



Early Stakeholder Outreach — Beneficial Use Designation Rules (OAC Chapter 3745-1)

Ohio EPA prepares early stakeholder outreach fact sheets to ensure stakeholders are brought into the review process as early as possible and to obtain additional input and discussion before development of interested party draft rules.

What does OAC Chapter 3745-1 cover?

Ohio Administrative Code (OAC) Chapter 3745-1 contains Ohio's standards for water quality. Water quality standards are state regulations or rules that protect lakes, rivers, streams and other surface water bodies from pollution. These rules contain: beneficial use designations such as warmwater aquatic life habitat, public water supply and primary contact recreation; numeric levels and narrative statements (water quality criteria) protective of the beneficial use designations; and procedures for applying the water quality criteria to wastewater discharges.

What are beneficial use designations?

A goal of the Clean Water Act is to achieve fishable and swimmable conditions in water bodies, whenever attainable. The fishable and swimmable goals equate to the warmwater habitat (WWH) and primary contact recreation (PCR) use designations in Chapter 3745-1 of the OAC. The use designations are defined in rule 3745-1-07 of the OAC and are briefly discussed below. The water quality criteria and values protective of the designated uses are found within Chapter 3745-1 of the OAC.

Beneficial use designations are the water quality goals for lakes, rivers, streams and other water bodies. Designations include such uses as aquatic life habitats (warmwater, coldwater, etc.), recreation (bathing waters, primary contact, secondary contact) and water supplies (public, agricultural, industrial).

Beneficial use designations are assigned to specific water bodies in Chapter 3745-1 of the OAC. Each of the 23 major drainage basins or watersheds in the state is assigned a rule in Chapter 3745-1.

Specific water quality criteria are associated with each beneficial use and are the minimum specific target conditions to be maintained in the water bodies. Together the uses and criteria may be the basis for limits in wastewater discharge permits and conditions in Section 401 water quality certifications. Changes to the beneficial use designations are adopted as water quality standard rule revisions.

Why are these rules being sent out for Early Stakeholder Outreach?

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. In response to EO 2011-01K, Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional interested party notification and request for information provides an opportunity for the Agency to obtain feedback before the rule language has been developed by the Agency.

How can I provide input?

The Agency is seeking stakeholder input on the rules. When preparing your comments, be sure to:

- explain your views as clearly as possible;
- describe any assumptions used;
- provide any technical information and/or data used to support your views;
- explain how you arrived at your estimate for potential burdens, benefits or costs;
- provide specific examples to illustrate your views; and
- offer alternatives.

Written comments will be accepted through close of business on October 5, 2015.

Please submit your comments in one of the following ways:

- By email: dsw_rulecomments@epa.ohio.gov
- By fax: (614) 644-2745
- By postal mail: Rule Coordinator, Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049

What if I have questions?

For more information about the rulemaking, please contact: Dan Dudley at (614) 644-2876 or daniel.dudley@epa.ohio.gov.

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What changes are being considered?

Ohio EPA is considering amendments to the following eight rules that address beneficial use designations.

- 3745-1-09 Scioto river drainage basin
- 3745-1-10 Grand river drainage basin
- 3745-1-17 Southwest Ohio river tributaries drainage basin
- 3745-1-19 Huron river drainage basin
- 3745-1-20 Rocky river drainage basin
- 3745-1-23 Portage river drainage basin
- 3745-1-25 Mahoning river drainage basin
- 3745-1-30 Mill creek drainage basin

State law and the federal Clean Water Act require Ohio EPA to periodically update rules to reflect the latest scientific information. The Agency is evaluating information regarding beneficial use designations for selected water bodies in six of the rules listed above (Scioto River, Grand River, Southwest Ohio River tributaries, Rocky River, Mahoning River and Mill Creek). Three broad types of changes will be considered:

- Changing beneficial use designations for specific water bodies;
- Adding water bodies that are currently undesignated to the rules; and
- Verifying existing beneficial use designations already listed in the rules.

