

**NOTICE OF ADOPTION OF RULES
OHIO ENVIRONMENTAL PROTECTION AGENCY**

Rules Governing

Adjudication and Administrative Procedures

Notice is hereby given that the Director of the Ohio Environmental Protection Agency (Ohio EPA) has final filed the following rules of the Ohio Administrative Code:

Adopted as NEW:

| <u>Rule #</u> | <u>Title:</u> |
|----------------------|--|
| 3745-47-01 | Adjudication – applicability and construction of rules. |
| 3745-47-02 | Adjudication – definitions. |
| 3745-47-03 | Request for an adjudication hearing and objections. |
| 3745-47-04 | Provision, mailing, and publishing of notice of adjudication hearings. |
| 3745-47-05 | Filing and service of documents. |
| 3745-47-06 | Authority and duties of hearing examiners. |
| 3745-47-07 | Intervention. |
| 3745-47-08 | Motions. |
| 3745-47-09 | Continuances. |
| 3745-47-10 | Conferences. |
| 3745-47-11 | Discovery; availability of agency files. |
| 3745-47-12 | Adjudication hearing procedures. |
| 3745-47-13 | Conclusion of adjudication proceedings. |
| 3745-47-14 | Witnesses and evidence. |
| 3745-47-15 | Burden of proof – evidence. |
| 3745-47-16 | Report and recommendation of hearing examiner. |
| 3745-47-17 | Record. |
| 3745-47-18 | Final action. |
| 3745-47-19 | Emergency orders. |
| 3745-47-20 | Rules of ethics. |
| 3745-49-01 | Administrative procedures – applicability and construction of rules. |
| 3745-49-02 | Administrative procedures – definitions. |
| 3745-49-03 | Trade secrets. |
| 3745-49-04 | Public notice of rules. |
| 3745-49-05 | Draft actions and proposed actions. |
| 3745-49-06 | Issuance of final actions. |
| 3745-49-07 | Public notice. |
| 3745-49-08 | Contents of public notices. |
| 3745-49-09 | Fact sheets. |
| 3745-49-10 | Notice of water permit applications to government agencies. |
| 3745-49-11 | Coordination of Federal Water Pollution Control Act permit program with agencies of the United States. |
| 3745-49-12 | Filing of verified complaints. |
| 3745-49-13 | Public meetings. |
| 3745-49-14 | Director’s journal. |

Adopted as RESCIND:

| Rule # | Title: |
|---------------|--|
| 3745-47-01 | Applicability. |
| 3745-47-02 | Construction of rules and regulations. |
| 3745-47-03 | Definitions. |
| 3745-47-04 | Hearing Clerk. |
| 3745-47-05 | Draft or proposed action. |
| 3745-47-06 | Fact sheets. |
| 3745-47-07 | Notice. |
| 3745-47-08 | Contents of public notices. |
| 3745-47-09 | Notice of water permit applications to government agencies. |
| 3745-47-10 | Coordination of Federal Water Pollution Control Act permit program with agencies of the United States. |
| 3745-47-11 | Filing of papers and service requirements. |
| 3745-47-12 | Public meetings. |
| 3745-47-13 | Requests for adjudication hearings and objections. |
| 3745-47-14 | Authority and duties of hearing examiners. |
| 3745-47-15 | Intervention. |
| 3745-47-16 | Rights of a dismissed party and of a person denied permission to intervene. |
| 3745-47-17 | Motions. |
| 3745-47-18 | Continuances. |
| 3745-47-19 | Prehearing conferences - proceedings prior to adjudication hearing. |
| 3745-47-20 | Discovery; availability of agency files. |
| 3745-47-21 | Adjudication hearing procedures. |
| 3745-47-22 | Director not to be a witness. |
| 3745-47-23 | Burden of proof - evidence. |
| 3745-47-24 | Report of hearing examiner or presiding officer. |
| 3745-47-25 | Record. |
| 3745-47-26 | Final action on hearing examiner's recommendation. |
| 3745-47-27 | Agency journal. |
| 3745-47-28 | Registers of current and past actions. |
| 3745-47-29 | Emergency orders. |
| 3745-47-30 | Rules of ethics. |
| 3745-49-01 | Public notice of proposed and final rules. |
| 3745-49-02 | Severability. |
| 3745-49-03 | Public Availability of Information. |
| 3745-49-04 | Civil and criminal penalties. |

The Director's order of rescission and adoption was issued on March 12, 2012.

These rescinded and adopted rules will become effective on April 2, 2012.

The Director's action in this matter is pursuant to the procedural requirements of Ohio Revised Code Chapter 119 and is based upon the record of the public hearing conducted by Ohio EPA on January 5, 2012, and comments received during the public comment period.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer Josh Mandel," which the Commission, in its discretion, may reduce if

by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

3745-47-01

Adjudication - applicability and construction of rules.

- (A) This chapter shall govern the procedure for all adjudication proceedings and other procedures relating to adjudications pursuant to Chapter 119. of the Revised Code, or any other statute or rule providing for an adjudication proceeding before the agency.
- (B) This chapter shall be construed liberally to accomplish the purposes of the chapters and sections of the Revised Code governing the functions and duties of the agency, and to afford maximum procedural fairness consistent with just, timely, and efficient resolution of disputes.
- (C) For purposes of this chapter, license, permit, variance, certificate, and registration include at a minimum all provisions, terms, conditions, specifications, requirements, and limitations set forth in the document, appended thereto, or incorporated by reference.

Replaces: Part of 3745-47-01 and 3745-47-02
Effective: 04/02/2012
R.C. 119.032 review dates: 04/02/2017

CERTIFIED ELECTRONICALLY

Certification

03/12/2012

Date

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Statutory Authority: 3704.03, 3714.02, 3734.02, 3734.021, 3734.12, 3734.70, 3734.71, 3734.72, 3734.73, 3734.74, 3745.01, 3746.04, 3751.02, 3752.03, 3753.02, 6109.04, 6111.03, 6111.041
Rule Amplifies: 119.06, 119.07, 119.08, 119.09, 3745.07
Prior Effective Dates: 07/05/73, 06/30/81

3745-47-02

Adjudication - definitions.

As used in this chapter:

(A)

(1) "Action" means the issuance, modification, or revocation of an order; the issuance, denial, renewal, modification, suspension, or revocation of a license, permit, lease, variance, certificate, registration, or authorization; or the approval or disapproval of plans and specifications pursuant to law.

(2) "Adjudication" has the same meaning as in division (D) of section 119.01 of the Revised Code.

(3) "Adjudication hearing" means an adversarial hearing during which evidence is taken for the purpose of determining issues of fact and law that will be used by the hearing examiner to prepare the report and recommendation and, ultimately, will be used in preparing final findings and orders.

(4) "Adjudication proceeding" means the entire process through which a person may seek to have a hearing officer consider evidence relevant to certain agency actions, beginning with the activities specified in paragraph (A) of rule 3745-47-03 of the Administrative Code and ending with the filing of the report and recommendation in accordance with rule 3745-47-16 of the Administrative Code.

(5) "Agency" means the Ohio environmental protection agency.

(B) [Reserved.]

(C) [Reserved.]

(D) "Director" means the director of environmental protection or the director's designee.

(E) [Reserved.]

(F) "Final action" means the written decision on any matter that is signed by the director and entered in the director's journal pursuant to rule 3745-49-14 of the Administrative Code.

(G) [Reserved.]

(H) [Reserved.]

(I) "Issue" or "issuance" means either of the following:

(1) In the case of a proposed action, to place the action into the United States mail, addressed to the person who is the subject of the proposed action.

(2) In the case of a final action, to enter the action into the director's journal after the action has been signed by the director.

(J) [Reserved.]

(K) [Reserved.]

(L) [Reserved.]

(M) [Reserved.]

(N) [Reserved.]

(O) [Reserved.]

(P)

(1) "Party" means any one of the following:

(a) The agency.

(b) For purposes of an adjudication proceeding regarding a proposed action, the person to whom the proposed action is issued and any person who objects to the proposed action pursuant to section 3745.07 of the Revised Code.

(c) For purposes of an adjudication proceeding in response to a verified complaint, the alleged violator upon whom a notice of hearing is served pursuant to section 3745.08 of the Revised Code and the person who filed the verified complaint that is the subject of the hearing, if that person filed a written notice of intent to participate as a party with the director before the hearing.

(d) Any person who intervenes in an adjudication proceeding pursuant to rule 3745-47-07 of the Administrative Code.

(e) For purposes of an adjudication proceeding conducted pursuant to section 6109.14 of the Revised Code, the person upon whom notice was served in accordance with that section.

