



Early Stakeholder Outreach — Section 401 Water Quality Certifications Rules (OAC 3745-32)

Ohio EPA prepares early stakeholder outreach fact sheets to ensure stakeholders are brought into the review process as early as possible and to obtain additional input and discussion before development of interested party draft rules.

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 a navigable water 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).

Why are these rules being sent out for Early Stakeholder Outreach?

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional interested party notification and request for information will allow for early feedback before the rule language has been developed by the Agency.

What changes are being considered?

The Agency is conducting the five-year review of the existing three rules in OAC Chapter 3745-32, and creating new rules 3745-32-04. Initial changes that the Agency is considering include:

3745-32-01

- Reduce regulatory restriction language within the rule.

3745-32-02

- Reduce regulatory restriction language within the rule.

3745-32-03

- Reduce regulatory restriction language within the rule.

3745-32-04

- This new rule will establish stream mitigation requirements and performance standards for impacts to perennial and intermittent streams covered under a Section 401 water quality certification.
- This 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.

Additional rules may be added to this package to comply with the requirements of HB 175.

How can I provide input?

The Agency is seeking stakeholder input on these rules. When preparing your comments, be sure to:

- explain your views as clearly as possible;
- describe any assumptions used;
- provide any technical information and/or data used to support your views;
- explain how you arrived at your estimate for potential burdens, benefits or costs;
- provide specific examples to illustrate your views; and
- offer alternatives.

Written comments will be accepted through close of business January 18, 2023. Please submit input to:

Rule Coordinator
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1019
dsw_rulecomments@epa.ohio.gov

What if I have questions?

For more information about the rulemaking, please contact Joni Lung by email at Joni.Lung@epa.ohio.gov or by phone at 614-644-2152

Early Stakeholder Outreach — Rules

Who will be regulated by these rules?

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. This rulemaking does not change existing requirements and should have no additional impact on stakeholders.

What is the rulemaking schedule?

Depending upon feedback provided during this comment period, the Agency is planning to release a draft version of these rules for interested party review and comment during spring or summer 2023.

What input is the Agency seeking?

The following questions may help guide you as you develop your comments.

- Is the general regulatory framework proposed the most appropriate? Should the Agency consider any alternative framework?
- What options are available for improving an identified concept? What options are available for improving the existing rules?
- Are there considerations the Agency should take into account when updating the existing rules? Are there considerations the Agency should take into account when developing a specific concept?
- Is there any information or data the Agency should be aware of when developing program concepts or rule language?

Ohio EPA would especially like to hear information regarding the following from stakeholders who may be impacted by the new program.

- Would this regulatory program have a positive impact on your business? Please explain how.
- Would this regulatory program have an adverse impact on your business? If so, please identify the nature of the adverse impact (for example, license fees, fines, employer time for compliance).

How can I get more information?

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

- This fact sheet is available on the Division of Surface Water website at: epa.ohio.gov/divisions-and-offices/surface-water/regulations/early-stakeholder.
- The existing 401 Certifications Rules are available here: epa.ohio.gov/divisions-and-offices/surface-water/regulations/effective-rules.
- For additional background information on the Section 401 water quality certification program, please visit the web page at: epa.ohio.gov/divisions-and-offices/surface-water/permitting/water-quality-certification-and-isolated-wetland-permits.

Contact

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