Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

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Regulation/Package Title (a general description of the rules' substantive content):

Water Quality Standards – wetlands rules

Rule Number(s): 3745-1-50, 3745-1-51, 3745-1-52, 3745-1-54

Date of Submission for CSI Review: November 2, 2023

Public Comment Period End Date: December 8, 2023

Rule Type/Number of Rules:

New/___ rules
Amended/__4__ rules (FYR? _Yes__)
No Change/____ rules (FYR? ___)
Rescinded/____ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   Under the Clean Water Act (CWA) states are required to have water quality standards that protect lakes, rivers, streams or other surface waters from pollution. Ohio's water quality standards are in OAC Chapter 3745-1. The required components of a water quality standard include: beneficial use designations; narrative and numeric criteria protective of the use designations; and implementation procedures used to evaluate decisions that could result in the lowering of water quality (referred to as the antidegradation policy or rule).

   Water quality standards are then used in other CWA programs such as the National Pollutant Discharge Elimination System (NPDES) permit program, the Section 401 water quality certification program and the establishment of Total Maximum Daily Loads (TMDLs). Any impacts to the business community are realized only through the implementation of water quality standards in these other regulatory programs.

   Changes being considered for each rule are detailed below:

   - Rule 1-50 includes reference to a new guidance document will be referenced and changes to the locations of where to locate other manuals or guidance documents currently in rule.
   - Rule 1-51 and -52 have minor language changes only to comply with the requirements of Senate Bill 9.

- Rule 1-54 The currently used wetland mitigation banking and in-lieu fee guidelines are incorporated into rule as a reference for required performance standards and monitoring requirements. New preservation and enhancement mitigation formulas are proposed to allow for more flexibility for applicants when using wetland preservation and enhancement as part of their mitigation proposal. A new mitigation ratio exemption is also included for coal remining and abandoned mine land projects.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**
   Rules -50 through -52: 6111.041 and 6111.12
   Rule -54: 6111.041, 6111.12, 6111.30

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   If yes, please briefly explain the source and substance of the federal requirement.
   Yes, these regulations implement federal requirements in the Clean Water Act and Title 40 of the Code of Federal Regulations (CFR) Parts 131 Water Quality Standards and 132 Water Quality Guidance for the Great Lakes System.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**
   Not applicable. These rules do not exceed federal requirements.

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**
   The CWA section 303(c)(2)(A) requires that water quality standards protect "public health or welfare, enhance the quality of the water and serve the purposes of [the Act]." The CWA section 101(a)(2) establishes as a national goal "water quality which provides for protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable."

   The value of clean water as a public resource is a well-established fact. Ohio is an economically important and diverse state with strong manufacturing and agricultural industries that depend upon abundant and clean water. Ohio's economy also depends upon the tourism that its waters attract. The program ensures that Ohio's streams, rivers and lakes can be used for purposes such as industrial and agricultural production, boating, fishing, swimming and as a source of drinking water. The public's expectations regarding clean water supplies and recreational opportunities would be placed in jeopardy without these standards and the programs that ensure regulated activities are able to meet them.

   The intent of the wetland water quality standards rules is to provide a means to categorize wetlands, ensure there is no net loss of wetland acreage or function and where necessary, establish standards for wastewater discharges to wetlands. According to the results of the Ohio Department of Natural Resources' Wetlands Inventory, there are 704,032 acres of wetlands in the state of Ohio. Wetlands constitute 2.6% of the total land area of the State. It is estimated that Ohio had about seven million acres of wetlands before European settlement,

which translates to a loss of about 90% of the original wetlands in the State.

Wetlands are economically valuable to society due to the priceless functions they provide. These economic values include flood minimization, groundwater recharge, nutrient and contaminant removal, wildlife and plant habitat, and opportunities for hunting, fishing, and other recreation. It is extremely difficult to attach the appropriate dollar values to these important functions. However, these functions benefit the wetland landowners directly as well as benefitting adjacent landowners and, importantly, society at large.