No other person shall be deemed to be a party to an adjudication proceeding.

(2) "Person" means the state of Ohio or any agency thereof, the federal government or any agency thereof, any other state or agency thereof, any interstate agency, any municipal corporation, political subdivision, public or private corporation, individual, partnership, or other legal entity defined as a person

under section 1.59 of the Revised Code.

(3) "Proposed action" means a written statement that gives the director's intention with respect to an action and allows persons to do one or more of the following:

(a) File comments or objections to the action.

(b) Request an adjudication hearing in accordance with this chapter.

(c) Request a public meeting regarding the action.

(4) "Public meeting" means a non-adversarial public forum where any person may present written or oral statements for the director's consideration pertaining to the application, draft action, or proposed action that is the subject of the meeting.

(Q) [Reserved.]

(R) [Reserved.]

(S) "Stenographic record" means a record provided by stenographic means or by the use of audio electronic recording devices.

(T) [Reserved.]

(U) [Reserved.]

(V) "Verified complaint" means a written complaint filed pursuant to and meeting the requirements of section 3745.08 of the Revised Code and rule 3745-49-12 of the Administrative Code.

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3745-47-03

Request for an adjudication hearing and objections.

(A) An adjudication proceeding shall be initiated if any one or combination of the following occur:

- (1) The person to whom the proposed action was issued timely requests an adjudication hearing pursuant to sections 119.06 and 119.07 of the Revised Code.
- (2) An officer of an agency of the state or of a political subdivision acting in a representative capacity or any person who would be aggrieved or adversely affected by the issuance or renewal of a permit, license, or variance timely objects to the proposed action pursuant to section 3745.07 of the Revised Code.
- (3) A person who disputes the agency's determination that the person's activities are subject to permitting or licensing requirements under statutes or rules administered by the agency timely requests an adjudication hearing pursuant to section 119.06 of the Revised Code.
- (4) A person timely requests an adjudication hearing or objects pursuant to other applicable provisions of the Revised Code.

Paragraphs (A)(1) to (A)(4) of this rule do not authorize the filing of objections to amended proposed actions unless the agency gave public notice of the amended proposed action in accordance with rule 3745-49-08 of the Administrative Code.

(B) All requests for an adjudication hearing, including requests pursuant to section 119.06 or 119.07 of the Revised Code, and all objections to proposed actions pursuant to section 3745.07 of the Revised Code shall be made in writing. All requests and objections shall state the matter objected to, the questions to be considered at the requested adjudication hearing, and the basis for the request or objection.

- (1) Not later than sixty days after issuance of the proposed action or such other time as the hearing examiner may order, the person who timely requests or objects in accordance with paragraph (A) of this rule shall file the specific provisions of the matter objected to that the person believes should be deleted, amended, or added if those specified provisions were not included in the adjudication hearing request or objection as initially filed.
- (2) The requesting or objecting person shall include a clear and concise summary of the factual or legal basis for each request, deletion, amendment, or addition, including a reference setting forth the citation to any statute, regulation, or other legal principle that supports the person's position. Filings required by this paragraph may be included in filings required under rule 3745-47-10 of the Administrative Code, as long as the filing complies with the deadline set forth in paragraph (B)(1) of this rule, and if such is acceptable to the hearing

examiner.

(C) Amendment of adjudication hearing requests and objections may be made in the same manner as the "Ohio Rules of Civil Procedure" (2011) allow amendment of complaints.

(D) If the agency issues an amended proposed action after initiation of an adjudication proceeding, the hearing examiner shall grant all parties a reasonable time, which, notwithstanding any other provision of this chapter, may be less than thirty days, to amend their adjudication hearing requests, objections, or petitions to intervene so as to raise issues relating to the amendments.

Replaces: Part of 3745-47-13 and 3745-47-19
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3745-47-04

Provision, mailing, and publishing of notice of adjudication hearings.

(A) Mailing of notice.

(1) A notice of an adjudication hearing shall be mailed by certified mail, return receipt requested, to the parties to the adjudication proceeding not less than thirty days prior to the adjudication hearing. Service shall be completed in accordance with section 119.07 of the Revised Code and the "Ohio Rules of Civil Procedure" (2011).

(2) Notices of adjudication hearings shall be mailed by first class mail to all persons on the mailing list of subscribers maintained pursuant to section 3745.07 of the Revised Code not less than fourteen days prior to the adjudication hearing.

(B) Public notice. Not later than thirty days prior to an adjudication hearing, a notice of the adjudication hearing shall be published in a newspaper of general circulation in the county in which the source, facility, or subject of the public notice is located. Public notice is complete upon publication.

(C) Public notices of adjudication hearings shall include the following:

(1) The name of the agency.

(2) The address and telephone number of the location where agency files and records pertaining to the adjudication are located and may be inspected and copied.

(3) Instructions for persons desiring to obtain additional information.

(4) The name of the person requesting the adjudication hearing.

(5) A brief description of the activities or operations that are the subject of the adjudication.

(6) The location of the source, facility, or subject of the adjudication, including a street address, if one is known.

(7) The date of the relevant public notices related to the subject of the adjudication.

(8) The date, time, and location of the adjudication hearing.

(9) A concise statement of the issues raised by the party requesting the adjudication hearing.

(10) A statement that evidence may be presented by the state and the other parties to the hearing.

(D) Where duplicate information is required in multiple notices mailed or published together, any information that is required by this rule to be contained in more than one such notice need not be repeated in each notice but may be contained in a separate document mailed or published with and referred to in each notice to which it applies.

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3745-47-05

Filing and service of documents.

- (A) An original and one copy of all documents shall be filed with the hearing clerk for each case, even when cases have been consolidated. The hearing clerk shall do the following:
- (1) Immediately upon initiation of an adjudication proceeding, open an adjudication file and assign a docket number to the proceeding.
 - (2) Be the custodian of all adjudication files for the agency.
 - (3) Upon initiation of an adjudication proceeding, include in the adjudication file the request for adjudication, any objection, and copies of any proposed action.
 - (4) During the pendency of the adjudication proceeding carefully preserve in the adjudication file all documents delivered to the hearing clerk for filing, recording on all such documents the date of receipt thereof.
- (B) The acceptance of documents for filing shall not be construed as an admission by the agency of the validity or proper filing of such document or of compliance with any procedural requirements imposed by statute or rule.
- (C) All items except copies of documents filed in the proceedings shall be on eight-and-one-half-inch by eleven-inch paper and shall be titled "Before the Ohio Environmental Protection Agency" and shall be styled with the name of the person to whom a final order in the case will be directed, indicating whether such person is an applicant in the case, and, if not, designating such person as respondent (i.e., "In the Matter of _____, Applicant" or "In the Matter of _____, Respondent"), and shall set forth the docket number of the case except where no docket number has been assigned.
- (D) All documents filed shall be printed and shall include the name, address, and telephone number of the person or, if represented by an attorney, that person's attorney. If a person is represented by a firm of attorneys, a particular attorney with the firm having primary responsibility for the case shall be indicated on such document. All documents filed shall be signed by the person or by the person's attorney.
- (E) All documents shall be deemed filed with the agency upon being date and time-stamped by the Ohio EPA "Legal Records Section."
- (F) In computing any period of time prescribed for filing a document, the day on which the designated period of time begins to run is not included. The last day of the period is included unless it is a day that the agency is not open for business, in which event the period runs until the end of the next day that the agency is open for business. When the time prescribed or allowed is less than seven days, days that the agency is not open for business shall be excluded from the computation.

- (G) Any request for an extension of time to file a document shall be filed within the time allowed for the filing of the document with the agency.
- (H) Documents filed with the hearing clerk shall not be considered by the hearing examiner unless proof of service in accordance with paragraphs (I) and (J) of this rule is endorsed thereon. The proof of service shall state the date and manner of service and shall be signed by the person filing such document or by the person's attorney.
- (I) The hearing examiner and the parties shall send a copy of each document they have filed with the hearing clerk to each party or, if a party is represented by an attorney, to the party's attorney. Service by mail is complete upon mailing. Service may also be made by any other means permitted by the "Ohio Rules of Civil Procedure" (2011).
- (J) Copies of all documents filed shall also be sent to any person who has been denied permission to intervene and any party who has been dismissed from a case for any reason, other than that party's voluntary withdrawal, in the same manner as this chapter requires those documents to be sent to the remaining parties. If a person being served is represented by an attorney, service shall be made upon the attorney instead of upon the person.

Replaces: Part of 3745-47-11 and 3745-47-16
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Rule Amplifies: 119.06, 119.07, 119.08, 119.09, 3745.07
Prior Effective Dates: 07/05/73, 06/30/81

3745-47-06

Authority and duties of hearing examiners.

