

STATE OF OHIO

Section 401 Water Quality Certifications

Chapter 3745-32 of the ADMINISTRATIVE CODE

Most Recent Revision:

Effective September 15, 1982

Ohio Environmental Protection Agency  
Division of Surface Water  
401/Wetlands Section

## TABLE OF CONTENTS

OAC Rule #	Rule Title	Effective Date
3745-32-01	Definitions .....	9/15/82
3745-32-02	Section 401 water quality certification required .....	9/15/82
3745-32-03	Section 401 water quality certification exemptions .....	9/15/82
3745-32-04	Section 401 water quality certification applications .....	9/15/82
3745-32-05	Criteria for decision by director .....	9/15/82
3745-32-06	Revocation of section 401 water quality certification .....	9/15/82
3745-32-07	Procedure for decision by director .....	9/15/82

### **3745-32-01 Definitions.**

For the purposes of this chapter the following definitions shall apply:

- (A) "Applicant" means any person required to obtain a section 401 water quality certification from the Ohio EPA.
- (B) "Director" means the director of the Ohio EPA or his duly authorized representative.
- (C) "Discharge of dredged material" means any addition of dredged material, in excess of one cubic yard when used in a single or incidental operation, into waters of the state. The term includes, without limitation, the addition of dredged material to a specified disposal site which is located in waters of the state, or the runoff or overflow of dredged material from a contained land or water disposal area which enters the waters of the state. Discharges of pollutants into waters of the state resulting from the subsequent onshore processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Federal Water Pollution Control Act, even though the extraction of such material may require a permit from the army corps of engineers under section 10 of the Rivers and Harbors Act.
- (D) "Discharge of fill material" means the addition of fill material into waters of the state for the purpose of creating fastlands, elevations of land beneath waters of the state, or for impoundments of water. The term includes, but is not limited to, the placement of the following in waters of the state: fill that is necessary to the construction of any structure; structures or impoundments requiring rock, sand, dirt, or other pollutants for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands, property protection or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; or artificial reefs.
- (E) "Dredged material" means material that is excavated or dredged from waters of the state. The term does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.
- (F) "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 886, 33 U.S.C. 1251, as amended.
- (G) "Fill material" means any pollutant used to create fill to replace an aquatic area with dry land or to change the bottom elevation of a water body for any purpose. "Fill material" does not include the following:
  - (1) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest

- products;
- (2) Material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.
- (H) "General permit" means a department of the army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cause only minimal individual and cumulative adverse environmental impact.
- (I) "Nationwide permit" means a department of the army authorization that has been issued for certain specified activities nationwide.
- (J) "Ohio EPA" means the Ohio environmental protection agency or its director, as the context or other law or regulations may require.
- (K) "Person" means the state, any municipal corporation, political subdivision of the state, person as defined in section 1.59 of the Revised Code, interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof.
- (L) "Section 401 water quality certification" means certification from Ohio EPA, pursuant to section 401 of the Federal Water Pollution Control Act, Chapter 6111. of the Revised Code and Chapter 3745-32 of the Administrative Code, that any discharge, as set forth in section 401, will comply with sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act.
- (M) "The Rivers and Harbors Act" means the Rivers and Harbors Act of 1899, 30 Stat. 1151, 33 U.S.C. 401.
- (N) "Waters of the state" means all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters, including those waters that are presently used, have been used or are susceptible to use to transport interstate commerce up to the head of navigation.
- (O) "Wetlands" are areas where the water table is at, near, or above the land surface long enough each year to support the growth of water dependent vegetation and to result in the formation of characteristic wet soil types. These include marshes, swamps, bogs and similar areas.

3745-32-01

3

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03

Rule authorized by: R.C. Section 6111.03

Rule amplifies: R.C. Section 6111.03

Prior effective dates: none

**3745-32-02 Section 401 water quality certification required.**

- (A) A section 401 water quality certification is required to obtain the following:
- (1) A permit from the army corps of engineers pursuant to section 10 of the Rivers and Harbors Act;
  - (2) A permit from the army corps of engineers pursuant to section 404 of the Federal Water Pollution Control Act;
  - (3) A permit from the army corps of engineers pursuant to both section 10 of the Rivers and Harbors Act and section 404 of the Federal Water Pollution Control Act; and
  - (4) Any other federal permit or license to conduct any activity which may result in any discharge to waters of the state.
- (B) No certification issued pursuant to this chapter shall be effective until all applicable fees have been paid.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03  
Rule authorized by: R.C. Section 6111.03  
Rule amplifies: R.C. Section 6111.03  
Prior effective dates: none

**3745-32-03 Section 401 water quality certification exemptions.**

No section 401 water quality certification need be obtained if:

- (A) The secretary of the army has issued a general permit pursuant to section 404(e) of the Federal Water Pollution Control Act; or
- (B) The discharge of dredged or fill material is part of the construction of a federal project specifically authorized by congress, provided the effects of such discharge are included in an environmental impact statement submitted to congress prior to the actual discharge.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03  
Rule authorized by: R.C. Section 6111.03  
Rule amplifies: R.C. Section 6111.03  
Prior effective dates: none

**3745-32-04 Section 401 water quality certification applications.**

- (A) Filing an application with the army corps of engineers for any permit set forth in paragraphs (A)(1) to (A)(3) of rule 3745-32-02 of the Administrative Code constitutes application for a section 401 water quality certification from the Ohio EPA. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director.
  
- (B) Any person filing an application for any other federal permit or license to conduct an activity which may result in a discharge to waters of the state must submit an application to the director for a section 401 water quality certification. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director. The director may waive the application requirement if, in the judgment of the director, the activity for which a federal permit or license is sought will not result in a discharge to the waters of the state.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03  
Rule authorized by: R.C. Section 6111.03  
Rule amplifies: R.C. Section 6111.03  
Prior effective dates: none

**3745-32-05 Criteria for decision by director.**

- (A) The director shall not issue a section 401 water quality certification unless he determines that the applicant has demonstrated that the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state will:
- (1) Not prevent or interfere with the attainment or maintenance of applicable water quality standards;
  - (2) Not result in a violation of any applicable provision of the following sections of the Federal Water Pollution Control Act including:
    - (a) Effluent limitations as described in section 301;
    - (b) Water quality related effluent limitations as described in section 302;
    - (c) Water quality standards and implementation plans as described in section 303;
    - (d) National standards of performance as described in section 306; or
    - (e) Toxic and pretreatment effluent standards as described in section 307.
- (B) Notwithstanding an applicant's demonstration of the criteria in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director may deny an application for a section 401 water quality certification if the director concludes that the discharge of dredged or fill material or obstructions or alterations in waters of the state will result in adverse long or short term impact on water quality.
- (C) The director may impose such terms and conditions as part of a section 401 water quality certification as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality.
- (D) Prior to the issuance of a section 401 water quality certification or prior to, during, or after the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests including, but not limited to, chemical analyses of water, sediment or fill material, and bioassays.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03  
Rule authorized by: R.C. Section 6111.03

3745-32-05

2

Rule amplifies: R.C. Section 6111.03

Prior effective dates: none

**3745-32-06 Revocation of section 401 water quality certification.**

The director may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03  
Rule authorized by: R.C. Section 6111.03  
Rule amplifies: R.C. Section 6111.03  
Prior effective dates: none

**3745-32-07 Procedure for decision by director.**

A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code.

Effective: 9/15/1982

R.C. Section 119.032 review dates: 9/27/2002 and 9/30/2005

Promulgated under: R.C. Section 119.03  
Rule authorized by: R.C. Section 6111.03  
Rule amplifies: R.C. Section 6111.03  
Prior effective dates: none