One of the most frequently cited economic functions of wetlands is flood control. Wetlands act as sponges on the landscape and are particularly valuable in attenuating peak flows in streams and reducing flood events. Watersheds that have lost a large percentage of their wetlands experience flooding at greater frequency, severity, and duration than those watersheds with a large percentage of their original wetlands intact. Wetlands act as buffers, absorbing high flows from storms and thereby releasing the water at a slower rate. This helps minimize property damage from flooding and reduces the need for expensive flood control structures. By holding back flows from storm events wetlands also decrease fluctuations in stream levels. This in turn reduces erosion and ensures more stable conditions for streams resulting in improved physical, chemical and biological water quality.

Wetlands are also referred to as "nature's kidneys" for their ability to filter pollutants. Wetlands act as natural purifiers, providing water treatment by removing sediments, nutrients, heavy metals, and other contaminants. Because wetlands slow down water flow, nutrients such as nitrogen and phosphorus, which can cause algal blooms and fish kills in streams and lakes, can be removed prior to entering downstream waters. Wetlands also remove additional nitrogen through the action of soil bacteria, and wetlands soils bind and tightly hold metal pollutants such as lead, zinc. and cadmium. Due to these functions, constructed wetlands are employed as a low-cost form of tertiary treatment for municipal and industrial wastewater. The result of the pollutant removal functions of wetlands is high quality groundwater and surface water resources. The natural filtering functions of wetlands benefits all users of water by reducing, or eliminating, expensive treatment of water for municipal, agricultural, and industrial users.

Wetlands also provide excellent habitat for a wide range of flora and fauna. Because they are intermediate between upland and deep-water resources, wetlands add diversity to the landscape and provide living spaces for a wide array of plant and wildlife species. Wetlands are some of the most diverse and productive natural communities on earth and one third of all endangered species depend on wetlands to complete at least part of their life cycle. This makes wetlands pivotal in the pursuit of many outdoor activities including hunting, fishing, bird watching, hiking and nature study. All these activities benefit Ohioans and contribute significantly to the State and local economies.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**
Success can be measured in two ways: 1) tracking various administrative milestones in the

programs that implement the water quality standards; and 2) monitoring the conditions of streams, rivers and lakes over time. The NPDES permit program and the 401 program routinely provide data and annual reports that describe the compliance performance of the regulated community. The Agency sets targets for achieving compliance with permit terms and conditions.

The water quality standards regulations are performance-based expectations regarding the quality of Ohio's surface water. Ohio EPA measures the success of the State's overall pollution control efforts through biological and chemical monitoring that determines whether or not a water body is attaining its designated uses. The status or health of Ohio's streams, rivers and lakes is reported every two years in the Integrated Water Quality Monitoring and Assessment Report, which is available on Ohio EPA's website at: https://epa.ohio.gov/divisions-and-offices/surface-water/reports-data/ohio-integrated-water-quality-monitoring-and-assessment-report.

In addition, Ohio EPA tracks the acreage of authorized wetlands impacts and acres of compensatory wetland mitigation required to offset those impacts. Ohio's wetland permitting programs adheres to the "No Net Loss of Wetlands" policy implemented in 1989 by President George H.W. Bush and adopted by each successive administration. From the mid-1600s to present, more than 90% of Ohio's natural wetlands were lost to unregulated filling and draining activities, dramatically affecting the water quality and fishable/swimmable status of Ohio's surface waters. Ohio EPA will implement the requirements of the federal CWA and the No Net Loss policy through these rules.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.
No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.
Ohio EPA sent electronic notification to DSW's rulemaking interested party list and posted the Early Stakeholder Outreach fact sheet on DSW's website on October 18, 2022. The comment period deadline was January 18, 2023. Approximately 2,600 interested parties were contacted via email; a list of recipients is available upon request.

The program conducted extensive outreach, including multiple meetings with individual stakeholders and stakeholder groups, from June 2022 through February 2024. Participating stakeholders included wetland mitigation banking and in-lieu fee sponsors (e.g. Stream + Wetlands Foundation, The Nature Conservancy, Resource Environmental Solutions, Environmental Investment Partners, Water and Land Solutions, and more), other state

agencies (e.g. Ohio Department of Transportation and the Ohio Department of Natural Resources), industry groups (e.g. Ohio Home Builders Association, Ohio Oil and Gas Association, Ohio Coal Association, NAIOP), and environmental groups (e.g. Midwest Biodiversity Institute, the Ohio Environmental Council, and Ohio Wetlands Association).