- (A) Adjudication hearings shall be conducted before a hearing examiner.
- (B) Upon receiving a request or objection pursuant to rule 3745-47-03 of the Administrative Code, a hearing examiner shall be assigned to the case.
- (C) The hearing examiner shall conduct adjudication hearings in such a manner as to prevent unnecessary delay, maintain order, and ensure the development of a clear and adequate record.
- (D) The authority of the hearing examiner shall include but not be limited to authority to do the following:
- (1) Schedule adjudication hearings, in which consideration shall be given to the following:
 - (a) Providing adequate time for all parties to prepare for the adjudication hearing.
 - (b) Any request by a party relating to the time and location of the adjudication hearing.
 - (2) Administer oaths and affirmations.
 - (3) Issue subpoenas to require the attendance of witnesses at adjudication hearings and depositions.
 - (4) Issue subpoenas duces tecum to require the production of documents or tangible things.
 - (5) Compel all parties to state their positions in writing with respect to the dispute.
 - (6) Examine witnesses and direct witnesses to testify.
 - (7) Make rulings on the admissibility of evidence.
 - (8) Make rulings on procedural motions, whether such motions are oral or written.
 - (9) Hold conferences pursuant to rule 3745-47-10 of the Administrative Code to discuss settlement or for the simplification of issues.
 - (10) Request any party or any party's attorneys to prepare and file suggested entries, findings, orders, conclusions of law, and briefs before or following the adjudication hearing and within such time limits as the hearing examiner may determine.
 - (11) Dismiss a party for failure to comply with this chapter or with any order that

the hearing examiner is authorized to issue, or for failure to appear at an adjudication hearing or conference.

(12) Order cases involving common issues of fact and law to be consolidated.

(13) Take such other action as may be necessary to accomplish the purposes of paragraph (C) of this rule.

(E) The hearing examiner shall have such other powers, duties, and authority as are granted by statute or rules.

(F) All rulings on evidence, motions, and other procedural matters, including dismissal of a party, shall be subject to review by the director upon review of the report and recommendation of the hearing examiner pursuant to rule 3745-47-16 of the Administrative Code.

Replaces: Part of 3745-47-14 and 3745-47-19
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3745-47-07

Intervention.

- (A) Any person may file a motion to intervene in an adjudication proceeding conducted under this chapter. A motion shall be accompanied by a memorandum setting forth the matter for which intervention is sought, the grounds for proposed intervention, the position and interest of the movant in the adjudication proceeding, and any other matter that the movant deems relevant in light of the factors to be considered by the hearing examiner listed in paragraph (D) of this rule. The movant shall serve a copy of the motion upon each party as provided in rule 3745-47-05 of the Administrative Code.
- (B) Except as provided in paragraph (C) of this rule, a motion to intervene in an adjudication proceeding shall be filed prior to the commencement of the first conference or not later than fifteen days prior to commencement of the adjudication hearing if no conference is held.
- (C) Motions to intervene in an adjudication proceeding filed after the time periods set forth in paragraph (B) of this rule shall contain, in addition to the information required by paragraph (A) of this rule, a statement of good cause for the failure to timely file the motion and shall be granted only upon a finding that extraordinary circumstances justify the granting of the motion.
- (D) Motions to intervene may be granted by the hearing examiner upon consideration of the following factors, where relevant:
- (1) The nature and extent of the movant's interest in the subject matter of the adjudication proceeding and the degree to which the adjudication may impair or impede the movant's ability to protect that interest.
 - (2) The adequacy of the representation of the movant's interest by existing parties.
 - (3) The relationship of the movant's interest to the subject matter of the adjudication hearing.
 - (4) The avoidance of duplicative adjudication proceedings.
 - (5) Whether the intervention would unduly delay or prejudice the adjudication of the rights of the parties.
 - (6) The contribution the movant may make to the just determination of the issues.
- (E) In any adjudication proceeding in which intervention is granted under this rule, the intervener shall be bound by previous rulings. The hearing examiner may impose reasonable conditions or restrictions on the extent of the intervener's participation in the adjudication proceeding.

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3745-47-08

Motions.

- (A) All motions, unless made before the hearing examiner upon the record, shall be made in writing. A written motion shall state with particularity the relief or order sought and shall be accompanied by a memorandum setting forth the grounds therefor.
- (B) Not later than ten days after service of a written motion, or such other time as fixed by the hearing examiner, any party may file a response to a motion. A movant may reply to the response only with the permission of the hearing examiner. Procedural motions shall not cause delay of an adjudication hearing without a finding by the hearing examiner that good cause for such delay exists.
- (C) Before deciding a written motion, the hearing examiner shall consider all applicable memoranda filed. The hearing examiner shall file a written decision, including any order issued, and shall serve copies on all parties. The hearing examiner's ruling on all oral motions shall be included in the stenographic record but the hearing examiner may elect to take the motion under advisement and issue a written ruling later. The hearing examiner shall include in each written decision on a motion a short statement of the reasons for each ruling.
- (D) Motion for summary disposition.
- (1) Any party may file a motion for summary disposition. A motion for summary disposition shall be filed not later than fifteen days before the date set for commencement of an adjudication hearing, unless leave for filing thereafter is obtained from the hearing examiner.
 - (2) When considering such a motion, the hearing examiner shall consider the proposed action; requests for adjudication hearing; objections; depositions; answers to interrogatories; stipulations of fact; admissions; the response to the motion and any replies to the response; affidavits accompanying the motion, response, or reply; and any argument presented at an adjudication hearing on the motion. If, after consideration of the foregoing, the hearing examiner determines that there is no genuine issue as to any material fact and that the moving party is entitled to the outcome requested as a matter of law, the hearing examiner shall submit to the director a report and recommendation pursuant to rule 3745-47-16 of the Administrative Code without holding an adjudication hearing.

Replaces: Part of 3745-47-17
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3745-47-09

Continuances.

(A) An adjudication hearing may be continued or postponed by the hearing examiner upon the hearing examiner's own motion, or upon the hearing examiner's determination that the written motion of any party shows good cause.

(B) Before granting any continuance, the hearing examiner shall consider any harm to public welfare or the environment which may result from delay in the adjudication proceeding.

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Rule Amplifies: 119.06, 119.07, 119.08, 119.09, 3745.07
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3745-47-10

Conferences.

(A) Upon written notice by the hearing examiner to all parties, the parties or the parties' attorneys may be ordered to appear at a specified time and place for a conference, presided over by the hearing examiner, before or during the course of the adjudication hearing, to consider such matters as the hearing examiner shall direct including but not limited to the following:

- (1) The settlement of the adjudication proceeding.
- (2) The specification and simplification of the questions presented.
- (3) The disclosure of names, identities, and location of witnesses together with a brief statement of what is proposed to be established by the testimony of each.
- (4) The limitation of the number of and the exchange of reports of expert witnesses expected to be called by any party.
- (5) The submission of admissions of fact.
- (6) The submission of stipulations as to the admissibility into evidence of documents and other exhibits to avoid unnecessary proof.
- (7) The exchange of documentary evidence to be submitted at the adjudication hearing.

(B) Each party shall attend the initial conference fully prepared to discuss in detail the following:

- (1) The party's own positions with respect to all issues of fact and law raised in the party's requests for adjudication hearing.
- (2) All issues of fact and law raised by other parties on which the party wishes to take a position.
- (3) All respects in which the party desires the proposed action to be altered, and the reasons therefor.

(C) The proceedings at the initial conference shall be off-the-record.

(D) Prior to or subsequent to any conference, the hearing examiner may require a party to prepare briefs covering such matters as the hearing examiner may specify. For any conference, the hearing examiner may prepare, or order prepared, a conference report encompassing the agreements reached and decisions made at the conference, including any agreed upon admissions, stipulations, or proposals. All offers of settlement, proposals of adjustment, and proposed stipulations not agreed upon shall not constitute admissions, and shall not be admissible in evidence against the

person making the offer or proposal.

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3745-47-11

Discovery; availability of agency files.

- (A) Any party may obtain public records of the agency, pursuant to section 149.43 of the Revised Code and rule 3745-49-03 of the Administrative Code, and obtain discovery or protection from discovery in the same manner and to the same extent as is prescribed in the "Ohio Rules of Civil Procedure" (2011) and section 119.09 of the Revised Code.
- (B) No adjudication hearing shall be continued to a date more than sixty days after initiation of the adjudication proceeding for the purpose of discovery unless the hearing examiner finds in writing that the party requesting the continuance diligently pursued discovery but was unable to complete discovery.
- (C) Parties shall cooperate in conducting discovery procedures with the objective being full and complete disclosure of all relevant facts. Informal consultation among parties concerning discovery shall be attempted before filing of formal motions to compel discovery.
- (D) All costs of service, mileage, witness fees, and other costs of discovery shall be borne by the party requesting such discovery. Witness and mileage fees shall be the same as paid in the common pleas courts of Ohio in criminal cases.

