



Ohio Administrative Code Rule 3745-32-04 Mitigation for impacts to streams.

Effective: August 1, 2024

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules and federal statutory provisions referenced in this rule, see rules 3745-1-03 and 3745-1-50 of the Administrative Code.]

(A) This rule applies when establishing mitigation requirements for stream impacts that are authorized under a Section 401 water quality certification in accordance with this chapter or other appropriate authorization issued by the director.

[Comment: Compensatory mitigation requirements for authorized impacts to wetlands are in rule 3745-1-54 of the Administrative Code. Compensatory mitigation requirements for authorized impacts to ephemeral streams are in sections 6111.311 through 6111.316 of the Revised Code.]

(B) Stream compensatory mitigation requirements.

(1) The compensatory mitigation type and location shall be provided in the following preferred order:

(a) At a mitigation bank, approved in accordance with 33 C.F.R. Part 332.8, with a service area including the same watershed as the location of the proposed stream impacts that provides appropriate stream mitigation credits.

(b) Through an in-lieu-fee program, approved in accordance with 33 C.F.R. Part 332.8, with a service area including the same watershed as the location of the proposed stream impacts that provides appropriate stream mitigation credits.

(c) At a permittee-responsible compensatory mitigation site located in accordance with 33 C.F.R. Part 332.3(b).



(2) Deviations from the preferred order established in paragraph (B)(1) of this rule require a demonstration of all of the following:

(a) Description of the available credits for each approved mitigation bank or in-lieu fee program with a service area including the same watershed as the location of the proposed stream impacts.

(b) Description of the costs associated with the proposed compensatory mitigation and each preceding option outlined in paragraph (B)(1) of this rule.

(c) Discussion of how the proposed compensatory mitigation will provide a greater ecological benefit than each preceding option outlined in paragraph (B)(1) of this rule.

(3) Compensatory mitigation shall be in-kind unless there is a compelling ecological reason that the compensatory mitigation should not be.

(4) Compensatory mitigation debit and credit amounts shall be calculated using the "Ohio Stream Assessment Method" or alternative stream mitigation methods, upon approval of the director, if the applicant demonstrates that the method provides an equivalent or greater ecological lift as the Ohio Stream Assessment Method.

(5) A drainage area scaling factor will apply for debit and credit amounts calculated using the Ohio Stream Assessment Method. The drainage area scaling factor is effective in a range between 0.1-10 square miles for streams with a valley slope of 2 per cent or less and 0.05-10 square miles for streams with a valley slope greater than 2 per cent.

For streams with a valley slope of 2 per cent or less, drainage areas below 0.1 square miles are capped at a scaling factor of 0.42. For streams with a valley slope greater than 2 per cent, drainage areas below 0.05 square miles are capped at a scaling factor of 0.32. For all streams with drainage area above 10 square miles, the scaling factor is capped at 2.40.

Valley slope is determined by dividing the amount of elevation change that occurs over the length of the valley.



Final debits and credits are calculated using the following equation, applying the scaling factor cap amounts described above:

OSAM units $\times (DA^{0.38})$ where:

OSAM units = calculated Ohio Stream Assessment Method debits or credits.

DA = drainage area.

(6) A temporal loss multiplier of 1.1 will apply for credits purchased through an in-lieu fee program or when permittee responsible mitigation will not occur concurrently with the approved impacts.

(7) The applicant shall demonstrate that the compensatory mitigation site will be protected long term and that appropriate management measures are, or will be, in place to restrict harmful activities that may jeopardize the compensatory mitigation.

(8) Performance standards. The director will require the permittee to achieve performance standards to demonstrate the ecological success of the mitigation project in accordance with the "Guidelines for Stream Mitigation Banking and In-lieu Fee Programs in Ohio" or other performance standards acceptable to the director as determined during the review of the application.

(9) Compensatory mitigation monitoring. The director will require the permittee to conduct ecological monitoring of the compensatory mitigation project and submit annual reports detailing the results of the ecological monitoring to demonstrate progress towards compliance with the performance standards.

(a) The ecological monitoring at the compensatory mitigation site may include, but is not limited to, collection of data on the following:

(i) Hydrologic, hydraulic, and geomorphological characteristics.

(ii) Vegetation communities.



(iii) Water chemistry.

(iv) Biological communities.

(v) Conducting an assessment of the compensatory mitigation using an appropriate evaluation method.

(b) Ecological monitoring shall be conducted for a period of at least five years following construction of the compensatory mitigation. Projects with a forested component shall be monitored for at least ten years following construction of the compensatory mitigation.

(i) Upon written request, the director may waive ecological monitoring requirements for the full five or ten years if the applicant demonstrates to the satisfaction of the director that the compensatory mitigation is meeting required goals or targets.

(ii) Upon written request, the director may grant a maximum two year extension from the end of the five year or ten year monitoring period to complete outstanding compensatory mitigation obligations. Submittal of annual reports shall continue during the extension.

(iii) For permittee responsible mitigation, at the end of five years or ten years, or seven years or twelve years if an extension is approved, compensatory mitigation that does not meet required goals or targets shall be rectified through the purchase of mitigation credits at a mitigation bank or through an in-lieu-fee program, when available, in accordance with paragraph (B) of this rule. When mitigation credits are not available, permittees may propose alternate compensatory mitigation to fulfill the permit requirements for the director to consider. The director may consider reductions in the required compensatory mitigation based upon the ecological status of the original compensatory mitigation project.