



April 3, 2018

**Sent via Electronic Mail**

Ohio EPA Rule Coordinator  
Division of Surface Water  
P.O. Box 1049  
Columbus, Ohio 43216

**RE: OAC Chapter 3745-1 Wetland Water Quality Standards**

Dear Sir/Madam,

Thank you for the opportunity to submit comments on Ohio EPA's latest revisions OAC Rules 3745-1-50 to 3745-1-54 Wetland Water Quality Standards. The Associated General Contractors of Ohio (AGC) and Ohio Contractors Association (OCA) are commercial construction associations that represent large and small contractors that build a wide variety of vertical and horizontal structures. We hope to work with stakeholders and OEPA to ensure that the rules are as clear and predictable as possible.

**DEFINITIONS - 3745-1-50**

**Wetland Categorization:** The definition refers to numerous functions and values that wetlands provide including recreation, wildlife habitat, education, research, stormwater retention, etc. Many of these functions are not addressed in ORAM v. 5.0, the VIBI or the AmIBI evaluation methods.

**Long Term Protection:** This is a positive change and allows greater flexibility in establishing long term protections.

**Public Need:** This definition should be clarified, and OEPA should engage stakeholders in that process, as recommended previously during the promulgation of the rule. The regulated community and OEPA often spend tremendous amounts of time and effort to come to an agreement on a case by case basis to determine if the threshold for "public need" has been met. A better definition would save precious time and resources for both permit applicants and the agency.

**VIBI:** OEPA should engage the regulated community and outside technical experts to evaluate whether the VIBI is a cost-effective and relevant tool for wetland evaluation. VIBI is very expensive, and OEPA has not demonstrated the ability to implement and interpret it in a consistent and reasonable manner.

In response to previous comments, OEPA stated the agency "is currently in discussion with various groups with the intent to evaluate other methods to the well-established VIBI and will continue to work with stakeholders to evaluate all alternate methods as they are proposed." This expanded review and outreach is necessary. Due to the lack of clarity on how to use the methodology, along with its substantial cost, we believe that VIBI should not be adopted. Instead, we suggest continued discussion with stakeholders on the application of such assessment tools.

## **WETLAND ANTIDEGRADATION - 3745-1-54**

**3745-1-54(B)(2)(a)(ii) & 3745-1-54(B)(2)(a)(iii)**. Our concern involves the reference to VIBI and AmphIBI and exclusion of the more cost-effective ORAM from mitigation monitoring. As mentioned previously, VIBI should be subject to external review and comment before being included in the regulation. And, to the best of our knowledge, OEPA has provided no basis for the exclusion of ORAM.

**3745-1-54(C)(3)**. There are concerns with OEPA, in practice, determining wetlands that are neither of particularly high quality nor scarce as Category 3 wetlands. This is particularly true for wetlands that include trees. Not all forested areas are Category 3 wetlands. Only those exceptional quality areas should be designated as Category 3 wetlands and subject to public need review.

**3745-1-54(D)(I)(c)(iii)**. *Criteria of Public Need* should state "or as determined by the director", not "and as determined by the director." It also references ORAM as a guidance document for establishing public need. As mentioned in prior stakeholder comments, this term is too important to be addressed only in the ORAM document and without any public input.

**3745-1-54(D)(I) and 3745-1-54(D)(2)**. OCA and AGC object to the deletion of the flexible mitigation approach that the Ohio Administrative Code currently affords to linear projects, and strongly urge the OEPA to restore the flexible mitigation language under the proposed rule. Linear projects are unique from both an impact and mitigation perspective, and thus require more flexibility in terms of developing appropriate mitigation proposals.

**Table E-1 Mitigation Ratios**. The ratios set forth in table E-1 should be reduced when an applicant satisfies compensatory mitigation through the purchase of approved and established credits and a bank. The higher ratios can only be justified if there is a temporal loss or a risk of failure. Neither applies for approved and established mitigation bank credits. Higher ratios could still be applied for ILFP and permittee responsible mitigation.

**3745-1-54 (F)(7)**. We have concerns with the reference to a 50-foot "minimum" buffer. Each project and proposed mitigation should consider the particular site and project requirements.

**3745-1-54(8)**. Requiring permittees that fail to establish required compensatory mitigation to buy available credits from a bank could be an economic hardship for the permittee. Permittees should be provided the opportunity to establish that cost-effective alternatives exist to the purchase of credits from a bank.

## **AMOUNT OF TIME FOR COMMENTS**

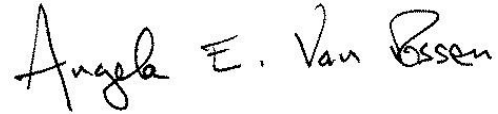
AGC, as well as other interested parties, requested that the comment deadline for this rule package be extended; the request was denied. (AGC electronically sent OEPA the letter, dated March 23, 2018.) After receiving comments from numerous stakeholders in October 2016, the agency considered the comments for over 16 months and made public its response and changes in February 2018, expecting further industry feedback by April 3<sup>rd</sup>. Additionally, OEPA set a public comment deadline of April 4 for OEPA's proposed NPDES Construction Storm Water General Permit Renewal (#OHC00005). Having two separate OEPA rule packages that significantly impact the construction industry and due dates within 24 hours of each other, we did not have an adequate amount of time to solicit feedback and prepare alternative recommendations to help OEPA make more informed, reasoned and defensible decisions. Nevertheless, AGC and OCA have provided the above comments for consideration.

Should you have any questions, please do not hesitate to contact Andrea Ashley with AGC (614-486-6446; [andrea@agcoho.com](mailto:andrea@agcoho.com)) or Angela VanFossen at OCA (614-488-0724; [angela@ohiocontractors.org](mailto:angela@ohiocontractors.org)). We would be happy to meet with OEPA staff to discuss these concerns and comments in further detail.

Sincerely,



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VP of Government Relations  
Associated General Contractors of Ohio



Angela VanFossen  
Director of Legislative/Environmental Affairs  
Ohio Contractors Association