



Draft Rules – Surface Water Quality

Water Quality Standards Wetland Antidegradation (OAC 3745-1-54)

What are water quality standards?

Water quality standards are state regulations or rules that protect lakes, rivers, streams and other surface water bodies from pollution. The rules are in Chapter 3745-1 of the Ohio Administrative Code (OAC). These rules contain: beneficial use designations; numeric levels and narrative statements (water quality criteria) protective of the use designations; procedures for applying the water quality criteria to wastewater dischargers and antidegradation procedures.

Which water quality standards rule is under review at this time?

This rulemaking includes amendments to one rule that addresses antidegradation protections and review procedures for wetlands, OAC 3745-1-54. This rule, in conjunction with the all-encompassing antidegradation rule OAC 3745-1-05, establish criteria for the Director to consider when determining whether a lowering of water quality in wetlands will be allowed and what is appropriate mitigation for those impacts.

Why is this rule being amended, what types of changes are being considered?

On June 5, 2012, the Governor signed into law Senate Bill 294, the Agency's Omnibus Bill. Included in the bill were revisions to ORC sections pertaining to wetlands. In general, the revisions allow an approved entity to create an in-lieu-fee mitigation program and allows in-lieu-fee to be used as required mitigation for Section 401 Water Quality Certifications and Isolated Wetlands permits. The revisions also set a defined mitigation hierarchy preference for Section 401 Water Quality Certifications and Isolated Wetlands permits and require the Agency to adopt this hierarchy in rule. This rulemaking will implement the above statute revisions. Please note this rulemaking does not contain the administration requirements for in-lieu-fee programs. These requirements are contained in the federal regulations in 33 C.F.R. Part 332 and apply to any program sponsor. Also, please note at this time the State is not seeking to develop and administer an in-lieu-fee program.

Who will be regulated by this rule?

The applicability of the rule will not differ from the current version of the rule, which includes applicants for Section 401 water quality certifications containing impacts to wetlands and isolated wetlands permits. The rulemaking will increase flexibility for certification/permit applicants in providing the required mitigation and will ensure in-lieu-fee program sponsors are qualified.

What additional information is the Agency seeking?

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

In addition to the draft rule amendments, Ohio EPA is also seeking comments and feedback on the draft Common Sense Initiative (CSI) Business Regulation Impact Analysis form, which is being released with this draft rule during interested party review.

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April 2013

How are the amendments formatted in the draft rules?

Text that is considered for deletion is identified in strikeout font; new text is underlined.

What is the rulemaking schedule?

At this time, the Agency is soliciting 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 rule comment period, the Agency will review the comments and make necessary changes to the rule. The Agency will then file a proposed rule with the Joint Committee on Agency Rule Review, the Legislative Service Commission and the Secretary of State.

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

Ohio EPA expects to file the proposed rule in the summer of 2013. The final rule could be adopted by early fall 2013.

How can I comment on the draft rule?

Please submit your comments in one of the following ways:

- By email: dsw_rulecomments@epa.ohio.gov
- By fax: (614) 644-2745
- By postal mail:

Rule Coordinator

Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

Comments on the draft rule must be received no later than 5:00 p.m. on May 17, 2013.

How can I get more information?

Copies of this fact sheet, CSI form and the draft rule are on the Division of Surface Water website at www.epa.ohio.gov/dsw/dswrules.aspx.

For more information about this draft rule, please contact:

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Web Links

2008 Federal Compensatory Mitigation for Losses of Aquatic Resources Final Rule -

http://water.epa.gov/lawsregs/guidance/wetlands/upload/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf

RIBITS (Regulatory In-lieu-fee and Bank Information Tracking System) - <http://geo.usace.army.mil/ribits/index.html>