

Ohio Proposes Modification to Clean Water Act §401 Water Quality Certification

Article By:

Environmental & Regulatory

Ohio EPA proposed a modification to its **Clean Water Act (CWA)** §401 water quality certifications for Nationwide general permits (NWP) on November 16, 2015. If finalized as proposed, longer lead times for CWA §404 permitting activities in high quality streams or undesignated streams that flow into high quality streams could result in project delays. Comments to the proposal are due no later than 5:00 pm on January 19, 2016.

Overview of the proposed modification to the Ohio CWA §401 Water Quality Certification

The state of Ohio must certify in accordance with CWA §401 that NWPs do not degrade state water quality. NWPs are a type of general permit issued by the U.S. Army Corps of Engineers (Corps) under CWA §404(e) to authorize activities that result in the discharge of dredged or fill materials into waters of the United States. NWPs are commonly used for activities such as stream crossings, stream relocations, and filling of wetlands for roadways or well pads, etc.

- This proposal designates additional streams within watersheds as high quality streams.
- Ohio EPA has developed GIS mapping for identifying high quality watersheds. NWP applications involving stream filling in these areas will require a separate CWA §401 certification application to the Ohio EPA. The applications submitted to Ohio EPA will require public notice and will have the opportunity for a public hearing.
 - NOTE: Streams designated as not high quality will not require an individual Ohio CWA §401 permit application.
- Projects proposed for areas where impacted streams have yet to be designated by Ohio will require the applicant to perform field evaluations using Qualitative Habitat Evaluation Index (QHEI) procedures, or using Headwater Habitat Evaluation Index (HHEI) procedures for smaller undesignated streams, to determine whether an individual Ohio CWA §401 permit application is required, or if a “Director’s Authorization” is required through an alternate permitting procedure.

- For sites that require a QHEI or HHEI assessment of the impacted stream, the assessment will generally need to be completed prior to the pre-construction notification (PCN) to the Corps.
- Ohio EPA and Corps are developing a debit/credit matrix method for determining mitigation requirements in exchange for impacts to streams and wetlands. The debit/credit matrix and the Corps participation with Ohio EPA detailing the interface between the two agencies was expected to be included with the proposed modification to the Ohio CWA §401 Water Quality Certification; however, this has not occurred. A separate public notice is anticipated from the Corps, which should be evaluated once the guidance is issued for public comment.

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