10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**
Comments are grouped below by topic.

Crediting/Debiting

Many comments recommended adjustments to debiting and crediting for wetland impacts and mitigation. Several commenters requested that the state reconcile the ratio differences between what is required for mitigation on isolated wetlands and on federally jurisdictional wetlands. At this time, the agency is not proposing to increase the mitigation ratios for federally jurisdictional wetlands to align with the isolated wetland ratios prescribed in Ohio Revised Code.

Requests were made to revise crediting to demonstrate functional lift, encourage more preservation, or allow for flexibility in the performance criteria for mitigation projects implemented in urban areas; both of these requests would benefit from the creation of a functional tool for wetlands that the program would support but would need time to develop. The program currently uses the 2020 Wetland Mitigation Banking and In-Lieu Fee Guidelines (hereto referred to as 2020 Guidelines) that was developed by the Ohio IRT to interpret the success of wetland mitigation projects. In the interest of time and aligning with the requirements of the US Army Corps of Engineers, this guidance document is newly proposed in rule to satisfy the requirement by HB 175 to incorporate all guidance documents used for mitigation in Ohio Administrative Code by July 21, 2024.

Currently, there is not a penalty for temporal loss resulting from using in-lieu fee mitigation. Several commenters requested that a penalty be applied when using in-lieu fee mitigation to incentivize the creation of more banks and ensure that wetlands impacted are properly mitigated and fulfill no-net-loss in real time.

Wetland Assessment Methods

There were requests for alternative wetland assessment methods for evaluating mitigation success other than the Vegetative Index or Amphibian Index of Biotic Integrity, stating these methods are time-consuming and cost prohibitive. The program is currently implementing a study on behalf of a Wetland Development Grant awarded by US EPA to evaluate alternative methods to demonstrate mitigation success, but the study will not be completed until after this rule is to be finalized according to HB 175.

Requests were made to develop and adopt a Level 2 assessment method that can be used for both permit decisions and mitigation success. The development of a functional assessment tool for wetlands could also address this recommendation but the program would need time to develop it.

Performance Criteria

Performance criteria including stem count and percent of native/invasive vegetation are currently used to evaluate the success of wetland restoration projects. Requests were made to abandon the percent of native species requirement and allow for the establishment of species native to the eastern United States, as opposed to species specific to Ohio, to increase resiliency to climate change. As mentioned, the program currently uses the 2020 Guidelines that was developed by the Ohio IRT to interpret the success of wetland mitigation projects. Since the implementation of the guidance document, other aspects of performance criteria such as tree height and credit release schedules have been negotiated and are not yet reflected in the document but have been requested to be incorporated into rule. In the interest of time and aligning with the requirements of the US Army Corps of Engineers, this guidance document is new to the rule but allows for deviations from the document as acceptable by the director to accommodate these and future minor updates without having to re-publish the guidance document at this current time.

Service Areas

Requests were made for larger service areas that include 6-digit HUCs and for service areas to be incorporated into rule as opposed to watersheds. The language in the rule allows for the flexibility to modify service areas as it only requires that mitigation occur within service areas that incorporate the watershed which is often defined as 8-digit HUCs. Service areas themselves can and often include more than a single 8-digit HUC. A new service area map was recently negotiated between stakeholders, the US Army Corps of Engineers and Ohio EPA and has been distributed amongst sponsors. Placing defined service areas into rule would forfeit the ability to provide future flexibility for mitigation bank and in-lieu fee sponsors.

