

*** DRAFT - NOT YET FILED ***

3745-1-01

Purpose and applicability.

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

(A) Purpose and objective. It is the purpose of this chapter to:

- (1) Establish minimum water quality requirements for all surface waters of the state, thereby protecting public health and welfare;
- (2) Enable the present and planned uses of Ohio's water for public water supplies, industrial and agricultural needs, propagation of fish, aquatic life and wildlife, and recreational purposes;
- (3) Enhance, improve and maintain water quality as provided under the laws of the state of Ohio, section 6111.041 of the Revised Code, the federal Clean Water Act, 33 U.S.C. sections 1251 to 1387, and rules adopted thereunder; and
- (4) Further the overall objective of the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

(B) Goals. Consistent with national goals set forth in the Clean Water Act, all surface waters in Ohio shall provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water unless the director determines the goal is not attainable for a specific water body. If the director determines that a water body cannot reasonably attain these goals using the available tests and criteria allowed under the Clean Water Act, then one of the following steps shall be taken:

- (1) The director shall evaluate the water body's designated uses and, where uses are not attainable, propose to change the designated uses to the best designations that can be attained; or
- (2) The director shall grant temporary variances from compliance with one or more water quality criteria applicable by this chapter pursuant to rule 3745-33-07 of the Administrative Code.
- (3) The director shall remove the designated use if the director determines that the designated use does not or will not apply to the water body or if the director determines that attainment is not feasible due to any of the factors cited under 40 C.F.R. 131.10(g).

(C) Overview of this chapter.

(1) Beneficial use designations.

- (a) Beneficial use designations describe existing or potential uses of water bodies. They take into consideration the use and value of water for public water supplies, protection and propagation of aquatic life, recreation in and on the water, agricultural, industrial and other purposes. This chapter assigns beneficial use designations to surface waters of the state. Examples of beneficial use designations include public water supply, primary contact recreation, and aquatic life uses (e.g., warmwater habitat, exceptional warmwater habitat, and coldwater habitat).
- (b) There may be more than one use designation assigned to a water body. Whenever two or more use designations apply to the same water body, all criteria associated with each use designation apply.
- (c) Beneficial use designations are defined in rule 3745-1-07 of the Administrative Code and are assigned in rule 3745-1-07 of the Administrative Code and for individual water bodies in rules 3745-1-08 to 3745-1-32 of the Administrative Code. Attainment of use designations is based on specific numeric and narrative water quality criteria.

(2) Water quality criteria.

- (a) Water quality criteria are narrative conditions and numeric values that support beneficial uses. Except as otherwise allowed by paragraph (E) of this rule, these criteria are the minimum water quality targets to attain in surface waters of the state.
- (b) Numeric water quality criteria for chemicals and bacteria are used in conjunction with the appropriate stream design flows set forth in rule 3745-2-05 of the Administrative Code for the purposes of establishing water quality based effluent limits through wasteload allocation calculations, and establishing load allocations through total maximum daily loads.
- (c) Numeric biological water quality criteria provide a direct measure of attainment of several aquatic life uses. See rule 3745-1-43 of the Administrative Code for a discussion of the application and interpretation of biological criteria.
- (d) Water quality criteria are in rules 3745-1-04, 3745-1-31, 3745-1-32, 3745-1-40, 3745-1-41, 3745-1-42, 3745-1-43, 3745-1-51 and 3745-1-52 of the Administrative Code. Additional water quality criteria may be calculated using the procedures in rules 3745-1-36 to 3745-1-39 of the

Administrative Code. Provisions for calculating site-specific modifications to water quality criteria are in rule 3745-1-35 of the Administrative Code.

(3) Antidegradation provisions.

(a) The antidegradation provisions describe the conditions under which water quality may be lowered in surface waters. Existing beneficial uses must be maintained and protected. Water quality better than that needed to protect existing uses must be maintained unless, after public notification and participation, lower quality is deemed necessary to carry out important public health and safety improvements or to allow important economic or social development.

(b) The antidegradation rules assign categories of high quality water (e.g., superior high quality water, outstanding state water, and category 3 wetland) to water bodies that possess exceptional ecological or recreational values. Those high quality waters are protected with additional restrictions on the degree to which water quality may be lowered.

(c) Provisions addressing antidegradation are in rules 3745-1-05 and 3745-1-54 of the Administrative Code.

(4) The other rules in this chapter address definitions (rule 3745-1-02 of the Administrative Code), analytical methods and citations for documents incorporated by reference (rule 3745-1-03 of the Administrative Code), mixing zone provisions (rule 3745-1-06 of the Administrative Code), and provisions specific to wetlands (rules 3745-1-50 to 3745-1-54 of the Administrative Code).

(D) General provisions.

(1) Chemical, physical and biological conditions of any surface waters of the state shall not impair existing and designated beneficial uses of downstream water bodies.

(2) These water quality standards apply to all surface waters of the state except as provided in paragraph (E) of this rule. Compliance schedules may be granted pursuant to rule 3745-33-05 of the Administrative Code.

(E) Temporary exceptions. The following exceptions apply only to the specific water quality criteria involved in each case for a reasonable period of time as determined by the director.

(1) Whenever chemicals are applied for control of aquatic plants or animals, notice must be given to the director before chemicals are applied. The director, upon

receiving such notice, may order that chemicals not be applied if the director concludes that the proposed application would pose an unreasonable danger to human or aquatic life. The application of pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136) are permitted without notification to the director when:

(a) The pesticide is applied consistent with label instructions; and

(i) The application is to a pond with a surface area equal to or less than five acres;

(ii) The application is not within one mile upstream of a public water supply intake or within one mile of a reservoir public water supply intake; and

(iii) The application is not to any wetland, borrow pit, quarry or water body used for public swimming; or

(b) The pesticide is applied under the direction of a local health department or other government agency in a mosquito abatement program.

(2) The requirements of paragraph (E)(1) of this rule shall not apply as long as the terms and conditions of National Pollutant Discharge Elimination System (NPDES) general permit OHG870001, or a succeeding replacement permit issued by the director, remain in effect or are not otherwise invalidated by statute or legal challenges.

[Comment: NPDES general permit OHG870001 was issued on October 17, 2011. A copy may be obtained from and is available for review at "Ohio EPA, Lazarus Government Center, 50 West Town Street, Columbus, Ohio 43215-3425," (614) 644-2001. The document is also available on the internet at http://www.epa.ohio.gov/dsw/permits/GP_Pesticide.aspx.]

(3) Whenever dredging or construction occur on or near water bodies or during the period of time when the aftereffects of dredging or construction activities degrade water quality and such activities have been authorized by the United States army corps of engineers or by a section 401 water quality certification or state isolated wetland permit issued by the Ohio environmental protection agency.

(4) Whenever coal remining permits are issued pursuant to section 301(p) of the act. This exception applies to pH, iron and manganese for the duration of the remining activity. This exception applies only if there is a demonstrated potential for improved water quality from the remining operation and no degradation of existing instream conditions occurs.

(5) Whenever a surface mining activity is regulated under Chapter 1514. of the

Revised Code the criteria in rules 3745-1-40 to 3745-1-43 of the Administrative Code shall not apply within the area under the permit issued by the Ohio department of natural resources.

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