

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

**Rules Governing
Water Quality Trading Program**

Notice is hereby given that the Director of Environmental Protection, under the authority of Sections 6111.03 and 6111.04 of the Ohio Revised Code and in accordance with Chapter 119 of the Revised Code, has adopted the following rules of the Ohio Administrative Code:

Rule #	Rule Title	Action
3745-5-01	Definitions: as used in this chapter.	Amend
3745-5-02	Purpose and applicability.	Amend
3745-5-03	Prohibitions and restrictions.	Amend
3745-5-04	Water quality trading: general requirements.	Amend
3745-5-05	Water quality trading: general requirements for a water quality trading management plan application.	Amend
3745-5-06	Water quality trading: requirements for a water quality trading management plan application.	Amend
3745-5-09	Determining water quality baselines.	Amend
3745-5-11		
3745-5-12	Record keeping, reporting requirements, compliance, enforcement, and oversight.	Amend
3745-5-13	Public participation requirements.	Amend
3745-5-14	Ambient water quality monitoring requirements.	Amend

The Director's order of adoption was issued on **October 11, 2012**. These adopted rules will become effective on **November 1, 2012**. To request a copy of these rules, write to Melinda Harris, Ohio Environmental Protection Agency, Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049 or call Mrs. Harris at (614) 728-1357. A copy of the adopted rules is also available on the Ohio EPA Division of Surface Water website at www.epa.ohio.gov/dsw/dswrules.aspx.

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 August 21, 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:

Ohio EPA Public Notice
Adoption of Rules Governing
Water Quality Trading Program
Page 2 of 2

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

3745-5-01

Definitions: as used in this chapter.

[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 3745-5-02 of the Administrative Code.]

- (A) "Animal feed operation" or "AFO" means animal feeding operation, as defined in 40 C.F.R. 122.23, ~~as amended July 1, 2006.~~
- (B) "Best management practice" or "BMP" means structural, vegetative, or managerial practices that reduce or prevent the discharge of pollutants to waters of the state, typically from a nonpoint source.
- (C) "Bioaccumulative chemical of concern" or "BCC" means bioaccumulative chemical of concern, as defined in paragraph (B) of rule 3745-1-02 of the Administrative Code.
- (D) "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a large CAFO or as a medium CAFO by the terms of 40 C.F.R. 122.23, or that is designated as a CAFO by the director or regional administrator. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.
- (E) "Current discharge level" for a permittee means the pollutant-specific discharge load, including daily, weekly, monthly, seasonal or annual as appropriate, calculated using the median flow and concentration data for the last three calendar years.
- (F) "Director" means the director of Ohio environmental protection agency.
- (G) "Endorsed watershed plan" means a watershed action plan that meets all criteria of Ohio's Guide to Developing Local Watershed Action Plans in Ohio (June 1997), including the Appendix 8 update (February 7, 2003), and the most recent U.S. EPA section 319 planning guidance (federal fiscal year 2006). Endorsed watershed plans are available at the following web page: www.epa.state.oh.us/dsw/nps/NPSMP/WAP/WAPendorse.html
<ftp://ftp.dnr.state.oh.us/soil & water conservation/WatershedActionPlans/EndorsedPlans/>.
- (H) "EPA" means environmental protection agency.
- (I) "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act, 33 U.S.C. section 1251, ~~as amended through July 1, 2006.~~