Requests for No Changes

Several stakeholders insist that there be no changes to the wetland water quality standards or current use of the 2020 guidelines. They maintain that the status quo has ensured there is no net loss – in acreage or function – of wetlands regulated by Ohio EPA and that assessment tools currently in rule are science-based, user-friendly, well known and tailored to Ohio. The tools and the existing performance criteria outlined in the 2020 guidelines have resulted in successful wetland restoration throughout the state with predictable debiting and crediting.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The following documents were used in the original drafting of the rules in 1998:

- Water Quality Standards for Wetlands, National Guidance, EPA 440/S-90-011, U.S. Environmental Protection Agency. July, 1990.
- Federal Guidance for the Establishment, Use and Operation of Mitigation Banks. Federal Register: Vol. 60, No. 228, November 28, 1995.
- Mitsch, W.J. and J.G. Gosselink. 1993. Wetlands. Van Nostrand Reinhold.
- Washington State Wetlands Rating System – Western Washington. Second Edition. Washington Department of Ecology. 1993.
- Section 404(b)(1) guidelines for specification of disposal sites for dredged or fill

material – restrictions on discharge. 40 CFR 230.10(d).

- Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the determination of mitigation under the Clean Water Act Section 404(b)(1) guidelines. 1990.
- Washington draft Wetland Water Quality Standards. Washington Department of Ecology. 1993.
- Oregon Freshwater Wetland Assessment Methodology. Oregon Division of State Lands. December 1993.
- Endangered species of Native Ohio Wild Plants; Ohio Department of Natural Resources, Division of Wildlife – Inservice Note 659. OAC 1501:18-1-01(D).
- 40 CFR 1508.8(b) – Terminology and Index-Effects.
- 33 CFR 279.4 (c) – Resource Use: Establishment of objectives-definitions; and 320.4 (1)(a) – General policies for evaluating permit applications – Public Interest Review.
- Jones G., A. Robertson, J. Forbes and G. Hollier. 1990. Dictionary of Environmental Science. Harper & Collins.
- Wisconsin Water Quality Standards for Wetlands. Wisconsin Department of Natural Resources. Chapter NR 103. July 1991.
- Mid-Ohio Regional Planning Commission Manual.
- Parker, G.F. 1989. "Old-growth forests of the central hardwood region." Natural Areas Journal:9(1).
- 40 CFR 1508.8(b) – Terminology and Index-Effects.
- North Carolina proposed Wetland Water Quality Standards (15A NCAC 2B.0101, Subchapter 2B). August 1994.

The following documents were used in current review of the rule:

- 33 C.F.R. Parts 325 and 332 and 40 C.F.R. Part 230 Compensatory Mitigation for Losses of Aquatic Resources; Final Rule 2008.
- Andreas, Barbara K., et al. 2004. Floristic Quality Assessment Index (FQAI) for Vascular Plants and Mosses for the State of Ohio. Ohio Environmental Protection Agency, Division of Surface Water, Wetland Ecology Group, Columbus, Ohio. 219 p.
- Broadmeadow, S. and T. Nisbet. 2004. The Effects of Riparian Forest Management on the Freshwater Environment: A Literature Review of Best Management Practice. Hydrology and Earth System Sciences Discussions, European Geosciences Union, 8(3), 286-305 pp.
- Castelle, A. J., et al. 1994. Wetland and Stream Buffer Size Requirements – A Review. Journal of Environmental Quality, 23:878-882 pp.
- Clinton, B. 2011. Stream Water Responses to Timber Harvest: Riparian Buffer Width Effectiveness. Forest Ecology and Management, 261, 979-988 pp.
- Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1. Vicksburg, MS: U.S. Army Engineer Waterways Experimental Station.
- Federal Register. April 10, 2008. Part II Department of Defense, Department of the Army, Corps of Engineers, 33 CFR Parts 325 and 332, Environmental Protection