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Prior Effective Dates: 07/05/73, 06/30/81

3745-47-12

Adjudication hearing procedures.

- (A) The hearing examiner shall admit all relevant and material evidence, except evidence that is unduly repetitious, even though inadmissible under the "Ohio Rules of Evidence" (2011) applicable to judicial proceedings. All records maintained by the agency or the agency's duly authorized representative shall not be inadmissible for lack of authentication if the custodian of such records certifies the identity of the records in writing. The weight to be given evidence shall be determined by the evidence's reliability and probative value. In all adjudication hearings the testimony of witnesses shall be taken orally, except as provided by this chapter or by the hearing examiner. Parties shall have the right to cross-examine witnesses.
- (B) If a party objects to the admission or exclusion of any evidence, that party shall state briefly the grounds for such objection. The stenographic record shall include any argument or debate thereon, unless the hearing examiner, with the consent of all parties, orders that such argument not be recorded. The ruling of the hearing examiner on any objection shall be part of the stenographic record.
- (C) A copy of each documentary exhibit filed with the hearing examiner shall be furnished to each other party. A true copy of an exhibit may, in the discretion of the hearing examiner, be substituted for the original.
- (D) Whenever evidence is ruled inadmissible, the party offering such evidence may make an offer of proof, which shall be included in the stenographic record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature and substance of the evidence excluded. If the evidence consists of a document or exhibit, the evidence shall be inserted in the record in total. If the director decides that the hearing examiner's ruling in excluding the evidence was erroneous, the adjudication hearing may be reopened to permit the taking of such evidence, or, where appropriate, the director may evaluate the evidence and proceed to a final decision.
- (E) Official notice may be taken of such matters as are within the expertise of the hearing examiner. The parties shall be given adequate opportunity to show that such facts are erroneously noticed.
- (F) Parties may file proposed findings, orders, conclusions of law, or briefs for consideration by the hearing examiner not later than fourteen days after receipt of the stenographic record of the adjudication hearing or such other period of time as the hearing examiner may set.
- (G) After the conclusion of an adjudication hearing and prior to the submission of a report and recommendation, the hearing examiner, upon motion of a party, may permit the parties to file newly discovered documentary evidence that by due diligence could not have been discovered prior to the adjudication hearing.
- (H) No interlocutory appeal of any ruling or order of the hearing examiner may be made

to the director.

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Rule Amplifies: 119.06, 119.07, 119.08, 119.09, 3745.07
Prior Effective Dates: 07/05/73, 06/30/81

3745-47-13

Conclusion of adjudication proceedings.

- (A) Withdrawal of request for adjudication. A party may file a withdrawal of its objection or request for an adjudication hearing at any stage of the adjudication proceeding. Provided there is not another party to the adjudication proceeding who wishes the adjudication proceeding to continue, not later than forty-five days after the filing of a withdrawal of the objection or request for an adjudication hearing, the hearing examiner shall submit to the director a written report and recommendation of the action to be taken by the director. This paragraph does not apply to withdrawals made as a result of settlement agreement by all parties pursuant to paragraph (C) of this rule.
- (B) Failure to prosecute. Where a party fails to comply with these rules or with orders of the hearing examiner, the hearing examiner may, upon motion of any party or upon the hearing examiner's motion and after notice to the parties, submit to the director a written report and recommendation that recommends that the director dismiss the adjudication proceeding.
- (C) Settlement agreements. If all parties agree, a settlement agreement may be entered into at any stage of the adjudication proceeding prior to the issuance of a final order by the director. Not later than forty-five days after the filing of a settlement agreement entered into by all parties, the hearing examiner shall submit to the director a written report setting forth findings of fact and conclusions of law, and a recommendation of the action to be taken by the director. The hearing examiner may recommend that the settlement agreement be adopted as a final order.

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3745-47-14

Witnesses and evidence.

(A) Due to the duties in deciding adjudicatory matters, the director, assistant director, and deputy directors shall not be competent witnesses or deponents in any adjudication proceeding before the agency.

(B) Evidence from other persons relating to the mental processes of the director, assistant director, and deputy directors shall not be admissible.

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Prior Effective Dates: 07/05/73, 06/30/81

3745-47-15

Burden of proof - evidence.

(A) The burden at all adjudication hearings with respect to applications for permits, licenses, variances, certificates, or other authorizing actions shall be upon the applicant to prove entitlement to the permit, license, variance, certificate, or authorizing action.

(B) Except as provided in paragraph (A) of this rule, the agency shall bear the burden of proof at all adjudication hearings relating to the following:

(1) Proposed modifications initiated by the agency.

(2) Proposed revocations.

(3) Proposed orders.

(4) Findings under division (B) of section 3714.12, division (B) of section 3734.13, division (C) of section 3745.08, division (B) of section 6109.05, section 6109.14, or division (C) of section 6111.06 of the Revised Code.

(5) Notice of the hearing under division (B) of section 3714.12, division (B) of section 3734.13, division (C) of section 3745.08, division (B) of section 6109.05, section 6109.14, or division (C) of section 6111.06 of the Revised Code.

(C) A party raising an issue of fact shall have the burden of presenting a prima facie case establishing that fact; thereafter, the burden of proof on such issue is allocated according to paragraphs (A) and (B) of this rule.

(D) Notwithstanding paragraph (A) of this rule, there shall be a legal presumption in favor of facts asserted by a party that can be disproved by evidence available to and under the control of an opposing party. In order to rebut this presumption, the party having control of such evidence shall show that the nonexistence of the presumed fact is more likely than the existence of such fact.

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3745-47-16

Report and recommendation of hearing examiner.

- (A) Except as otherwise provided in this paragraph, not later than forty-five days after receipt of the stenographic record of an adjudication hearing, and upon due consideration of the record, the hearing examiner shall file a report and recommendation and shall submit a copy of that report and recommendation to the director. In cases where the hearing examiner has established a post-hearing briefing schedule, the report and recommendation shall be filed and submitted not later than forty-five days after the completion of briefing. The report shall include findings of fact and conclusions of law, and the recommendation shall include the recommendations regarding the action to be taken by the director.
- (B) A copy of the report and recommendation shall be mailed to all parties or their attorneys, and to the persons entitled to receive documents pursuant to rule 3745-47-05 of the Administrative Code. Copies shall be mailed by certified mail not later than five days after the submission of the report and recommendation to the director.
- (C) Any person to whom a copy of the report and recommendation shall be provided pursuant to paragraph (B) of this rule may file a written statement of objections to the report and recommendation not later than ten days after receipt of the copy. All written statements of objections filed pursuant to this paragraph shall be considered by the director before issuance of a final action. Upon the director's own motion, or upon motion of any person entitled to file an objection, the director may grant extensions of the ten-day period. All objections shall state each legal and each factual basis for the objection. Where matters of fact form a basis for the objection, a citation to the record shall be included. Persons filing objections shall serve their objections upon all other persons entitled to file objections. Answers to objections may not be filed.
- (D) After the hearing examiner's report and recommendation has been filed, the director, upon the director's own motion or upon motion of a party, may permit the parties to file further documentary evidence, and after granting the opposing party the opportunity to prepare, may take additional testimony or remand the matter to the hearing examiner for the taking of additional testimony. In deciding whether to permit the taking of additional testimony, the director shall give consideration to harm to the public welfare or the environment that may result from delay in the adjudication proceeding.

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3745-47-17

Record.

(A) After the initiation of an adjudication proceeding, a record of the adjudication proceeding shall be maintained at the expense of the agency. Such record shall include the following pertaining to the adjudication proceeding:

(1) The adjudication file.

(2) Any stenographic record.

(3) Offers of proof.

(4) Stipulations.

(5) Written motions.

(6) Exhibits.

(7) Requests.

(8) Objections.

(9) Answers.

(10) Comments submitted on the proposed action.

(11) Written statements.

(12) Correspondence.

(13) Briefs.

(14) A copy of the proposed action.

(15) Copies of public notices.

(16) The fact sheet, where the agency is required to prepare one.

(17) The report and recommendation of the hearing examiner.

(18) The record of a public meeting.

(19) Any comments submitted pursuant to paragraph (D) of rule 3745-49-05 of the Administrative Code.

(20) The report of the presiding officer if a public meeting was held, and written orders or rulings of the hearing examiner.

