

3745-32-01

**Definitions.**

In addition to the definitions in rules 3745-1-02, 3745-1-05 and 3745-1-50 of the Administrative Code, the following definitions apply to this chapter.

~~(A) "33 C.F.R." and "40 C.F.R." means Title 33 and Title 40, respectively, of the Code of Federal Regulations effective July 1, 2015.~~

~~[The Code of Federal Regulations can be generally found in public libraries, and can be viewed electronically online at <http://www.gpo.gov/fdsys/> and purchased by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954."]~~

(A)

~~(B)(1) "401 certification" means a Section 401 water quality certification from Ohio EPA, pursuant to section 401 of the act, Chapter 6111. of the Revised Code and this chapter, that any discharge, as set forth in section 401, ~~shall~~will comply with sections 301, 302, 303, 306 and 307 of the act.~~

~~(C)(2) "Act" means the Federal Water Pollution Control Act ~~amendments of 1972, 86 Stat. 886~~ (commonly referred to as the Clean Water Act), ~~33 U.S.C. sections 1251 to 1387, as amended through July 1, 2015.~~~~

~~[The act can be generally found in public libraries, and can be viewed electronically online at <http://www.gpo.gov/fdsys/> and purchased by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954."]~~

~~(D)(3) "Applicant" means any person ~~required to~~ who submits an application to obtain a 401 certification from the Ohio EPA.~~

(B) [Reserved.]

~~(E)(C) "Corps" means the United States army corps of engineers.~~

(D)

(1) "Discharge" has the same meaning as used in paragraph (16) of section 502 of the Act.

~~(F)(2) "Discharge of dredged material" means any addition of dredged material into, including redeposit of dredged material other than incidental fallback, as those terms are construed under federal law, within waters of the state.~~

~~(1)~~(a) Discharge of dredged material includes, but is not limited to, the following:

- ~~(a)~~(i) The addition of dredged material to a specified discharge site located in waters of the state.
- ~~(b)~~(ii) The runoff or overflow, associated with a dredging operation, from a contained land or water disposal area.
- ~~(c)~~(iii) Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the state which is incidental to any activity including mechanized landclearing, ditching, channelization, or other excavation.

~~(2)~~(b) Discharge of dredged material does not include the following:

- ~~(a)~~(i) Discharges of pollutants into waters of the state resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may ~~require~~ necessitate a permit from the corps or applicable state.
- ~~(b)~~(ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material.
- ~~(c)~~(iii) Incidental fallback.

~~(G)~~(3) "Discharge of fill material" means the addition of fill material into waters of the state. The term generally includes, without limitation, the following: placement of fill that is necessary for the construction of any structure or infrastructure in a water of the state; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material 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 and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid

waste landfills; placement of overburden, slurry, or tailings or similar mining related materials; and artificial reefs.

~~(H)~~(4) "Dredged material" means material that is excavated or dredged from waters of the state.

(E) [Reserved.]

~~(H)~~(F) "Fill material" means any material used to fill a surface water of the state, to replace a surface water of the state with dry land, or to change the bottom elevation of a surface water of the state, and that consists of suitable material that is free from toxic contaminants in other than trace quantities.

~~(H)~~(G) "General permit" means a corps authorization that is issued on a nationwide or regional basis for a category or categories of activities.

(H) [Reserved.]

(I) "In-kind" means a water of the state with a similar structural and functional type to the impacted water of the state.

(J) [Reserved.]

(K) [Reserved.]

~~(K)~~(L) "Letter of permission" means a corps permit issued through an abbreviated processing procedure which includes coordination with federal and state fish and wildlife agencies, as ~~required~~ necessitated by the fish and wildlife coordination act and a public interest evaluation but without the publishing an individual public notice.

(M) [Reserved.]

~~(L)~~(N) "Nationwide permit" means a type of corps general permit which authorizes activities on a nationwide basis unless specifically limited.

~~(M)~~(O) "Ohio EPA" means the Ohio environmental protection agency or ~~its~~ the agency's director, as the context or other law or regulations may require.

~~(N)~~(P) "Person" means the same as defined in section 6111.01 of the Revised Code.

(Q) [Reserved.]

~~(O)~~(R) "Regional permit" means a type of corps general permit that has been issued for certain specified activities on a regional basis.