Agency, 40 CFR Part 230: Compensatory Mitigation Losses of Aquatic Resources; Final Rule.
- Ferris, G., et al. 2012. Determining Effective Riparian Buffer Width for Nonnative Plan Exclusion and Habitat Enhancement, International Journal of Ecology, Volume 2012, Article ID 170931, 7 pages
- Fischer R. and J. Fischenich. 2000. Design Recommendations for Riparian Corridors and Vegetated Buffer Strips. EMRRP Technical Notes Collection (ERDC TN-EMRRP-SR-24), U.S. Army Engineer Research and Development Center, Vicksburg, MS.
- Galatowitsch, Susan, et al, 1994. Restoring Prairie Wetlands: An Ecological Approach. Iowa State University Press, Ames, IA. 246 pp.
- Houlihan, J. E., P. A. Keddy, K. Makkay, and C.S. Findlay. 2006. The Effects of Adjacent Land Use in Wetland Species Richness and Community Composition. Wetlands 26(1): 79-96.
- Lichvar, R.W., D.L. Banks, W.N. Kirchner, and N.C. Melvin. 2016. The National Wetland Plant List: 2016 wetland ratings. Phytoneuron 2016-30: 1-17. Published 28 April 2016. ISSN 2153 733X
- Mack, John J., M. Siobhan Fennessy, Mick Micacchion and Deni Porej. 2004. Integrated Wetland Assessment. Part 6: Standardized Monitoring Protocols and Performance Standards for Wetland Creation, Enhancement and Restoration, Version 1.0. Ohio EPA Technical Report WET/2004-6. Ohio Environmental Protection Agency, Division of Surface Water, Wetland Ecology Group, Columbus, Ohio.
- Mack, John J. and Brian D. Gara. 2015. Integrated Wetland Assessment Program. Part 9: Field Manual for the Vegetation Index of Biotic Integrity for Wetlands v. 1.5. Ohio EPA Technical Report WET/2015-2. Ohio Environmental Protection Agency, Wetland Ecology Group, Division of Surface Water, Columbus, Ohio.
- Maschhoff, Justin T & James H. Dooley, 2001. Functional Requirements and Design Parameters for Restocking Coarse Woody Features in Restored Wetlands. ASAE Meeting Presentation, Paper No: 012059.
- Mayer, P. M., S. K. Reynolds, Jr., T. J. Canfield, and M.D. McCutchen. 2005. Riparian Buffer Width, Vegetative Cover, and Nitrogen Removal Effectiveness: A Review of Current Science and Regulations. National Risk Management Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio. 27 pp.
- Scodari, P., S. Martin, and A. Willis. 2016. Implementing Financial Assurance for Mitigation Project Success. Institute for Water Resources, U.S. Army Corps of Engineers, Alexandria, Virginia
- Semlitch, R. D. and J. R. Bodie. Biological Criteria for Buffer Zones around Wetlands and Riparian Habitats for Amphibians and Reptiles. Conservation Biology 17(5): 1219-1228.
- Slawski, T. 2010. Managing the Water's Edge: Making Natural Connections. Southeastern Wisconsin Regional Planning Commission. 24 pp.
- U.S. Army Engineer Research and Development Center. 2012. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0). U.S. Army Corps of Engineers, Vicksburg, Mississippi

- U.S. Army Engineer Research and Development Center. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (Version 2.0). U.S. Army Corps of Engineers, Vicksburg, Mississippi
- U.S. Army Engineer Research and Development Center. 2012. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0). U.S. Army Corps of Engineers, Vicksburg, MS
- Walter, M., et al. 2009. New Paradigm for Sizing Riparian Buffers to Reduce Risks of Polluted Storm Water: Practical Synthesis. Journal of Irrigation and Drainage Engineering, March/April 2009, 200-209 pp
- Wenger, S. 1999. A Review of the Scientific Literature on Riparian Buffer Width, Extent, and Vegetation. Office of Public Service & Outreach, Institute of Ecology, University of Georgia, Athens, Georgia. 59 p.
- Wilkerson, E., et al. 2006. The Effectiveness of Different Buffer Widths for Protecting Headwater Stream Temperature in Maine. Journal of Forest Science, 52(3): 221-231 pp.
- Woods, A.J., J.M. Omernik, C.S. Brockman, T.D. Gerber, W.D. Hosteter, and S.H. Azevedo. 1998. Ecoregions of Indiana and Ohio [2 sided color poster with map, descriptive text, summary tables, and photographs]. U.S. Geological Survey, Reston, VA. Scale 1:500,000).
- Wood, C. and S. Martin. 2016. Compensatory Mitigation Site Protection Instrument Handbook for the Corps Regulatory Program. Institute for Water Resources, U.S. Army Corps of Engineers, Alexandria, Virginia
- Senate Bill 9, 134th General Assembly of the State of Ohio.
- House Bill 175, 134st General Assembly of the State of Ohio.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? ***Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

