

February 2006

Surface Water Quality - Draft Rules for Wetland/Stream Mitigation

Ohio EPA is accepting comments on draft rule changes that would improve wetland mitigation procedures and add new guidelines to evaluate streams for mitigation.

The draft rules are designed to:

1. improve the quality of and ability to evaluate mitigated wetlands and streams;
2. ensure greater clarity and predictability regarding Ohio EPA's requirements;
3. make the project review process more efficient, saving time; and
4. bring Ohio's rules in line with current scientific knowledge.

The federal Clean Water Act requires anyone discharging dredged or fill material into Ohio waters to obtain a water quality certification from Ohio EPA and a permit from the U.S. Army Corps of Engineers. Ohio EPA's review is to ensure the project will comply with Ohio's water quality standards. As a condition of approval, all wetland or stream impacts need to be compensated by restoring, creating, enhancing or preserving other wetland or stream areas.

Why are the rules being reviewed?

Improve Success of Wetland Mitigation Projects

The wetland water quality standards first became effective on May 1, 1998. Since then, Ohio EPA has gained considerable experience using those rules during its review of water quality certification

applications. In addition to this experience, Ohio EPA has conducted research under a number of U.S. EPA grants to further refine its understanding of natural and constructed wetlands.

According to the National Academy of Sciences, some wetland mitigation projects nationally are not performing as expected in replacing natural wetlands that were filled. In Ohio studies, mitigation projects have shown mixed results.

While there has been no net loss of wetlands resulting from individual mitigation projects, the quality of mitigation projects does not compare favorably to the quality of the original wetland that was removed.

Changes to the wetland water quality standards would bring them up to date with current knowledge about how wetlands work and how the existing rules can be improved. Revisions also are being considered for wetland mitigation, including the amount of mitigation required, the appropriate location for mitigation and new criteria to measure the success of wetland mitigation projects.

Draft changes include setting up design and monitoring provisions with performance standards and ecological monitoring requirements. These provisions would ensure wetland mitigation plans have a high likelihood of success.

Enhance Stream Mitigation

In the past, Ohio hadn't established detailed rules to guide stream mitigation projects. A new mitigation credit and debit system, which assigns scale values for various aspects of stream degradation or improvement, is now being considered to rate stream quality.

The draft rules describe how to score stream impacts based on aquatic life use, habitat quality and other factors that can indicate stream quality, such as the presence of endangered, threatened or rare species, and the quality of the flood plain and stream bank.

The final calculated mitigation credits would need to equal or exceed calculated debits for a proposed project to be eligible for a water quality certification.

What rules would change?

Chapter 3745-1 of the Ohio Administrative Code (OAC) contains the water quality standards for Ohio. The water quality standards impacted by these draft rule revisions and additions relate to antidegradation and wetlands.

Chapter 3745-32 of the OAC outlines administrative and technical requirements for submitting a Section 401 Water Quality Certification (401) application to Ohio EPA's Division of Surface Water.

Chapter 3745-45 of the OAC consists of one rule, which contains outdated water quality certification fees.

What specific revisions are being considered?

The more significant draft revisions are discussed below. A complete list of rules being considered for revision is provided at the end of this fact sheet.

The changes to rule 3745-1-53 would make significant additions to define specific wetland aquatic life uses and antidegradation categories.



Rule 3745-1-55 would be a new rule that addresses wetland mitigation. This rule would revise mitigation requirements, including the amount of mitigation required and the appropriate location for mitigation. It would also provide additional measures to determine the success of mitigation projects.

Rule 3745-1-56 is a new rule designed to incorporate a detailed stream antidegradation and mitigation procedure into the OAC. The document "*Compensatory Mitigation Requirements for Stream Impacts in the State of Ohio*" would be incorporated into the OAC by reference. This document provides a structured mechanism to review proposed stream impacts and to compare them to mitigation proposals to ensure consistent and appropriate mitigation is performed.

Rule 3745-32-02 consolidates existing rule language and adds a provision to address permit requirements for impacts to waters of the state. It also adds a provision that allows the issuance of a water quality certification where an activity may cause the loss of wetlands or some other impact to a water of the state.

Rule 3745-32-03 is a new rule that consolidates existing rule language and significantly adds to the rules it is replacing. For example, a provision is added to address the requirements imposed on the water quality certification program by the state's budget bill (effective July 1, 2005). This rule also would add some administrative capabilities to the water quality certification program, such as the ability to transfer or renew certifications and issue emergency certifications.

Rule 3745-32-04 would be replaced with a new rule to include provisions related to mitigation plans, design and monitoring. The draft rule specifies goals and objectives, describes baseline data and work plan requirements, and discusses performance standards and

ecological monitoring requirements. These requirements would be implemented to ensure that the mitigation plans submitted have a high likelihood of success.

Rule 3745-45-02 would be rescinded because new fees for the water quality certification program were established in statute (HB 66).

Are other rules being developed that impact stream mitigation?

Yes. Ohio EPA is developing specific use designations for small headwater streams and will incorporate them into Chapter 3745-1 in a future rulemaking.

How are the draft changes formatted in the rules?

For an amended rule, text being deleted is struck through and new text is underlined. For a new rule, all text is underlined. For a rescinded rule, text is left unchanged and "To Be Rescinded" is at the top of the first page of the rule.

How will the revisions affect the regulated community?