- (J) "Load allocation" means load allocation, as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.
- (K) "Loading capacity" means loading capacity as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.
- (L) "Load reduction spreadsheet" means the most recent version of the load reduction spreadsheet (Ohio department of natural resources, division of soil and water conservation) available at ~~<http://www.dnr.state.oh.us/soilandwater/resources.htm>~~ <http://www.dnr.state.oh.us/tabid/23456/Default.aspx>.
- (M) "Local impacts" mean a stream segment, where high levels of pollutants being traded contribute to partial attainment or non-attainment of water quality standards.
- (N) "Nonpoint source" means any source of pollutants other than those defined or designated as point sources.
- (O) "NPDES" means national pollutant discharge elimination system.
- (P) "NPDES permit" means a permit issued by the state of Ohio pursuant to section 402 of the Federal Water Pollution Control Act and Chapter 6111. of the Revised Code and rules adopted thereunder.
- (Q) "Person" means person, as defined in division (I) of section 6111.01 of the Revised Code.
- (R) "Permittee" means an NPDES permit holder.
- (S) "Point source", for the purpose of this chapter, means any discernible, confined and discrete conveyance from a wastewater treatment works. This term does not include agricultural storm water discharges or return flows from irrigated agriculture.
- (T) "Point source-point source trade" means a trade in which the person using water quality credits and the person generating water quality credits are both permittees.
- (U) "Point source-nonpoint source trade" means a trade in which the person using water quality credits is a permittee and the person generating water quality credits is a nonpoint source.
- (V) "Pollutant load" means the quantity of a pollutant expressed in units of mass or mass

per unit time.

- (W) "Pollutant specific-cap" means the sum of the wasteload allocations established under a TMDL for permittees participating in a point source-point source trade.
- (X) "Pollution" means pollution as defined in division (A) of section 6111.01 of the Revised Code.
- (Y) "Production area" means an AFO production area, as defined in 40 C.F.R. 122.23.
- (Z) "Qualified soil and water conservation professional" means county soil and water conservation district or "SWCD" staff, staff from the Ohio DNR Division of Soil and Water ~~Conservation~~Resources or other Ohio department of natural resources staff, a natural resource conservation service or "NRCS" certified planner or an NRCS employee, a united states department of agriculture registered technical service provider or "TSP", a certified crop planner, a soil scientist as certified by the association of Ohio pedologists, a professional engineer, or equivalent professional as deemed by the director to have the education, knowledge and experience commensurate with this definition.
- (AA) "Quantified load reduction" means the reduction in a nonpoint source discharge that has been determined using one of the methods specified in this chapter.
- (BB) "Regional administrator" means the regional administrator of the appropriate regional office of the United States environmental protection agency or the authorized representative of the regional administrator.
- ~~(CC)~~ "Technology based effluent limit" means effluent limit based on either the secondary treatment regulations as specified in 40 C.F.R. 133 or the national effluent limitations guidelines and performance standards as specified in 40 C.F.R. 405 through 499.
- ~~(DD)~~(CC) "Total maximum daily load" or "TMDL" means total maximum daily load, as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.
- ~~(EE)~~(DD) "Trading ratio" means the mass of a pollutant that must be reduced to receive a water quality credit.

[Comment: A trading ratio of one to one or "1:1" means that one pound of a pollutant must be removed to receive a water quality credit for the reduction of one pound of that pollutant. A trading ratio of two to one or "2:1" means that two pounds of a pollutant must be removed to receive a water quality credit for the reduction of one pound of that pollutant.]

~~(FF)~~(EE) "Upstream trade" means a trade in which one source purchases water quality credits for pollutant reductions that are made by another source located upstream.

~~(GG)~~(FF) "Wasteload allocation" means wasteload allocation, as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.

~~(HH)~~(GG) "Water quality baseline" means the level of pollutant reduction that must be achieved before water quality credits can be generated.

~~(II)~~(HH) "Water quality credit" means the quantity of a pollutant that is available for a trade. Water quality credits are generated by pollutant reductions that are in excess of water quality baseline requirements, that occur within a specified period of time, and that are greater than those required by a regulatory requirement, such as an NPDES permit, or the wasteload allocation established under a TMDL.

~~(JJ)~~(II) "Water quality standards" means the standards set forth in Chapter 3745-1 of the Administrative Code.

~~(KK)~~(JJ) "Water quality trade" means the purchase, sale, conveyance or other transfer of a water quality credit from one person or permittee to another person or permittee.

