



Draft Rules — Water Quality Certified Professional Program (OAC Chapter 3745-6)

What will OAC Chapter 3745-6 cover?

Ohio Administrative Code (OAC) Chapter 3745-6 will contain the administrative requirements for the purpose of certifying water quality professionals to assess streams and categorize wetlands in support of applications for Section 401 Water Quality Certifications and Isolated Wetland Permits.

In July 2017, Governor Kasich signed Senate Bill 2 of the 132nd General Assembly into law. This legislation requires Ohio EPA to develop a program to certify water quality professionals to assess streams to determine the stream's existing aquatic life use, and to categorize wetlands in support of applications for section 401 water quality certifications and isolated wetland permits. The legislation also requires the Director to establish a multi-sector work group to assist in the development of rules adopted under this statute (Ohio Revised Code 6111.30), and lays out minimum requirements for such rules.

As stated clearly in ORC 6111.30 (K), *"nothing in this section requires an applicant for a section 401 water quality certification or a permit for impacts to an isolated wetland under this chapter to use the services of a certified water quality professional"*, meaning that this program is a voluntary program. Those applying for a Section 401 water quality certification may use the services of a Water Quality Certified Professional (WQCP), and will receive the benefit of an expedited permit application review of ninety days, instead of one hundred eighty days, provided that a public hearing is not required or necessary.

The Agency is recommending and requesting feedback on the creation of the following rules, all of which are briefly summarized:

Rule Number	Title	Description
3745-6-01	Purpose, applicability, and available certifications.	Explains the underlying purpose of this program, who the program rules apply to, and the types of professional certifications that an individual may apply for. Also, explains how this program can be used in conjunction with the Credible Data Program.
3745-6-02	Definitions.	Defines the terms used in this chapter of the Administrative Code.
3745-6-03	General education and professional experience requirements, professional certifications and requirements for certification, approved trainers, testing, and professional development requirements.	Details the specific education and experience required for each certification, states what training and testing in a defined timeframe is needed for each certification, and lists requirements for an individual to become a subject matter expert trainer.
3745-6-04	Application for initial certification and renewal of certification.	Lists administrative specifics on how to apply to be a certified professional, and renewal of that certification, and details the Agency review process of an application to become a certified professional, and what information on certified professionals is statutorily required for Ohio EPA to keep on their website.
3745-6-05	Technical standards.	Lists the source documents containing technical standards required to be used for sampling methods and data analysis for each type of certification, as well as what methods are required for laboratory or field analysis.
3745-6-06	Data collection and submittal; document and data review, retention, and production.	Discusses data collection and review requirements, and states what documentation a certified professional needs to retain and for how long, and what documentation

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		should be submitted in support of a 401 water quality certification or isolated wetland permit.
3745-6-07	Standards of conduct, suspension, revocation, recertification, withdrawal, and appeal.	Establishes the standards of conduct that all certified professionals and those involved in a given project are required to follow, and what constitutes grounds for suspension or revocation of a certified professional's status. This rule also provides information on recertification after suspension, and provides the processes for withdrawal, revocation, and appeals.
3745-6-08	Audits.	Defines the audit procedures that will be conducted by Ohio EPA, including discretionary and random audits, and defines what could trigger a discretionary audit. States what audit findings will be posted on Ohio EPA's web site.
3745-6-09	Permit issuance and fees.	Establishes the benefit of using the WQCP program, and the annual fee associated with the program.

What step is this in the rulemaking process?

This step in Ohio EPA's rulemaking process, required by Ohio Revised Code (ORC) 121.39, is called Interested Party Review. During this step, the Agency makes available draft rules to interested parties for review and comment. This step occurs after the Early Stakeholder Outreach comment period.

What content is being considered?

