



# Draft Rules – Section 401 Water Quality Certifications Rules (OAC chapter 3745-32)

## What does OAC Chapter 3745-32 cover?

The federal Clean Water Act requires any applicant for a federal permit or license that may result in a discharge to water of the United States to obtain a water quality certification from Ohio EPA pursuant to Section 401. Ohio EPA's Section 401 water quality certification program reviews projects submitted by applicants to ensure they comply with Ohio's water quality standards, which are located in Chapter 3745-1 of the Ohio Administrative Code (OAC).

## 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 for interested parties for review and comment. This step occurs after the Early Stakeholder Outreach comment period.

## Which water quality standards rules are under review?

This rulemaking includes three existing rules, 3745-32-01, -02, -03, which are due for the five-year review required by state law, and one new rule, 3745-32-04, which is required by House Bill 175.

## What types of changes are being considered?

State law and the federal Clean Water Act require Ohio EPA to periodically update rules to reflect the latest scientific information. The Agency has evaluated information regarding the rules listed above. The main changes being considered are:

- 1) The new rule will establish stream mitigation requirements, including a new crediting and debiting model, and performance standards for impacts to perennial and intermittent streams covered under a Section 401 water quality certification.
- 2) Changes to the rule language and formatting to make them more user-friendly and concise, and to reduce regulatory restriction language within the rules, as well as adding three new definitions to the rule chapter.

## Where does the new information come from?

The new rule is necessary because House Bill 175 (effective July 21, 2022) requires any wetland, stream, or lake mitigation standards, guidance, guidelines, and criteria used in the Section 401 water quality certification process to be in rule after July 21, 2024. Currently, the 401 program relies on the Guidelines for Stream Mitigation Banking and In-lieu fee Programs in Ohio, Version 1.1, to determine the appropriate monitoring requirements and performance standards for stream mitigation required by Section 401 water quality certifications. Incorporating this guidance document in rule will allow the program to continue using the document for permitting decisions in compliance with House Bill 175. During Early Stakeholder Outreach, a new method for calculating stream mitigation debits and credits was proposed by a stakeholder. The agency has decided to incorporate the new Ohio Stream Assessment Method (OSAM) into this rulemaking and seek stakeholder input on the model along with the corresponding rule language.

## How will the draft rules affect the regulated community?

Anyone who wishes to discharge dredged or fill material into waters of the state for which a Section 401 Water Quality Certification is required, is regulated by these rules. This includes local and state governments, federal government, businesses and private property owners. The proposed changes will provide more clarity and flexibility for applicants that are

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required to provide stream mitigation.

### What additional information is the Agency seeking?

The Agency is seeking comments from interested stakeholders (public, local officials, National Pollutant Discharge Elimination System [NPDES] permit holders, industry sectors, other state agencies, consultants, and environmental organizations) who may be impacted by these draft rule amendments or the new rule. 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 Impact Analysis form, which is being released with these draft rules during interested party review.

### How are the amendments formatted in the draft rules?

Text that is considered for deletion is identified in strikethrough 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 rules. The Agency will then file proposed rules 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 rules. Ohio EPA expects to file the proposed rules in spring 2024.

### 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](mailto:dsw_rulecomments@epa.ohio.gov)
- 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 p.m. December 8, 2023.**

### How can I get more information?

Information is available on the Ohio EPA Division of Surface Water website:

- Copies of this fact sheet, CSI form, and the draft rules at: [epa.ohio.gov/divisions-and-offices/surface-water/regulations/interested-party-review](https://epa.ohio.gov/divisions-and-offices/surface-water/regulations/interested-party-review).
- Information on the Section 401 water quality certification program at: [epa.ohio.gov/divisions-and-offices/surface-water/permitting/water-quality-certification-and-isolated-wetland-permits](https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/water-quality-certification-and-isolated-wetland-permits).
- The existing 401 Certifications rules (Chapter 3745-32) at: [epa.ohio.gov/divisions-and-offices/surface-water/regulations/effective-rules](https://epa.ohio.gov/divisions-and-offices/surface-water/regulations/effective-rules).

For more information about these draft rules, please contact Joni Lung at [Joni.Lung@epa.ohio.gov](mailto:Joni.Lung@epa.ohio.gov) or by phone at 614-644-2152.