(21) Any further documentary evidence and additional testimony, if any, permitted

by the director, pursuant to paragraph (D) of rule 3745-47-16 of the Administrative Code, after the filing of the hearing examiner's report and recommendation.

(B) The record shall be the exclusive basis for decision by the director in an adjudication proceeding.

(C) The director's decision pertaining to the adjudication proceeding shall be added to the record.

Replaces: Part of 3745-47-25 and 3745-47-26
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Prior Effective Dates: 07/05/73, 04/26/76, 06/30/81

3745-47-18

Final action.

- (A) Not earlier than expiration of the time for submission of objections under paragraph (C) of rule 3745-47-16 of the Administrative Code, nor later than sixty days thereafter, the director shall approve, modify, or disapprove the hearing examiner's report and recommendation as a final action.
- (B) When the final action modifies or disapproves the hearing examiner's report and recommendation, the final action shall include findings of fact and conclusions of law with the reasons for such modification or disapproval.
- (C) The decision of the director shall be entered in the director's journal and in the record of the adjudication proceeding.

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3745-47-19

Emergency orders.

(A) When the director has determined that an emergency exists and has ordered that such action be taken as is necessary to meet the emergency pursuant to division (B) of section 3714.12, division (B) of section 3734.13, division (B) of section 6109.05, or division (C) of section 6111.06 of the Revised Code, any person to whom such order is directed may request an adjudication hearing. Notwithstanding a request for an adjudication hearing, emergency orders shall be effective immediately. Immediately upon receipt of such request, the director shall appoint a hearing examiner who shall convene an adjudication hearing within forty-eight hours to consider the issues raised by the adjudication hearing request. To obtain necessary evidence, the hearing examiner may continue the adjudication hearing, but shall reconvene the adjudication hearing as soon as possible and not later than twenty days after the adjudication hearing request unless the subject of the adjudication hearing becomes moot. The director shall give priority to consideration of the hearing examiner's report and recommendation and shall not await written objections of the parties before issuing a decision. To the extent that other rules of this chapter conflict with this rule or would cause delay in an emergency adjudication hearing, the other rules shall not be applicable to adjudication proceedings under this rule.

(B) Proceedings pursuant to the declaration of an air pollution emergency under section 3704.032 of the Revised Code shall not be subject to this chapter.

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3745-47-20

Rules of ethics.(A) Ex parte communications.

(1) No party to an adjudication proceeding shall engage in or encourage other persons to engage in ex parte communications with the hearing examiner about any matter that is the subject of the adjudication proceeding. The hearing examiner shall not entertain such communications.

(2) No persons identified in paragraphs (P)(1)(b) to (P)(1)(e) of rule 3745-47-02 of the Administrative Code shall engage in or encourage other persons to engage in ex parte communications with the director, the assistant director, or the deputy directors about any matter that is the subject of the adjudication proceeding. The director, the assistant director, and the deputy directors shall not entertain such communications.

(3) The director, the assistant director, the deputy directors, and the hearing examiner may participate in conferences or any other discussions in which all the parties have a right to participate.

(B) All communications prohibited by paragraph (A) of this rule shall be reported immediately to the hearing examiner, who shall place the communication or a memorandum describing the communication in public files associated with the case, but separate from the record material upon which the agency will rely in reaching a decision. The hearing examiner shall take such additional action as the hearing examiner deems advisable.

(C) A hearing examiner shall be disqualified upon the hearing examiner filing an affidavit stating the reason for disqualification. A hearing examiner shall file a disqualification affidavit for either of the following reasons:

(1) If for any reason the hearing examiner may not be able to preside in a fair and impartial manner and render an impartial report and recommendation to the director.

(2) If the hearing examiner receives, or has during the previous two years received, ten per cent or more of the hearing examiner's gross personal income for a calendar year from a party or any subsidiary or owner thereof. For purposes of this paragraph, "party or any subsidiary or owner thereof" does not include the state. The hearing examiner's gross personal income includes retirement benefits, consultant fees, and stock dividends, but does not include income from diversified investments where the hearing examiner does not know the identity of the primary sources of income.

(D) Hearing examiners shall behave in the manner prescribed for judges generally in the "Ohio Code of Judicial Conduct" (2010).

(E) It shall not be deemed a violation of this rule if the director, in the performance of

duties and functions other than decision-making in an adjudication proceeding, gathers information or expresses opinions on matters of fact or law that are the subject of any adjudication proceeding.

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3745-49-01

Administrative procedures - applicability and construction of rules.

(A) This chapter shall govern public notices, public meetings, public records, trade secret claims, verified complaints, and other administrative functions performed by the agency.

(B) This chapter shall be construed liberally to accomplish the purposes of the chapters of the Revised Code governing the functions and duties of the agency, and to afford maximum public involvement in the agency's efforts to protect public health, safety, and the environment.

(C) For purposes of this chapter, license, permit, variance, certificate, registration, and authorization include at a minimum all provisions, terms, conditions, specifications, requirements, and limitations set forth in the document, appended thereto, or incorporated by reference.

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3745-49-02

Administrative procedures - definitions.As used in this chapter:

(A)

(1) "Action" means the issuance, modification, or revocation of an order; the issuance, denial, renewal, modification, suspension, or revocation of a license, permit, lease, variance, certificate, registration, or authorization; or the approval or disapproval of plans and specifications pursuant to law.

(2) "Agency" means the Ohio environmental protection agency.

(B) [Reserved.]

(C)

(1) "Claimant" means the person who claims that all or any portion of information submitted to the agency is confidential because the information constitutes a trade secret.

(2) "Complainant" means a person who has filed a verified complaint.

(D)

(1) "Director" means the director of environmental protection or the director's designee.

(2) "Draft action" means a written statement giving the director's intention with respect to an action and about which persons are authorized by law to file comments or request a public meeting, but which will not be the subject of an adjudication proceeding. A draft action that indicates an intent to issue an order, license, permit, variance, certificate, registration, or authorization shall include a draft of that order, license, permit, variance, certificate, registration, or authorization.

(E) [Reserved.]

(F) "Final action" means the written decision on any matter that is signed by the director and entered in the director's journal pursuant to rule 3745-49-14 of the Administrative Code.

(G) [Reserved.]

(H) [Reserved.]

(I) "Issue" or "issuance" means either of the following:

(1) In the case of a draft action or proposed action, to place the action into the United States mail, addressed to the person who is the subject of the action.

(2) In the case of a final action, to enter the action into the director's journal after it is signed by the director.

(J) [Reserved.]

(K) [Reserved.]

(L) [Reserved.]

(M) [Reserved.]

(N) [Reserved.]

(O) [Reserved.]

(P)

(1) "Person" means the state of Ohio or any agency thereof, the federal government or any agency thereof, any other state or agency thereof, any interstate agency, an individual, and any municipal corporation, political subdivision, public or private corporation, partnership, or other legal entity defined as a person under section 1.59 of the Revised Code.

(2) "Personal knowledge" means knowledge gained through first hand observation or experience, as distinguished from information obtained solely from another person or source.

(3) "Proposed action" means a written statement that gives the director's intention with respect to an action and allows persons to do one or more of the following:

(a) File comments or objections to the action.

(b) Request an adjudication hearing in accordance with Chapter 3745-47 of the Administrative Code.

(c) Request a public meeting regarding the action.

(4) "Proposed public copy" means a version of information submitted to the agency from which information claimed to constitute a trade secret has been omitted or withheld by a claimant.

(5) "Public copy" means a version of information maintained by the agency from

which information determined by the director to constitute a trade secret has been omitted or withheld by the agency.

(6) "Public meeting" means a non-adversarial public forum where any person may present written or oral statements for the director's consideration pertaining to the application, draft action, or proposed action that is the subject of the meeting.

(7) "Public record" has the same meaning as in section 149.43 of the Revised Code.

(Q) [Reserved.]

(R) [Reserved.]

(S) [Reserved.]

(T) "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, provided that the information conforms to the following:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Is not discharge or emission data.

(U) "Unredacted copy" means the complete original version of information submitted to the agency from which information claimed to constitute a trade secret has not been omitted or withheld.

(V) "Verified complaint" means a written complaint filed pursuant to and meeting the requirements of section 3745.08 of the Revised Code and rule 3745-49-12 of the Administrative Code.

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6109.04, 6111.03, 6111.041
Rule Amplifies: 3745.07
Prior Effective Dates: 04/26/76, 06/30/81

3745-49-03

Trade secrets.

