



Ohio Revised Code

Section 6111.30 Application for federal water quality certification - hearing.

Effective: September 29, 2017

Legislation: Senate Bill 2, House Bill 49 - 132nd General Assembly

(A) Applications for a section 401 water quality certification required under division (O) of section 6111.03 of the Revised Code shall be submitted on forms provided by the director of environmental protection and shall include all information required on those forms as well as all of the following:

- (1) A copy of a letter from the United States army corps of engineers documenting its jurisdiction over the wetlands, streams, or other waters of the state that are the subject of the section 401 water quality certification application;
- (2) If the project involves impacts to a wetland, a wetland characterization analysis consistent with the Ohio rapid assessment method;
- (3) If the project involves a stream for which a specific aquatic life use designation has not been made, data sufficient to determine the existing aquatic life use;
- (4) A specific and detailed mitigation proposal, including the location and proposed real estate instrument or other available mechanism for protecting the property long term;
- (5) Applicable fees;
- (6) Site photographs;
- (7) Adequate documentation confirming that the applicant has requested comments from the department of natural resources and the United States fish and wildlife service regarding threatened and endangered species, including the presence or absence of critical habitat;
- (8) Descriptions, schematics, and appropriate economic information concerning the applicant's preferred alternative, nondegradation alternatives, and minimum degradation alternatives for the design and operation of the project;



(9) The applicant's investigation report of the waters of the United States in support of a section 404 permit application concerning the project;

(10) A copy of the United States army corps of engineers' public notice regarding the section 404 permit application concerning the project.

(B) Not later than fifteen business days after the receipt of an application for a section 401 water quality certification, the director shall review the application to determine if it is complete and shall notify the applicant in writing as to whether the application is complete. If the director fails to notify the applicant within fifteen business days regarding the completeness of the application, the application is considered complete. If the director determines that the application is not complete, the director shall include with the written notification an itemized list of the information or materials that are necessary to complete the application. If the applicant fails to provide the information or materials within sixty days after the director's receipt of the application, the director may return the incomplete application to the applicant and take no further action on the application. If the application is returned to the applicant because it is incomplete, the director shall return the review fee levied under division (A)(1), (2), or (3) of section 3745.114 of the Revised Code to the applicant, but shall retain the application fee levied under that section.

(C) Not later than twenty-one days after a determination that an application is complete under division (B) of this section, the applicant shall publish public notice of the director's receipt of the complete application in a newspaper of general circulation in the county in which the project that is the subject of the application is located. The public notice shall be in a form acceptable to the director. The applicant shall promptly provide the director with proof of publication. The applicant may choose, subject to review by and approval of the director, to include in the public notice an advertisement for an antidegradation public hearing on the application pursuant to section 6111.12 of the Revised Code. There shall be a public comment period of thirty days following the publication of the public notice.

(D) If the director determines that there is significant public interest in a public hearing as evidenced by the public comments received concerning the application and by other requests for a public hearing on the application, the director or the director's representative shall conduct a public hearing



concerning the application. Notice of the public hearing shall be published by the applicant, subject to review and approval by the director, at least thirty days prior to the date of the hearing in a newspaper of general circulation in the county in which the project that is the subject of the application is to take place. If a public hearing is requested concerning an application, the director shall accept comments concerning the application until five business days after the public hearing. A public hearing conducted under this division shall take place not later than one hundred days after the application is determined to be complete.

(E) The director shall forward all public comments concerning an application submitted under this section that are received through the public involvement process required by rules adopted under this chapter to the applicant not later than five business days after receipt of the comments by the director.

(F) The applicant shall respond in writing to written comments or to deficiencies identified by the director during the course of reviewing the application not later than fifteen days after receiving or being notified of them.

(G) The director shall issue or deny a section 401 water quality certification not later than one hundred eighty days after the complete application for the certification is received. The director shall provide an applicant for a section 401 water quality certification with an opportunity to review the certification prior to its issuance. However, when a certified water quality professional conducts a stream or wetland assessment to support an application and the application does not require or necessitate a public hearing, the director shall issue or deny a section 401 water quality certification not later than ninety days after the complete application for the certification is received.

(H) The director shall maintain an accessible database that includes environmentally beneficial water restoration and protection projects that may serve as potential mitigation projects for projects in the state for which a section 401 water quality certification is required. A project's inclusion in the database does not constitute an approval of the project.

