contains outdated water quality certification fees. That rule will be rescinded.

Why are the rules being reviewed?

Section 119.032 of the Ohio Revised Code (ORC) requires Ohio EPA to review its rules every five years to determine whether they should be changed. The Agency

has reviewed these rules and has identified needed changes.

What specific revisions are being considered?

The current Section 401 water quality certification rules, as they apply to streams, apply only in situations involving a pending federal permit, usually a Section 404 permit. Section 404 permits are required only for waterways that can be defined as waters of the United States.

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

New rule 3745-32-04 contains antidegradation requirements for the state water quality permit program and the isolated wetlands permit program. The antidegradation requirements are being moved from rule 3745-1-05 in an effort to clarify the requirements that apply to these programs. Rule 3745-1-05 will continue to apply to other programs, such as the NPDES permit program.

Other draft revisions in Chapter 3745-32 combine and enhance procedural rules that help address some historical procedural ambiguities within the program.

Rule 3745-45-02 is being rescinded because certification fees are now incorporated into state law (ORC section 3745.114).

Draft Rules – Surface Water Quality

Section 401 Water Quality Certifications

(OAC Chapters 3745-32 and 3745-45)

What updates have been made to the September 2008 draft version of the rules?

Additional terms used in Chapter 3745-32 are defined in rule 3745-32-01.

New rule 3745-32-04 is created to contain the antidegradation requirements applicable to the state water quality permit program and the isolated wetland permit program. The antidegradation requirements are being moved from rule 3745-1-05. This rule cites the existing wetland rule 3745-1-54 for mitigation requirements for impacts to wetlands and cites the new stream mitigation rule 3745-1-56 for mitigation requirements for impacts to streams.

Who will be regulated by these rules?

Anyone who wishes to discharge dredged or fill material into waters of the state will be regulated by these rules. This includes local and state governments, the federal government, businesses and private property owners.

What additional information is the Agency seeking?

The Agency wants to hear from interested stakeholders who may be impacted by these rule revisions. General comments and specific factual information are welcome.

How are the amendments formatted in the draft rules?

Text being considered for deletion is struck through; new text being considered is underlined. Rules being considered for rescission have "To Be Rescinded" at the top of the first page of the rule.

What is the rulemaking schedule?

At this time, the Agency is soliciting initial input on these draft rule revisions. Ohio EPA is required by section

121.39(D) of the Revised Code to contact potentially affected parties prior to adopting rule changes.

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

At that point, a second comment period, including one or more public hearings, will be scheduled. After the close of the second comment period, the Agency will review the comments, make any necessary changes and then adopt final rules.

Ohio EPA expects to file the proposed rules in the summer of 2011. The final rules could be adopted by the end of 2011.

How can I comment on the draft rules?

Please submit your comments in one of the following ways:

By email: dsw_rulecomments@epa.state.oh.us

By fax: (614) 644-2745

By postal mail:

Rule Coordinator

Ohio EPA, Division of Surface Water

P.O. Box 1049

Columbus, OH 43216-1049

Comments on the draft rules must be received no later than March 8, 2011.

How can I get more information?

Copies of this fact sheet and the draft rules are on the Division of Surface Water website at www.epa.ohio.gov/dsw/Home.aspx.

For more information about the draft rules, please contact:

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