(A) A trade secret claim shall be submitted to the agency simultaneously with submission of the specific information, and such request shall be accompanied by sufficient supporting documentation. Failure to make such timely request shall constitute a waiver of the right to prevent public disclosure. If a claimant does not submit the documentation and substantiation required by paragraph (B) of this rule at the time of the submission of the information claimed to constitute a trade secret, the submission shall be considered a public record of the agency.

(B) A claimant shall bear the burden of proving to the satisfaction of the director that the information submitted or portion thereof is a trade secret.

(1) In order to assert a trade secret claim regarding a submission, the claimant shall, at the time of the submission, provide the following to the director:

(a) An unredacted copy of the submission, identified as such, with each page numbered consecutively from beginning to end.

(b) A proposed public copy of the submission, identified as such, with each page numbered consecutively from beginning to end.

(c) With respect to each item of information claimed to be a trade secret, a statement that describes each item and identifies the location of each item.

(d) A sworn or affirmed statement of reasons, including the factual basis thereof, as to why each item of information redacted from the proposed public copy is a trade secret.

(2) A trade secret claim is not asserted by simply stamping, marking, or otherwise identifying information as "confidential," "trade secret," or the like.

(C) Upon a showing satisfactory to the director by any person that information maintained by the agency, or a particular part thereof, is a trade secret, the agency shall consider such information confidential. Any information determined by the director to be confidential or the subject of a pending trade secret claim may be disclosed, without the claimant's consent, as follows:

(1) To officers, employees, or authorized representatives of the state or a federal agency.

(2) In any in camera administrative proceeding or in camera judicial proceeding conducted in accordance with applicable law.

(D) If the director makes a determination denying all or any portion of a trade secret claim, the director shall not disclose the information that is the subject of the trade secret claim until the expiration of the applicable time period for appealing the

determination or until all appeals have been exhausted.

(E) If a public records request encompasses records the agency possesses that are the subject of a pending claim that the records constitute a trade secret and that the release of such records is thus prohibited by law, in addition to any appropriate response otherwise required by section 149.43 of the Revised Code, within a reasonable time after receipt of the request, the requestor shall be provided with the proposed public copy of the record requested and shall be notified by the agency of the following:

- (1) Certain records encompassed by the request, which are in the possession of the agency, are subject to a pending claim that such records constitute a trade secret.
- (2) A determination whether such records constitute a trade secret will be made within forty-five days of the date the request to inspect public records was received by the agency.
- (3) The requestor will receive written notification of such determination.
- (4) Until such determination is made, the requested records are not subject to disclosure by the agency.
- (5) If the director determines that any portion of the requested records constitute a trade secret, the requestor shall be provided with a public copy of the records.
- (6) If the director determines that the requested records do not constitute a trade secret, the requestor shall be provided a copy of the records.

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6109.04, 6111.03, 6111.041
Rule Amplifies: 149.43
Prior Effective Dates: 08/13/73

3745-49-04

Public notice of rules.

- (A) Not later than thirty days prior to the date set for a public hearing to consider adopting, amending, or rescinding a rule, public notice shall be published in the register of Ohio in accordance with section 119.03 of the Revised Code and in the Ohio EPA "Weekly Review." The public notice shall consist of a general statement of the subject matter of the proposed rule, amendment, or rule to be rescinded by the agency and the date, time, and place of the public meeting on the proposed rule.
- (B) Not later than ten days prior to the effective date of the adoption, amendment, or rescission of a rule, public notice shall be published in the register of Ohio in accordance with the requirements in section 119.03 of the Revised Code and in the Ohio EPA "Weekly Review," except when the governor, pursuant to division (F) of section 119.03 of the Revised Code, declares an emergency allowing for the immediate adoption, amendment, or rescission of a rule. In such case, the public notice shall be published as expeditiously as practicable following the adoption, amendment, or rescission of an emergency rule in the register of Ohio and in the Ohio EPA "Weekly Review."
- (C) The agency may take such additional steps as reasonable to inform interested persons of the time, date, and place of the public meeting and the subject matter of the proposed rule. However, the failure to give notice by any means other than specified in paragraphs (A) and (B) of this rule shall not invalidate any action which may be taken by the agency.
- (D) Copies of the full text of the rule that was proposed to be adopted, amended, or rescinded shall be available prior to the effective date of such rule for any person who wishes to obtain a copy from the agency. However, the failure to furnish such copies to any person shall not invalidate any action of the agency in connection therewith.
- (E) Any action that adopts, amends, or rescinds a rule is not subject to rules 3745-49-05 to 3745-49-08 of the Administrative Code.

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Rule Amplifies: 3704.08(A), 3734.12(G), 3745.01, 3751.04, 6111.05(A), 6111.05(B)
Prior Effective Dates: 02/16/75, 08/24/81, 11/09/84, 12/01/01

3745-49-05

Draft actions and proposed actions.

(A) With respect to all actions of the agency that would require the agency to afford an opportunity for an adjudication hearing in accordance with sections 119.06 and 119.07 of the Revised Code and Chapter 3745-47 of the Administrative Code, the director shall prepare a proposed action.

(1) A proposed action shall be issued to the person who is the subject of the proposed action by certified mail, return receipt requested. Service shall be complete in accordance with section 119.07 of the Revised Code and the "Ohio Rules of Civil Procedure" (2011).

(2) All proposed actions, except amended proposed actions, shall be accompanied by a notice that states when and how a person may request an adjudication hearing in accordance with Chapter 3745-47 of the Administrative Code.

(B) In any instance in which the director is not obligated to afford an opportunity for an adjudication hearing in accordance with sections 119.06 and 119.07 of the Revised Code and Chapter 3745-47 of the Administrative Code, the director may issue a draft action to the person subject thereto. All draft actions shall be sent by certified mail or first class mail to the person subject thereto and shall be accompanied by a statement as to when a final action may be issued.

(C) Draft action or proposed action process determined by effective dates.

(1) A draft action or proposed action may bear a date upon which it will become effective as a final action, or it may be issued with no such date stated. If the draft action or proposed action bears an effective date, the date shall not be prior to the following:

(a) For a proposed action, the deadline for filing an adjudication hearing request and an objection set forth in rule 3745-47-03 of the Administrative Code.

(b) For a draft action, either of the following:

(i) The deadline for filing comments set forth in paragraph (D) of this rule.

(ii) The deadline for requesting a public meeting set forth in rule 3745-49-13 of the Administrative Code.

(2) If a draft action or proposed action is issued with an effective date, amendments thereto are issued, and the amended action is entered in the director's journal, the agency need not, at the time of entry, provide notice or a copy of the amended action to the person subject thereto.

(3) If a draft action or proposed action is issued without an effective date,

amendments thereto are issued, and the agency later assigns an effective date and enters the amended action in the director's journal, the agency shall mail notice to the person subject thereto informing such person of the effective date.

(D) Public comments.

- (1) Any person may submit written comments relating to a draft action or proposed action.
- (2) All comments received by the agency not later than thirty days after public notice in accordance with rule 3745-49-07 of the Administrative Code, or such longer period as the public notice may specify, shall be considered by the director prior to issuance of a final action. This paragraph does not apply to amended draft actions or amended proposed actions unless the agency gives public notice of the amended draft action or amended proposed action pursuant to rule 3745-49-07 of the Administrative Code.
- (3) All comments or statements presented to the agency at a public meeting held pursuant to rule 3745-49-13 of the Administrative Code shall be considered by the director prior to issuance of a final action.

(E) Amendment and withdrawal of a draft action or proposed action.

- (1) If a draft action or proposed action is issued with an effective date, the director may amend the draft action or proposed action at any time prior to the stated effective date. A draft action or proposed action issued without an effective date may be amended at any time prior to entry in the director's journal as a final action.
- (2) The director may withdraw a draft action or proposed action prior to the effective date stated, or if no date is stated, at any time. However, the director may not withdraw a proposed action after the initiation of an adjudication proceeding in accordance with Chapter 3745-47 of the Administrative Code unless objections made in accordance with section 3745.07 of the Revised Code and rule 3745-47-03 of the Administrative Code and all requests for an adjudication hearing have been withdrawn or dismissed.

(F) A draft action or proposed action shall be issued as a final action in accordance with rule 3745-49-06 of the Administrative Code.

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6109.04, 6111.03, 6111.041
Rule Amplifies: 3745.07
Prior Effective Dates: 07/05/73, 06/30/81

3745-49-06

Issuance of final actions.

(A) The director shall not issue an action as a final action if an objection is received from the United States environmental protection agency and applicable law prohibits the issuance of a final action under such circumstances.

(B) Except as otherwise provided in paragraph (E)(1) or (E)(2) of rule 3745-49-05 of the Administrative Code, the director shall issue a draft action as the director's final action on the effective date stated or, if no effective date is included, on a date that shall not be sooner than either of the dates specified in paragraph (C)(1)(b) of rule 3745-49-05 of the Administrative Code.