Not applicable. The rule amendments are being driven by the necessity to be consistent with federal and state laws.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio EPA is the delegated state agency for the water quality standards program. Only a review of existing Ohio EPA rules was necessary, and no duplication was found.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Agency will put the effective date of the adopted rules three months out from the date of adoption, which provides for U.S. EPA's review and approval and gives the Agency time to update web pages and permit writing tools.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

The water quality standards affect the business community indirectly through other regulatory programs that are designed to assure compliance with requirements based on meeting the water quality standards. These requirements take the form of effluent limits imposed by Ohio EPA through the NPDES permit program and the terms and conditions imposed through the 401 program for any activity that places dredge or fill materials into waters of the state. Though there is no direct cost associated with this water quality standards rulemaking, the Agency has evaluated potential costs the business community might incur through other CWA programs.

a. The impacted business community might include those regulated through the NPDES program or Section 401 water quality certification.

b. The nature of the adverse impact for those regulated through the NPDES program is the level of wastewater treatment necessary to meet the narrative and numeric criteria associated with the designated beneficial uses listed in the rules. The nature of the adverse impact for those regulated through the Section 401 water quality certification program is whether a proposed impact to the wetland is approvable, and if approvable, the level of required compensatory mitigation.

In regard to those regulated through the NPDES permit program, the overall adverse impact can vary greatly based on stream designated use, as the type and quantity of pollutants discharged, the amount of dilution water available to mix with the discharge, and the amounts of pollutants already present in the dilution water. A higher level of wastewater treatment may be required of those discharging to higher quality wetlands. In regard to those regulated through the Section 401 water quality certification program, the overall adverse impact can also vary greatly based on wetland category. A proposed project to impact higher quality wetlands is less likely to be approved and would require more compensatory mitigation than a project proposing to impact a lower quality wetland.

Water Quality Standards, including antidegradation, affect the business community indirectly through other regulatory programs that are designed to assure compliance with requirements based on meeting the standards. For these rules, requirements take the form of terms and conditions imposed through the Section 401 Water quality Certification and

state isolated wetlands permitting programs for any activity that places dredge or fill materials into wetlands or National Pollutant Discharge Elimination System (NPDES) permit program for any point source discharge of pollutants to a wetland. Though there is no direct cost associated with this rulemaking, the Agency has evaluated potential costs the business community might incur through the Section 401/isolated wetlands and NPDES permitting program.

a. The wetland water quality standards rules impact anyone or any project where proposed impacts to wetlands through dredge and fill activities are subject to regulation under the CWA Section 401 Water Quality Certification or state isolated wetlands permitting program. The wetland water quality standards rules also impact anyone or any project where proposed discharge of pollutants to wetlands are subject to regulation under the CWA NPDES permitting program. This may include local and state governments, the federal government, businesses, industries and private property owners.

b. Adverse business impacts of the wetland water quality standards rules include
1) project planning and alternatives analysis including avoidance and minimization of wetland impacts and
2) providing compensatory mitigation for any proposed wetland impacts in accordance with the requirements set out in the rules.

Quantifying the adverse impact to the business community imposed by the wetland water quality standards rules is difficult because many site-specific factors affect the project cost. The rules establish project planning requirements, such as alternatives analysis, that guide an applicant towards selection of a preferred project that will most likely be approved by the Agency. Most applicants would follow a similar planning process, if it were not required, to ensure wise use of time and resources on a proposal that meets applicable laws and rules. For these applicants, the cost of the rules is the cost of completing the required application forms. This cost would vary depending on the size and complexity of the proposed project. Other applicants, however, may not perform the planning prior to project submittal without rule requirements. For these applicants, the rules most likely reduce cost or does not increase costs because the preplanning reduces the number of changes required to be made after the project is submitted for review. Changes to design and engineering or even site location can be costly. This cost would also vary depending on the size and complexity of the proposed project. The rules also establish compensatory mitigation requirements for any proposed wetland impacts. The cost associated with mitigation varies widely based on quality of wetland being impacted, size/extent of impact and location and type of mitigation required. The rule contains an increasing set of mitigation requirements with increasing quality of wetland being impacted, thus reducing some costs for impacts to lower quality wetlands (Category 1 and 2) through more streamlined and flexible requirements.