(S) "Stream" means a water body having a channel with defined bed and banks that confine and conduct continuous or periodical flowing water. Streams with ephemeral flow that are a water of the state are subject to the requirements in sections 6111.311 to 6111.316 of the Revised Code.

(T) [Reserved.]

(U) [Reserved.]

(V) [Reserved.]

(P) "The Rivers and Harbors Act" means the Rivers and Harbors Act of 1899, 30 Stat. 1151, 33 U.S.C. 401, as amended through July 1, 2015.

~~[The Rivers and Harbors Act can be generally found in public libraries, and can be viewed electronically online at <http://www.gpo.gov/fdsys/> and purchased by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954."]~~

(W)

~~(Q)~~(1) "Waters of the state" means the same as defined in section 6111.01 of the Revised Code.

~~(R)~~(2) "Wetland" means the same as defined in section 6111.02 of the Revised Code.

(X) [Reserved.]

(Y) [Reserved.]

(Z) [Reserved.]

(AA) Incorporation by reference. This chapter includes references to certain matter or materials. The text of the referenced materials is not included in the rules contained in this chapter. Information on the availability of the referenced materials as well as the date of, or the particular edition or version of the material is included in this rule. For materials subject to change, only the specific versions specified in this rule are referenced. Material is referenced as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not applicable unless and until this rule has been amended to specify the new dates.

(1) Availability. The materials incorporated by reference are available as follows:

- (a) "Code of Federal Regulations" (CFR). Information and copies may be obtained by writing to: "U.S. government printing office, P.O. Box 979050, St. Louis, MO 63197-9000." The full text of the CFR is also available in electronic format at [www.ecfr.gov/](http://www.ecfr.gov/). The CFR compilations are also available for inspection and use at most public libraries and "The State Library of Ohio."
- (b) "Federal Water Pollution Control Act." Information and copies may be obtained by writing to: "U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000." The full text of the Act is also available in electronic format at <https://www.govinfo.gov>. A copy of the Act is also available for inspection and use at most public libraries and "The State Library of Ohio."
- (c) "The Rivers and Harbors Act." Information and copies may be obtained by writing to: "U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000." The full text of the act is also available in electronic format at <https://www.govinfo.gov/content/pkg/USCODE-2018-title33/pdf/USCODE-2018-title33-chap9-subchapI.pdf>. A copy of the act is also available for inspection and use at most public libraries and "The State Library of Ohio."
- (d) Other publications. The availability of these documents is provided in paragraph (AA)(2) of this rule. However, many of the documents are also available for inspection and copying at most public libraries and "The State Library of Ohio."

(2) Incorporated materials.

- (a) 33 CFR; "Navigation and Navigable Waters" as published in the July 1, 2023 Code of Federal Regulations.
- (b) 40 CFR; "Protection of Environment" as published in the July 1, 2023 Code of Federal Regulations.
- (c) Federal Water Pollution Control Act; contained in 33 U.S.C. 1251-1387.: as published in the 2018 edition of the United States Code.
- (d) The Rivers and Harbors Act; contained in 30 Stat. 1151, 33 U.S.C. 40; "The Rivers and Harbors Act of 1899"; as published in the 2018 edition of the the United States Code.

- (e) "Guidelines for Stream Mitigation Banking and In-lieu Fee Programs in Ohio," version 1.1 (March 2016) can be found at <https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/6536>. This document may also be obtained by writing to: "Ohio EPA, Division of Surface Water, PO Box 1049, Columbus, Ohio 43216-1049."
- (f) "Ohio Stream Assessment Method," version 3.0 (March 2024) can be found at <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/wetland-and-stream-mitigation>. This document may also be obtained by writing to: "Ohio EPA, Division of Surface Water, PO Box 1049, Columbus, Ohio 43216-1049."

Effective: 7/20/2024

Five Year Review (FYR) Dates: 4/1/2024 and 07/20/2029

**CERTIFIED ELECTRONICALLY**

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**Certification**

07/10/2024

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**Date**

Promulgated Under:

119.03

Statutory Authority:

6111.03

Rule Amplifies:

6111.03

Prior Effective Dates:

09/15/1982, 04/17/2001 (Emer.), 01/02/2017