Changes, additions and verifications of existing beneficial use designations are based upon the findings of biological, habitat and water quality surveys. Other available pertinent information is also consulted, including information and comments from interested persons. The results of the following surveys form the basis for this rulemaking:

- 2011 Lower Scioto River basin survey
- 2011 Deer Creek basin survey
- 2014 Big Darby Creek basin survey
- 2010 Middle Scioto River basin survey
- 2009/2011 Upper Scioto River basin survey
- 2007 Upper Grand River basin survey
- 2014 Southwest Ohio River tributaries basin survey
- 2014 Rocky River basin survey
- 2013 Mahoning River basin survey
- 2011 Mill Creek basin survey

Only minor revisions are planned for two beneficial use designation rules (Huron River and Portage River). Paragraph (D) of the rules contain a listing of symbols used throughout the rule. The Agency is planning to delete the “L” symbol, which represents limited warmwater habitat, since there are no remaining streams in these rules with this use designation.

Where does the new information come from?

The new information supporting the changes under consideration comes from water body surveys. Ohio EPA has an ongoing basin monitoring schedule that rotates monitoring efforts across the state. The monitoring program consists of surveying the chemical, physical and biological characteristics of selected water bodies around the state each year, following a regular cycle. The purposes of these surveys include determining the present health and uses of the water bodies and predicting the potential health and uses of the water bodies if additional pollution controls were imposed. The rule revisions, incorporating the results of water body surveys conducted in the past several years, reflect the Agency’s responsibility to assign beneficial water uses.

For information on the current conditions of Ohio water bodies and trends in water quality, see the Ohio EPA Integrated Water Quality Monitoring and Assessment Report. It is available on the web at

<http://epa.ohio.gov/dsw/tmdl/OhioIntegratedReport.aspx>.

Who is regulated by these rules?

Beneficial use designations are one component of the water quality standards used in the implementation of Clean Water Act programs such as the National Pollutant Discharge Elimination System (NPDES) permits, Section 401 Water Quality

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Certifications and Total Maximum Daily Load (TMDL) reports. Potentially impacted entities may include facilities that discharge or plan to discharge wastewater or entities seeking permission to physically impact these water bodies.

What is the rulemaking schedule?

At the close of the Early Stakeholder Outreach comment period, the Agency will consider input provided by stakeholders and then draft revisions to the rules. These draft revisions will be released for another comment period called Interested Party Review, which the Agency anticipates occurring in late 2015.

What input is the Agency seeking?

Please review the existing rules in OAC Chapter 3745-1, available at: http://epa.ohio.gov/dsw/rules/3745_1.aspx. The Agency strongly encourages interested stakeholders to provide comments now; at this early step in the rulemaking process so that the Agency can draft revised language in response to those comments and make the draft revisions available for comment during the next rule review step.

The following questions may help guide you as you develop your comments.

- Is the general regulatory framework proposed the most appropriate? Should the Agency consider any alternative framework?
- What options are available for improving the existing rules?
- Are there considerations the Agency should take into account when updating the existing rules?
- Is there any information or data the Agency should be aware of when developing new or amended rule language?

Ohio EPA would especially like to hear information regarding the following from stakeholders who may be impacted by this program.

- Does this regulatory program have a positive impact on your business? Please explain how.
- Does this regulatory program have an adverse impact on your business? If so, please identify the nature of the adverse impact (for example, license fees, fines, employer time for compliance).

How can I get more information?

Information is available on the Ohio EPA Division of Surface Water website:

- This fact sheet is available on the Division of Surface Water website at www.epa.ohio.gov/dsw/dswrules.aspx.
- For additional background information on water quality standards and beneficial uses, please visit the Water Quality Standards Program web page at: www.epa.ohio.gov/dsw/wqs/index.aspx.
- The existing rules in OAC Chapter 3745-1 are available at: www.epa.ohio.gov/dsw/rules/3745_1.aspx.
- The biological and water quality studies upon which the rule revisions are based are available at: www.epa.ohio.gov/dsw/document_index/psdindx.aspx.