(I) Mitigation required by a section 401 water quality certification may be accomplished by any of the following:



- (1) Purchasing credits at a mitigation bank approved in accordance with 33 C.F.R. 332.8;
- (2) Participating in an in-lieu fee mitigation program approved in accordance with 33 C.F.R. 332.8;
- (3) Constructing individual mitigation projects.

Notwithstanding the mitigation hierarchy specified in section 3745-1-54 of the Administrative Code, mitigation projects shall be approved in accordance with the hierarchy specified in 33 C.F.R. 332.3 unless the director determines that the size or quality of the impacted resource necessitates reasonably identifiable, available, and practicable mitigation conducted by the applicant. The director shall adopt rules in accordance with Chapter 119. of the Revised Code consistent with the mitigation hierarchy specified in 33 C.F.R. 332.3.

(J) The director shall establish a program and adopt rules in accordance with Chapter 119. of the Revised Code for the purpose of certifying water quality professionals to assess streams to determine existing aquatic life use and to categorize wetlands in support of applications for section 401 water quality certification under divisions (A)(2) and (3) of this section and isolated wetland permits under sections 6111.022 to 6111.024 of the Revised Code. The director shall establish a multi-sector work group to assist in the development of rules adopted under this division. The director shall use information submitted by certified water quality professionals in the review of those applications.

Rules adopted under this division shall do all of the following:

(1) Provide for the certification of water quality professionals to conduct activities in support of applications for section 401 water quality certification and isolated wetland permits, including work necessary to determine existing aquatic life use of streams and categorize wetlands. Rules adopted under division (J)(1) of this section shall do at least all of the following:

(a) Authorize the director to require an applicant for water quality professional certification to submit information considered necessary by the director to assess a water quality professional's experience in conducting stream assessments and wetlands categorizations;

(b) Authorize the director to establish experience requirements and to use tests to determine the



competency of applicants for water quality professional certification;

(c) Authorize the director to approve applicants for water quality professional certification who comply with the requirements established in rules and deny applicants that do not comply with those requirements;

(d) Require the director to revoke the certification of a water quality professional if the director finds that the professional falsified any information on the professional's application for certification regarding the professional's credentials;

(e) Require periodic renewal of a water quality professional's certification and establish continuing education requirements for purposes of that renewal.

(2) Establish an annual fee to be paid by water quality professionals certified under rules adopted under division (J)(1) of this section in an amount calculated to defray the costs incurred by the environmental protection agency for reviewing applications for water quality professional certification and for issuing those certifications;

(3) Authorize the director to suspend or revoke the certification of a water quality professional if the director finds that the professional's performance has resulted in submission of documentation that is inconsistent with standards established in rules adopted under division (J)(7) of this section;

(4) Authorize the director to review documentation submitted by a certified water quality professional to ensure compliance with requirements established in rules adopted under division (J)(7) of this section;

(5) Require a certified water quality professional to submit any documentation developed in support of an application for a section 401 water quality certification or an isolated wetland permit upon the request of the director;

(6) Authorize audits by the director of documentation developed or submitted by certified water quality professionals to ensure compliance with requirements established in rules adopted under division (J)(7) of this section;



(7) Establish technical standards to be used by certified water quality professionals in conducting stream assessments and wetlands categorizations;

(8) Authorize the director to require public disclosure, including publication on the environmental protection agency's web site, of all of the following information for each certified water quality professional:

(a) Name;

(b) Qualifications and credentials;

(c) Status of the professional's certifications;

(d) Documents and reports submitted by the certified water quality professional;

(e) Documentation and results of agency audits of the certified water quality professional's work;

(f) Any final disciplinary action related to the certified water quality professional's performance.

(K) Nothing in this section requires an applicant for a section 401 water quality certification or a permit for impacts to an isolated wetland under this chapter to use the services of a certified water quality professional.

(L) As used in this section and section 6111.31 of the Revised Code, "section 401 water quality certification" means certification pursuant to section 401 of the Federal Water Pollution Control Act and this chapter and rules adopted under it 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.

The Legislative Service Commission presents the text of this section as a composite of the section as amended by multiple acts of the General Assembly. This presentation recognizes the principle stated in R.C. 1.52(B) that amendments are to be harmonized if reasonably capable of simultaneous operation.