(C) Unless an adjudication proceeding has been initiated, the director shall issue the proposed action as a final action on the effective date stated or after the deadline for filing an adjudication request or an objection, whichever date is later. After the initiation of an adjudication proceeding, the director shall not issue a final action until the adjudication proceeding has been completed in accordance with Chapter 3745-47 of the Administrative Code.

(D) Mailing.

(1) The agency shall mail a copy of the final action to the following:

(a) The person subject thereto.

(b) If the final action follows the completion of an adjudication proceeding in accordance with Chapter 3745-47 of the Administrative Code regarding a prior proposed action, all parties of record in the adjudication proceeding.

(c) If the final action follows the completion of an adjudication proceeding in accordance with Chapter 3745-47 of the Administrative Code regarding a prior proposed action, all attorneys of record in the adjudication proceeding.

(d) If the final action dismisses a verified complaint, the complainant and the person complained against.

(2) Not later than five days after a final action preceded by a proposed action is entered into the director's journal, a copy of the final action shall be sent by certified mail in accordance with paragraph (D)(1)(a) or (D)(1)(b) of this rule.

(3) Not later than five days after the final action preceded by a proposed action is entered into the director's journal, a copy of the final action shall be sent by first class mail in accordance with paragraph (D)(1)(c) or (D)(1)(d) of this rule.

(4) If applicable law grants a right to appeal the final action to the environmental

review appeals commission, mailings required by this rule shall be accompanied by a notice stating when and how the appeal may be filed.

Replaces: Part of 3745-47-05, 3745-47-07, and 3745-47-13
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6109.04, 6111.03, 6111.041
Rule Amplifies: 3745.07
Prior Effective Dates: 07/05/73, 05/07/76, 06/30/81

3745-49-07

Public notice.

(A) The agency shall give public notice for the following:

- (1) Draft actions and proposed actions, except amended draft actions and amended proposed actions. The agency may give public notice of amended draft actions and amended proposed actions.
- (2) Final actions, except final actions preceded by proposed actions, unless the agency determines that the final action differs from the proposed action in a manner that affects the rights or duties of any person.
- (3) Withdrawals of actions.
- (4) Public meetings.
- (5) Verified complaints received.
- (6) Whenever the agency begins consideration of the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005).
- (7) The adoption, amendment, or rescission of a rule.

(B) Public notices shall be published as follows:

- (1) For all public notices required or authorized by this rule, except for public notices of rules and registrations, in at least one newspaper of general circulation in the county in which the source, facility, or subject of the public notice is located.
- (2) For registrations, once in the Ohio EPA "Weekly Review."
- (3) For the adoption, amendment, or rescission of a rule, in accordance with rule 3745-49-04 of the Administrative Code.
- (4) Not later than thirty days prior to a public meeting.
- (5) Not later than fifteen days after issuance of an action and initiation of consideration of the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005).
- (6) Not later than fifteen days after receipt of a verified complaint.

Public notice is complete upon publication.

(C) All public notices required or authorized by this chapter shall be mailed by first class

mail to all persons on the mailing list of subscribers maintained pursuant to section 3745.07 of the Revised Code not later than seven days after issuance of an action, receipt of verified complaint, or initiation of consideration of the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005), and at least fourteen days prior to a public meeting. Failure to mail notice to any person on the mailing list of subscribers maintained pursuant to section 3745.07 of the Revised Code will not invalidate any action of the director under any circumstance.

(D) Failure to give public notice of a draft action as required by this rule will invalidate the resulting final action only if such invalidation is expressly required by applicable law.

(E) Failure to give public notice of a proposed action as required by this rule will invalidate the resulting final action only if the failure is raised by, and was relied upon to the detriment of, any person entitled to be a party to an adjudication proceeding before the agency.

(F) If any action but a final action would issue or renew a permit to discharge sewage, industrial wastes, or other wastes to waters of the state under division (J) of section 6111.03 of the Revised Code, the agency shall, on or before the date of newspaper publication of the public notice, comply with rule 3745-49-10 of the Administrative Code.

(G) If any person has requested to be notified of agency actions relating to an application or request for a permit, license, or variance for a particular source or facility and the agency later issues the permit, license, or variance, the agency shall send the notice required by paragraph (A)(2) of this rule to that person not later than fifteen days after issuance. Failure to do so will not invalidate the agency action.

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6109.04, 6111.03, 6111.041
Rule Amplifies: 3745.07
Prior Effective Dates: 05/07/76, 06/30/81

3745-49-08

Contents of public notices.**(A) Public notices of actions shall include the following:**

- (1) The name of the agency.
- (2) The address and telephone number of the locations where agency files and records pertaining to the action are located and may be inspected and copied.
- (3) Instructions for persons desiring to obtain additional information, a copy of any fact sheet prepared, or a copy of the action.
- (4) Instructions to persons desiring to be included on the mailing list provided for in section 3745.07 of the Revised Code.
- (5) The name and address of the person to whom the action was issued.
- (6) A brief description of the activities or operations that are the subject of the action.
- (7) The location of the source, facility, or subject of the action, including a street address if one is known.
- (8) A statement summarizing the action.
- (9) The date of issuance of the action.

(B) If the public notice is for a draft action or proposed action, in addition to the information required by paragraph (A) of this rule, the public notice shall include the following:

- (1) A statement that any person may submit written comments regarding the action not later than thirty days after the publication of the public notice, or such longer period as the agency may specify.
- (2) A statement that any person may request a public meeting and that if the agency determines that significant public interest is shown, a public meeting may be held on the action prior to issuance of a final action.
- (3) If the draft action or proposed action specifies when the action will become final, a statement that the draft action or proposed action shall become final on an effective date or event specified therein unless any of the following occurs:
 - (a) The director withdraws or amends the action.
 - (b) The action is disapproved by the United States environmental protection agency.

(c) For proposed actions, an adjudication hearing is timely requested in accordance with Chapter 3745-47 of the Administrative Code.

(4) A statement as to when the action may become effective as a final action.

(C) If the public notice is for a final action, in addition to the information required by paragraph (A) of this rule, the public notice shall indicate that the final action may be appealed to the environmental review appeals commission and shall include a statement summarizing the rights to appeal, if applicable.

(D) Public notices of all public meetings relating to an action shall include the following:

(1) The name of the agency.

(2) The address and telephone number of the locations where agency files and records pertaining to the action are located and may be inspected and copied.

(3) Instructions for persons desiring to obtain additional information, a copy of any fact sheet prepared, or a copy of the action.

(4) Instructions to persons desiring to be included on the mailing list provided for in section 3745.07 of the Revised Code.

(5) The name and address of the person to whom the action was issued.

(6) The location of the source, facility, or subject of the action, including a street address if one is known.

(7) The date, time, and location of the public meeting.

(8) If the activities or operations that are the subject of the action are not otherwise included in the public notice, a brief statement of the issues to be addressed at the public meeting, if any.

(9) A statement that the purpose of the meeting is to obtain additional information that will be considered by the director prior to the director taking further action on the matter under consideration.

(E) Public notice of verified complaints filed pursuant to section 3745.08 of the Revised Code and rule 3745-49-12 of the Administrative Code shall include, to the extent known to the agency, the following:

(1) The name of the agency.

(2) The address and telephone number of the locations where further information may be obtained and agency files and records pertaining to the verified

complaint may be inspected and copied.

(3) The name of the person who filed the complaint.

(4) The name of the person against whom the complaint was filed.

(5) A brief description of the location of the source, facility, or subject of the verified complaint, including a street address if one is known.

(6) A brief description of the activities or operations that are the subject of the verified complaint.

(7) A statement that any person may request notice concerning further actions pursuant to the verified complaint.

(F) All other public notices shall include, to the extent known to the agency, the following:

(1) The name of the agency.

(2) The address and telephone number where further information may be obtained and agency files and records pertaining to the source, facility, or subject may be inspected and copied.

(3) The name and address of the person responsible for the source, facility, or subject.

(4) The location of the source, facility, or subject, including a street address if one is known.

(5) A statement that any person, within thirty days of publication of the public notice, or such longer period as the agency may specify, may submit written comments to the director concerning the source, facility, or subject.

(6) A statement that any person may request notice concerning further actions or proceedings regarding the source, facility, or subject.

(G) Where duplicate information is required in multiple notices that are mailed or published together, any information that is required by this rule to be contained in more than one such notice need not be repeated in each notice but may be contained in a separate document mailed or published with and referred to in each notice to which it applies.

