



Draft Rules – Wetland Water Quality Standards

OAC Rules 3745-1-50 to 3745-1-54

What are water quality standards?

Water quality standards are state regulations or rules that protect lakes, rivers, streams, wetlands 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 rules are under review at this time?

This rulemaking includes amendments to five rules that address water quality standards for wetlands, including antidegradation protections and review procedures. These rules are OAC 3745-1-50 to 3745-1-54.

Why are these rules being amended, what types of changes are being considered?

The rules are being amended as part of the five year rule review requirements in Ohio Revised Code (ORC) section 106. The Agency has reviewed these rules and has identified necessary changes. On June 5, 2012, the Governor signed into law Senate Bill 294, the Agency's Omnibus Bill. On June 30, 2015, the Governor signed into law House Bill 64, the State's main operating budget bill. Included in these bills 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. The revisions also changed the protection of mitigation projects from "perpetuity" to "long term."

This rulemaking will implement the above statute revisions. Please note this rulemaking does not contain the administrative 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. Minor updates and style revisions are also being considered. No changes are being considered for two rules, OAC 3745-1-52 and OAC 3745-1-53.

The following is a summary of the main revisions considered in this rulemaking:

OAC 3745-1-50

- Existing terms and definitions are being updated to be more consistent with federal regulations.
- New definitions are included for the following terms: applicant, establishment, in-lieu-fee program, long term protection, permittee, reestablishment, rehabilitation, service area, services, and upland buffer.
- Federal regulations and technical manuals referenced in the rules are also included to satisfy rule by reference requirements.
- Minor edits and style revisions.

OAC 3745-1-51

- Inclusion of biological integrity of natural floral and faunal communities to the list of items to be considered when assessing impacts to wetland hydrology.
- Inclusion of biodiversity and maturity level of woody vegetation to the list of items to be considered when assessing impacts to wetland water quality.
- Minor edits and style revisions.

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OAC 3745-1-54

- Revision of terms to be more consistent with U.S. Army Corps of Engineers.
- Clarification on the timeframe wetland categorizations are valid.
- Inclusion of example wetland categorization methods
- Clarification that the Ohio Rapid Assessment Method (ORAM) is not an acceptable wetland evaluation method for reestablished, established or rehabilitated wetlands.
- Allowance for entities designated by Ohio Department of Natural Resources and United States Fish and Wildlife Service to provide written comments to the Agency regarding threatened and endangered species for all wetlands under review.
- Removal of rule language specific to compensatory mitigation for linear projects.
- Update of compensatory mitigation hierarchy to be consistent with S.B. 294 and U.S. Army Corps of Engineer's requirements.
- Update of table of compensatory mitigation ratios (removed on-site ratios and updated terminology).
- Allowance of high quality category 2 wetlands, with reasonable potential to reestablish superior functions, to be preserved as a component of compensatory mitigation.
- Revision of the term "perpetuity" to "long term protection."
- Inclusion of additional detail on when upland buffers can be included as an acceptable component of compensatory mitigation.
- Inclusion of additional detail on compensatory mitigation monitoring requirements.
- Minor edits and style revisions.

Are there revisions from the April 2013 draft version of the wetland Antidegradation rule, OAC 3745-1-54?

The Agency previously released a draft of OAC rule 3745-1-54 for interested party review and comment in April 2013. Revisions have been made to this rule in response to comments received from interested parties and to reflect changes in the Agency's regulatory preferences. Revisions have been made to the draft rule to increase consistency with U.S. Army Corps of Engineers' regulations, especially in regard to the compensatory mitigation hierarchy.

Who will be regulated by these rules?

The applicability of the rules will not differ from the current version of the rules, 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 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 strikeout font; new text is underlined.

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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 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 fall 2016. The final rules could be adopted by early 2017.

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 October 24, 2016.

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:

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