16. Are there any proposed changes to the rules that will <u>reduce</u> a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*

A couple changes to the rule will help to reduce regulatory burden on the regulated community. New preservation and enhancement mitigation formulas are proposed to allow for more flexibility for applicants when using wetland preservation and enhancement as part of a mitigation proposal. Additionally, a new mitigation ratio exemption is also included for coal remining and abandoned mine land projects. These projects have an overall water quality benefit and therefore certain wetlands impacted by those projects will have a lower mitigation ratio.

17. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**
Clean water is recognized as a valued resource worth protecting. The water quality standards program and these draft rule revisions are the primary means of ensuring that the quality of water in Ohio's streams, rivers and lakes is improved, maintained and remains suitable for swimming, drinking and fishing. The basic goal of meeting all beneficial uses and criteria established under the CWA is the normal requirement mandated by federal regulations. Deviation from that expectation is allowed in only a handful of extraordinary circumstances, one of which is imposition of widespread social and economic impact. Thus, it is incumbent upon states to establish the proper balance between the water quality goals (beneficial uses and criteria) and the costs to society of attaining those goals. The Agency believes the draft rules are supported by the need to protect water quality and are in the overall public interest.

Regulatory Flexibility

18. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**
Yes. Flexibility has been built into certain aspects of the water quality standards program. This flexibility applies to businesses of all sizes. Ohio's system of beneficial uses accounts for environmental and landscape factors in setting the tiered aquatic life use and the associated performance-based water quality criteria. In short, the tiered aquatic life uses provide a hierarchy of stream performance measures (biological and chemical water quality criteria) ranging from exceptional quality waters to highly modified waters that cannot fully support the "fishable" goals of the CWA. This system ensures that businesses, through the terms of their 401 water quality certification and isolated wetland permits, are required to meet standards that most closely match the actual water quality requirements that protect the aquatic environment in their immediate location. In other words, Ohio standards do not impose a one-size fits all mandate.

19. **How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**
The first-time paperwork violation waiver is not applicable to this rule package. The rules in OAC Chapter 3745-1 contain standards for CWA permitting programs to enforce. No paperwork or permits are required by the standards themselves.

20. **What resources are available to assist small businesses with compliance of the regulation?**
Ohio EPA Division of Environmental and Financial Assistance's Office of Compliance

Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at: epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/about-defa/office-of-compliance-assistance-and-pollution-prevention.

- Ohio EPA also has a Customer Support Center web page (ohioepa.custhelp.com/) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Frequently Asked Questions (FAQ), training and subscription to various program listservs.

- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

- Ohio EPA, Division of Environmental and Financial Assistance's Compliance Assistance Unit provides technical support to small (less than 0.5 million gallons per day) wastewater treatment plants. Additional information is available at: epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/compliance-assistance/compliance-assistance.

- U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at: epa.gov/smallbusiness/ and a Small Business Ombudsman Hotline 800-368-5888.

- U.S. EPA's Water Quality Standards Handbook, Second Edition available at: water.epa.gov/scitech/swguidance/standards/handbook/index.cfm.

- U.S. EPA's Policy and Guidance: Reference Library contains an index of EPA documents related to water quality standards, including those referenced in the WQS Handbook. You can sort the index alphabetically, by publication date, or by topic. Available at: water.epa.gov/scitech/swguidance/standards/library/index.cfm.

- The Division of Surface Water's Water Quality Standards program web page contains background information and direct links to sections of the regulations. Additional information is available at: epa.ohio.gov/divisions-and-offices/surface-water/reports-data/water-quality-standards-program.