(H) Notwithstanding any other provision in this rule, notice of an action to modify any action of the director shall include a statement summarizing the modification together with references to the following:

(1) The action to be modified.

(2) Prior public notices or fact sheets relating to the action to be modified.

(I) All notices required by rule 3745-49-07 of the Administrative Code may be in summary form, specifying the source or facility; the name of the person to whom the action was issued; the type of action, if any; and the address of the office where further information, including the full notice, may be obtained.

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Rule Amplifies: 3745.07
Prior Effective Dates: 07/05/73, 06/30/81

3745-49-09

Fact sheets.

(A) In all instances where a federal statute or rule requires a fact sheet to be prepared, the agency shall, prior to issuance of an action, prepare a fact sheet. The fact sheet shall include such information as may be required by federal statute or rule and may include such additional information as the agency deems desirable.

(B) The agency shall maintain a mailing list of persons or groups requesting fact sheets prepared for any specified application for issuance or renewal of a permit under division (J) of section 6111.03 of the Revised Code and notice of further proceedings relating to such application, copies of additional fact sheets prepared, or other information relating to such application. The agency shall add any person or group to any such list upon receipt from the person or group of a request for inclusion thereon specifying the application or proceedings about which notices, additional fact sheets, or other information is desired.

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6109.04, 6111.03, 6111.041
Rule Amplifies: 3745.07
Prior Effective Dates: 07/05/73, 06/30/81

3745-49-10

Notice of water permit applications to government agencies.

(A) Any action, other than a final action, that would issue or renew a permit to discharge sewage, industrial waste, or other wastes to waters of the state under division (J) of section 6111.03 of the Revised Code shall be provided to the following entities having jurisdiction over waters that may be affected by the discharge:

- (1) Any agency responsible for an areawide waste treatment management plan pursuant to division (B) of section 208 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005).
- (2) Any agency responsible for the preparation of a plan pursuant to an approved continuing planning process under division (E) of section 303 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005).
- (3) Public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005) with any applicable health requirements of such public health agencies.

(B) The notice required to be provided in paragraph (A) of this rule shall include the following:

- (1) The information required in rule 3745-49-08 of the Administrative Code for a public notice regarding the action. The notice may include a copy of such public notice.
- (2) A statement that the state, interstate, federal, or local government agency may submit written recommendations to the director and to the regional administrator of the United States environmental protection agency.
- (3) A statement that the director may incorporate the recommendation into the permit if issued, and that if the recommendation is not incorporated in the final action of the director, a written explanation of the reasons for not accepting the recommendation will be provided to the state, interstate, federal, or local government agency and to the regional administrator of the United States environmental protection agency.
- (4) A copy of the fact sheet and a statement that a copy of the permit application for a permit or the draft permit or proposed permit, including all ancillary papers, will be provided upon request.

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3745-49-11**Coordination of Federal Water Pollution Control Act permit program with agencies of the United States.**

- (A) Upon the director's issuance of a draft action or proposed action on an application to issue, modify, or renew a permit to discharge sewage, industrial waste, or other wastes to waters of the state under division (J) of section 6111.03 of the Revised Code, the agency shall transmit by certified mail a copy of the permit to the regional administrator of the United States environmental protection agency, unless by written agreement the regional administrator has waived the right to receive, review, object to, or comment upon such draft action or proposed action. If the regional administrator makes timely objection in writing to the issuance of such permit as being outside the requirements of the Federal Water Pollution Control Act, the permit shall not be issued as a final action. The director may issue an amended draft action or amended proposed action after consideration of written comments or recommendations of the regional administrator, or may withdraw a draft action or proposed action if permitted by rule 3745-49-05 of the Administrative Code.
- (B) Immediately following final issuance, modification, or renewal of a permit to discharge sewage, industrial waste, or other wastes to waters of the state under division (J) of section 6111.03 of the Revised Code, the agency shall transmit by first class mail a copy thereof to the regional administrator of the United States environmental protection agency.
- (C) At the time of public notice of an application for issuance, modification, or renewal of a permit to discharge sewage, industrial waste, or other wastes to waters of the state pursuant to division (J) of section 6111.03 of the Revised Code, for a discharge for which a fact sheet is prepared pursuant to rule 3745-49-09 of the Administrative Code, the agency shall transmit a copy of the fact sheet to the district engineer of the United States army corps of engineers, for the district in which the discharge is located, unless by written agreement such district engineer has waived the right to receive a fact sheet for such discharge.

Replaces: 3745-47-10
Effective: 04/02/2012
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CERTIFIED ELECTRONICALLY

Certification

03/12/2012

Date

Promulgated Under: 119.03
Statutory Authority: 3704.03, 3714.02, 3734.02, 3734.021, 3734.12,
3734.70, 3734.71, 3734.72, 3734.73, 3734.74,
3745.01, 3746.04, 3751.02, 3752.03, 3753.02,
6109.04, 6111.03, 6111.041
Rule Amplifies: 6111.03(J)
Prior Effective Dates: 07/05/73, 06/30/81

3745-49-12

Filing of verified complaints.**(A) Filing a verified complaint.**

(1) An officer of an agency of the state of Ohio or of a political subdivision in Ohio, acting in a representative capacity, may file a verified complaint with the director in accordance with section 3745.08 of the Revised Code and paragraphs (B), (C), and (D) of this rule.

(2) A person who is or will be aggrieved or adversely affected by a violation that has occurred, is occurring, or will occur may file a verified complaint with the director that meets the requirements of section 3745.08 of the Revised Code and paragraphs (B), (C), and (D) of this rule provided that the alleged violation has caused, or will cause, the complainant an injury (e.g., physical or economic) that is actual and immediate.

(B) A verified complaint shall be in writing and shall contain the following:

(1) An allegation that another person has violated, is violating, or will violate any one or combination of the following:

(a) Any law, rule, standard, order, or authorization relating to the following:

(i) Air pollution.

(ii) Water pollution.

(iii) Solid waste.

(iv) Infectious waste.

(v) Construction and demolition debris.

(vi) Public water supply.

(vii) Hazardous waste.

(viii) Cessation of regulated operations.

(b) The conditions of a license, permit, variance, registration, or authorization relating to any one or combination of the following:

(i) Air pollution.

(ii) Water pollution.

(iii) Solid waste.

(iv) Infectious waste.

(v) Construction and demolition debris.

(vi) Public water supply.

(vii) Hazardous waste.

(viii) Cessation of regulated operations.

(2) The complaint shall set forth specific facts to support the complaint. If the complainant is a person described in paragraph (A)(2) of this rule, the complaint shall also explain how the complainant is or will be affected by the alleged violation.

(C) An affidavit verifying a complaint authorized by this rule shall be filed along with the complaint. The affidavit shall comply with the following:

(1) Be attached to the complaint as a separate document and include a statement that the facts set forth in the complaint are based upon personal knowledge of the complainant.

(2) Be made before any person authorized by law to administer oaths and be signed by any of the following:

(a) The complainant.

(b) The complainant's agent.

(c) The complainant's attorney.

(D) The person before whom the affidavit in paragraph (C) of this rule is taken shall certify that it was sworn to or affirmed and signed in that person's presence, and the signed certificate shall be evidence that the affidavit was made by or on behalf of the complainant.

(E) A written complaint received by the agency that fails to comply with the requirements of this rule shall not be treated by the director as a verified complaint, but the director may conduct any further investigations or make any other inquiries that are necessary and appropriate to address the violations alleged in the complaint.

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6109.04, 6111.03, 6111.041
Rule Amplifies: 3745.08

3745-49-13

Public meetings.

- (A) Not later than thirty days after public notice or such longer period as the agency may specify in the public notice of a draft action or proposed action, any person may file a request for a public meeting. This paragraph does not apply to an amended draft action or an amended proposed action.
- (B) If the director determines that there is significant public interest in a draft action or proposed action, or if required to do so by statute or rule, the director shall hold a public meeting in the county where the source, facility, or subject of the draft action or proposed action is located, or in a contiguous county. In the consideration of an application for issuance, modification, revision, or renewal of a permit or variance, the director may hold a public meeting prior to issuance of a draft action or proposed action.
- (C) The director may appoint a hearing examiner or other presiding officer to conduct a public meeting. On the date and at the time and place specified in the notice, the public meeting shall be held, and any person may do any the following:
- (1) Appear and be heard in person or by a representative, or both.
 - (2) Present statements orally or in writing, or both.
 - (3) At the discretion of the presiding officer, question persons who present statements at the meeting.

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6109.04, 6111.03, 6111.041
Rule Amplifies: 3745.07
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3745-49-14

Director's journal.

The agency shall maintain a journal in which all final actions of the director shall be entered.

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