The draft rules for stream mitigation analysis have tangible advantages, such as providing standardization of the process and predictability of the requirements. This will significantly reduce delays caused by uncertainties and vagueness in the current procedures. In addition, the rules would allow better comparisons of proposed mitigation approaches for different projects.

The rule changes will facilitate better communication between the regulated community and the Agency. The proposed changes should not significantly impact the resources that the regulated community expends to

obtain a water quality certification. Currently, both the Agency and the regulated community spend considerable resources negotiating mitigation projects after an application has been submitted. The implementation of the rules drafted by Ohio EPA would require more of this effort before the application is submitted rather than after.

A few other changes should be helpful to the regulated community, including adding the ability to transfer or renew water quality certifications and to receive an emergency certification.

What is the rulemaking schedule?

Ohio EPA is soliciting initial input from interested parties on these draft rule revisions. When the Agency proposes rule revisions later this year, a public hearing and another public comment period will be scheduled. After the close of that public comment period, the Agency will review the comments, make any necessary changes to the rules and then adopt the rules.

How can I learn more about the draft rules?

On Friday, March 10, 2006, Ohio EPA will present detailed information on the draft rules at a full-day symposium. This presentation is intended for a technical audience including engineers, consultants and those who want an in-depth understanding of the draft rules and the science behind them.

This meeting will be at Ohio Department of Transportation's Auditorium, 1980 W. Broad Street, Columbus. To register, please contact, Mary McCarron at mary.mccarron@epa.state.oh.us or (614) 644-2160.

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Following the symposium, Ohio EPA will offer four regional overview information sessions.

March 13, 2006, 3-6 pm
Ohio EPA, Northwest District Office
Room 125 A&B
347 North Dunbridge Road
Bowling Green

March 14, 2006, 3-6 pm
Ohio EPA, Southeast District Office
Room 104 A&B
2195 Front Street
Logan

March 15, 2006, 3-6 pm
Northeast Ohio
The West Woods Nature Center
9465 Kinsman Road (Route 87)
Russell

March 16, 2006, 3-6 pm
Ohio EPA, Southwest District Office
401 East Fifth Street
Dayton

How can I get a copy of the draft rules or more information?

Go to the Division of Surface Water Web site at <http://www.epa.state.oh.us/dsw/rules/drafrules.html> or contact Randy Bournique at the address below or by phone at (614) 644-2013.

Where can I send my comments on the draft rules?

Submit your comments no later than April 17, 2006, to:

Randy Bournique
Ohio EPA, Division of Surface Water
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049.
Fax: (614) 644-2745
E-mail:
randy.bournique@epa.state.oh.us.

Summary of Draft Rule Revisions

OAC Chapter 3745-1 Ohio Water Quality Standards

3745-1-05 Antidegradation.

- ▶ Provisions are added to defer application requirements to Chapter 3745-32.
- ▶ Provision is added to exempt Lake Erie shoreline projects from automatic public hearing requirements.

3745-1 50 Definitions.

- ▶ A number of technical definitions are added or modified.

3745-1-51 Wetland narrative criteria.

- ▶ Reference to Ohio Revised Code 6111 is added.
- ▶ Minor wording changes are made.

3745-1-52 Numeric chemical criteria for waste water discharges to wetlands.

- ▶ Provisions are added to define requirements of alternate discharge criteria.

3745-1-53 Wetland use designation.

- ▶ Provisions are added to define specific wetland aquatic life uses and antidegradation categories.

3745-1-54 Wetland antidegradation.

- ▶ This rule is shortened to address general antidegradation provisions only.
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New 3745-1-55 Compensatory mitigation requirements for wetlands.

- ▶ Wetland mitigation is removed from rule 3745-1-54 and placed in this new rule.
- ▶ Provisions are added to better define the mitigation requirements.
- ▶ The calculation procedures are simplified.
- ▶ The number of mitigation ratio scenarios is reduced from four to two.
- ▶ The allowance for upland buffers is expanded.

New 3745-1-56 Stream antidegradation and mitigation.

- ▶ This new rule is created to incorporate, through reference, the proposal for calculating stream debits and credits for the purpose of determining appropriate stream mitigation.

OAC Chapter 3745-32 Section 401 Water Quality Certifications

3745-32-01 Definitions.

- ▶ Minor wording changes are made.

The following rules will be rescinded and the requirements of the rules incorporated into the new rules below.

- ▶ 3745-32-02 Section 401 water quality certification required.
- ▶ 3745-32-03 Section 401 water quality certification exemptions.
- ▶ 3745-32-04 Section 401 water quality certification applications.
- ▶ 3745-32-05 Criteria for decision by director.
- ▶ 3745-32-06 Revocation of section 401 water quality certification.
- ▶ 3745-32-07 Procedure for decision by director.

New 3745-32-02 Applicability.

- ▶ Existing rule requirements are consolidated.
- ▶ A provision is added to address permit requirements for impacts to waters of the state.

New 3745-32-03 401 certification application requirements and procedures.

- ▶ Existing rule language is consolidated.
- ▶ Many additions are made.
- ▶ A provision is added to address the requirements imposed by Ohio House Bill 66.
- ▶ Provisions are added to modify, transfer, or extend certifications.
- ▶ Provisions are added to issue emergency certifications.

New 3745-32-04 Plans, design and monitoring for mitigation.

- ▶ This new rule is created to document mitigation monitoring requirements.

OAC Chapter 3745-45 Section 401 Water Quality Certification Fees

3745-45-02 Certification fees.

- ▶ This rule will be rescinded.
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