



# Proposed Rule – Section 401 Water Quality Certification

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*(OAC 3745-32-05)*

## What does OAC 3745-32-05 cover?

Ohio Administrative Code (OAC) 3745-32-05 contains the criteria for the director of Ohio EPA to use in the issuance of Section 401 Water Quality Certifications (WQC). The rule also grants the director authority to deny a Section 401 WQC, impose terms and conditions and require the applicant to perform various environmental tests to ensure adequate protection of water quality.

## What step is this in the rulemaking process?

This step in Ohio EPA's rulemaking process is called Proposed or Original Filed. During this step, the Agency files the rule with the Joint Committee on Agency Rule Review (JCARR), Secretary of State and Legislative Service Commission. JCARR jurisdiction lasts 65 days. Ohio EPA will schedule and hold a public hearing on the rule and accept comments on the rule language in this step. This step occurs after the Interested Party Review comment period.

## What changes are being proposed?

The Agency is proposing amendments to the rule to provide the director the ability to prohibit open lake disposal of dredged material from harbor or navigation maintenance activities in Lake Erie if the dredge material could result in higher levels of a chemical in fish that bioaccumulates throughout the food chain, such as PCBs, or if the disposal of dredge material would violate any international treaties or compacts. Minor formatting revisions and reference citations are also included.

On February 9, 2015, the Agency began the Early Stakeholder Outreach review and comment of all the Section 401 Water Quality Certification rules in OAC Chapter 3745-32. Revisions to the rule beyond those specified above are under consideration as part of this separate rulemaking.

## Are there changes from the February 2015 draft rule revisions?

No.

## Why is the Agency considering this rulemaking at this time?

On February 11, 2015, Governor Kasich signed Executive Order 2015-02K, authorizing the Agency to conduct an emergency rulemaking to protect Lake Erie from open lake disposal of dredge material contaminated with bioaccumulative chemicals of concern (BCCs). The emergency rule expires on June 11, 2015. The Agency is conducting this rulemaking to replace the emergency rule.

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### How will the changes affect controls placed on water pollution?

The revisions to the rule will prohibit the open lake disposal of BCC contaminated dredge material in Lake Erie. The contaminated dredge material will be required to be placed in a confined disposal facility or upland location determined to be protective of public health and the environment. Removing contaminated sediment from Lake Erie will better protect the lake, its aquatic life and fishing industry.

### 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, Section 401 Water Quality Certification applicants, 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.

### How are the amendments formatted in the proposed rule?

Text proposed for deletion is identified in ~~strikeout font~~; new text is underlined.

### What is the rulemaking schedule?

A public hearing on the proposed rule will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. This hearing will be held at the Ohio EPA Conference Center, Room A, 50 West Town Street, Suite 700, in Columbus, Ohio at 10:30 a.m. on May 5, 2015. The purpose of the public hearing is to give interested persons the opportunity to present oral or written comments on the proposed rule.

At close of the public comment period, the Agency will review the comments, make any necessary changes to the rule, and then adopt the rule. This is roughly a two-month process from the close of the comment period. A responsiveness summary will be prepared and sent to everyone who comments on the proposed rule. A final rule could be adopted in early summer.

If you have comments on the rule provisions unrelated to those changed by the executive order, please submit the comments on the separate five year rule review rulemaking in progress that includes all of the Section 401 Water Quality Certification rules in OAC Chapter 3745-32.

### How can I comment on the proposed rule?

Please submit your comments in one of the following ways:

- By email: [dsw\\_rulecomments@epa.ohio.gov](mailto: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 proposed rule must be received no later than 5:00 p.m. on May 5, 2015.**

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### How can I get more information?

- Copies of this fact sheet and the proposed rule are on the Division of Surface Water website at [www.epa.ohio.gov/dsw/dswrules.aspx](http://www.epa.ohio.gov/dsw/dswrules.aspx).
- Copies of Governor Kasich's Executive Order and fact sheet regarding the emergency rulemaking are available on the Ohio EPA website at <http://epa.ohio.gov/News/OnlineNewsRoom/NewsReleases/TabId/6596/ArticleId/696/language/en-US/governor-kasich-signs-executive-order-to-further-protect-lake-erie.aspx>.

. For more information about this proposed rule, please contact:

**Karl Gebhardt**

(614) 644-2001

[karl.gebhardt@epa.ohio.gov](mailto:karl.gebhardt@epa.ohio.gov)