



Section 401 Water Quality Certification

Section 401 of the federal Clean Water Act (CWA) requires state agencies to evaluate projects that will result in the discharge of dredged or fill material into waters of the United States to determine whether the discharge will violate the State's water quality standards.

Who must apply?

A Section 401 certification is required for activities that require federal permits such as a Section 404 permit, a Federal Energy Regulatory Commission (FERC) license, or a U.S. Coast Guard permit. Any person who wishes to place dredged or fill material into wetlands, streams or lakes must apply for an individual Section 401 certification unless the project meets the Ohio EPA conditions of applicable nationwide permits (see below). Activities typically requiring 401 certification include stream rerouting, culverting streams, filling wetlands and dredging and filling in lakes. Typical projects include highway construction, marina and dock construction, shopping mall construction, strip mining operations or housing subdivision.

What is the application process?

Ohio EPA must determine whether an application is complete within 15 business days and notify the applicant in writing if the application is complete. The applicant is then responsible for issuing a public notice within 21 days after the determination that their project is complete. The public will have 30 days following the publication of the public notice to provide comments. At least 30 days prior to the hearing, the applicant is responsible for public noticing the details of the hearing. Ohio EPA will conduct a public hearing for projects if the director determines that there is significant public interest.

An applicant seeking 401 certification must present an evaluation of alternatives and discuss the social and economic impacts that will result from the project. The Clean Water Act allows states up to one year to act on applications for Section 401 water quality certification. However, the new statute allows a 180-day issuance time frame.

What are some typical requirements of a Section 401 certification?

- Complete 401 application.
- Application permit fees.
- U.S. Army Corps of Engineers Public Notice or General Permit Notification.
- U.S. Army Corps of Engineers Jurisdictional Determination Letter.
- Applicant's Investigation Report of Waters of the United States.
- Site photographs.
- Descriptions, schematics and appropriate economic information for the applicant's preferred alternative, minimal degradation alternative and non-degradation alternative for construction and operation of the activity.
- Wetland Characterization Analysis (consistent with Ohio Rapid Assessment Method (ORAM) if wetland impacts are proposed.
- Data sufficient to determine the existing aquatic life use if stream impacts are proposed to a stream and no aquatic life use designation had been made.
- Copies of comment request letters to U.S. F&W and ODNR regarding endangered species and critical habitat.
- Specific and detailed mitigation proposal, including the legal mechanism to protect the mitigation areas in perpetuity.

Applicable Laws and Regulations

- Federal Water Pollution Control Act of 1972 and subsequent amendments (Clean Water Act)
- 40 CFR Parts 230 through 233 and 33 CFR Parts 320 through 330
- Ohio Revised Code (ORC) 6111
- Ohio Administrative Code
 - 3745-32: Water Quality Certification
 - 3745-1-01 through 3745-1-32 Water Quality Standards
 - 3745-1-50 through 3745-1-54 Wetland Water Quality Standards

More Information

For more information, please contact the Division of Surface Water's 401/Wetlands Section at (614) 644-2001.

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What is required to compensate for impacts?

Applicants must mitigate wetland impacts by purchasing credits from mitigation banks, purchasing credits from in-lieu fee programs, or restoring or enhancing wetlands elsewhere in accordance with the wetland water quality standards. Ohio EPA also may require applicants to mitigate stream impacts by purchasing credits from mitigation banks, purchasing credits from in-lieu fee programs, or restoring or enhancing impacted stream segments within the watershed in which the impacts occur.

What are nationwide permits?

Specific activities that will have minimal environmental impacts may be authorized by the U.S. Army Corps of Engineers under nationwide permits. If the activities meet Ohio EPA's conditions on the nationwide permit, the project does not require an individual Section 401 water quality certification. There are currently nationwide permits for approximately 40 types of activities authorized in Ohio.

How long is the 401 certification valid?

The 401 certification is valid as long as the corresponding federal permit remains valid, such as a U.S. Army Corps of Engineers individual Section 404 permit.

How much does it cost?

In addition to the \$200 application fee, applicants applying for a water quality certification shall pay the following review fees. One half of the applicable review fee is due at the time of application. The remainder shall be paid at the time the director takes an action on the application. The maximum fee is \$25,000 (\$5,000 for counties, townships or municipal corporations). State agencies are exempt from fees.

Resource Impacted	Review Fee
Wetland	\$500 per acre
Ephemeral Stream	\$5 per linear foot or \$200, whichever is greater
Intermittent Stream	\$10 per linear foot or \$200, whichever is greater
Perennial Stream	\$15 per linear foot or \$200, whichever is greater
Lake	\$3 per cubic yard of dredged or fill material