Content being considered is mostly defined in the authorizing statute in the Ohio Revised Code (ORC). The rules adopted under Ohio Revised Code (ORC) 6111.30 are required to:

- Authorize the Director to require applicants for the program to submit information considered necessary by the Director to assess a WQCP's experience;
- Authorize the Director to establish experience requirements and to test WQCP applicants to determine the applicant's competency;
- Authorize the Director to approve or deny applicants to the WQCP program;
- Require the Director to revoke a professional's certification if the Director finds that the professional falsified information on their application to become a WQCP;
- Require periodic renewal of a WQCP's certification and establish continuing education requirements for the purposes of that renewal;
- Establish an annual fee to be paid by WQCPs certified under the rules adopted under ORC 6111.30 (J)(1) in an amount to defray the cost incurred by Ohio EPA for reviewing applications for WQCPs and for issuing those certifications;
- Authorize the Director to suspend or revoke a professional's certification if the Director finds that the professional's performance has resulted in submission of documentation that is inconsistent with the technical standards established in the rules;
- Require a WQCP to submit any documentation developed in support of an application for a Section 401 water quality certification or an isolated wetland permit upon request of the Director;
- Authorize audits by the Director of documentation developed or submitted by a WQCP to ensure compliance with technical standards in rule;
- Establish technical standards to be used by WQCPs in conducting stream assessments and wetlands categorizations; and
- Authorize the Director to require public disclosure, including publication on Ohio EPA's website of: the names, qualifications and credentials of the certified professional, status of the professional's certifications, documents and reports submitted by the professional, the documentation and results of Agency audits of the professional's

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work, and any final disciplinary action related to the professional's performance for all WQCPs certified through Ohio EPA.

Who is regulated by these rules and how will the draft rules affect the regulated community?

As stated clearly in ORC 6111.30 (K), *"nothing in this section requires an applicant for a section 401 water quality certification or a permit for impacts to an isolated wetland under this chapter to use the services of a certified water quality professional"*, meaning that this program is a voluntary program. Those applying for a Section 401 water quality certification may use the services of a WQCP, and will receive the benefit of an expedited permit application review of ninety days, instead of one hundred eighty days, provided that a public hearing is not required or necessary. These regulations should provide a welcome alternative to expedite the permitting process.

How will this program work with the Credible Data Program?

This program will have a small but notable area of overlap with the Credible Data Program. Certain biological data to be collected in support of a 401 Water Quality Certification will be required to be collected by a Level 3 Qualified Data Collector (QDC) approved by the Credible Data Program. A QDC would be necessary in cases when certain types of advanced biological methods need to be used to more accurately categorize a stream. The WQCP would involve a QDC if certain assessment methods, like the Index of Biotic Integrity (IBI), Invertebrate Community Index (ICI), or Modified Index of well-being (MIwb), which require a large amount of experience and expertise, are necessary for a more accurate depiction of stream quality. Certified professionals will undergo the same rigor of training and testing as a Level 3 QDC but will only be certified to collect habitat data and perform certain rapid biological field methods (HMFEL and Salamander community assessment), as this is all that the majority of sites would require. WQCPs will be trained in stream biology enough to know when advanced biological data, in addition to the data that the WQCPs collect, would be useful for the purposes of the 401 application; However, the WQCP will not be trained to collect that data themselves using these advanced biological assessment methods. If the WQCP determines that more biological data is necessary, they will contract out a Level 3 Qualified Data Collector under the Credible Data Program to collect and analyze any additional biological data.

It is important to note that in these instances where data should be collected by a QDC, that data is to be used for permitting purposes only. If the QDC would like the data to be "credible data," the QDC shall be required to submit the data through the Credible Data Program.

What is the rulemaking schedule?

At this time, the Agency is soliciting input on these draft rules. Ohio EPA is required by section 121.39(D) of the Revised Code to contact potentially affected parties prior to adopting rules.

At the close of the draft rule 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, the Legislative Service Commission and 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 rules.

Ohio EPA expects to file the proposed rules in spring 2019. The final rules could be adopted in summer 2019.

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 these draft rules during interested party review.

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How can I comment on the draft rules?

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 rules must be received no later than 5:00 p.m. on February 25, 2019.

How can I get more information?

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

For more information about these draft rules, please contact Jeff Boyles at (614) 644-2494 or Jeffrey.Boyles@epa.ohio.gov.