~~(LL)~~(KK) "Water quality trading" or "trading" means a regulatory program that allows a permittee to meet its regulatory obligations by using pollutant reductions generated by another person.

~~(MM)~~(LL) "Water quality trading activity" means all requirements established and all activities regulated by this chapter.

~~(NN)~~(MM) "Water quality trading area" means the region identified in a water quality trading management plan where trading will occur. Common water quality trading areas include areas delineated by the boundaries of all receiving waters, a TMDL area or a watershed area.

~~(OO)~~(NN) "Water quality trading management plan" means a management plan governing the operation and maintenance of water quality trading activities within a water quality trading area.

~~(PP)~~(OO) "Watershed" means an area of land that drains to a common lake, pond, river, stream, or other waters of the state. A watershed may encompass a large river mainstem and all of its subbasins and tributaries when this is necessary to address regional or national water quality issues.

~~(QQ)~~(PP) "Watershed trading" means water quality trading activities within an area that occur between two or more permittees and one or more nonpoint sources.

~~(RR)~~(QQ) "Waters of the state" means waters of the state, as defined in rule 3745-33-01 of the Administrative Code.

~~[Comment: "C.F.R." refers to the federal "Code of Federal Regulations," which can generally be found in public libraries and electronically online, and can be purchased by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954." The full text is also available in electronic format at <http://www.epa.gov/water/laws.html#laws>. Compilations are also available for inspection and copying at the state library of Ohio and most public libraries.]~~

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Certification

10/11/2012

Date

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Prior Effective Dates: 1/1/2007

3745-5-02

Purpose and applicability.

(A) The purpose of this chapter is to establish a voluntary statewide water quality trading program that:

- (1) Facilitates watershed-based approaches to improving water quality;
- (2) Improves water quality and minimizes the costs of achieving and maintaining water quality standards;
- (3) Provides economic incentives for voluntary pollutant reductions from point sources and nonpoint sources; and
- (4) Achieves additional environmental benefits beyond pollutant reductions.

(B) This chapter applies to any person that participates in water quality trading activities.

~~[Comment: Pursuant to section 119.032 of the Revised Code, every five years state agencies are required to review each of their rules to determine if the rules should continue without change, be amended or be rescinded. In reaching such a determination, the director must consider all of the following: (1) the purpose, scope, and intent of the statute under which the rule was adopted; (2) is additional flexibility required at the local level; (3) does the rule result in unnecessary paperwork; and (4) does the rule duplicate, overlap, or conflict with other rules. In making this review, the director must consider the continued need for the rule, the nature of any complaints or comments received, and any relevant factors that may have changed in the subject matter affected by the rule. The above information is found at the website of the joint committee on agency rule review, http://www.jcarr.state.oh.us/man_five.cfm.]~~

(C) The director may consider whether water quality trading activities have met the purpose of this chapter when determining if the rules should continue without change, be amended or be rescinded.

[Comment: Pursuant to section 119.032 of the Revised Code, every five years state agencies are required to review each of their rules to determine if the rules should continue without change, be amended or be rescinded. In reaching such a determination, the director must consider all of the following: (1) the purpose, scope, and intent of the statute under which the rule was adopted; (2) is additional flexibility required at the local level; (3) does the rule result in unnecessary paperwork; and (4) does the rule duplicate, overlap, or conflict with other rules. In making this review, the director must consider the continued need for the rule, the nature of any complaints or comments received, and any relevant factors that may have changed in the subject matter affected by the rule. The above information is

found in the joint committee on agency rule review procedures manual available at <http://www.jcarr.state.oh.us.>

(D) Incorporation by reference.

[Comment: Incorporation by reference. This chapter includes references to certain acts and regulations in which the text of the specified act or regulation is not included. Those statutes and regulations are hereby incorporated by reference into this chapter and made a part of this chapter as if fully rewritten therein. For statutes and regulations subject to change, only the specific version specified in the rule are incorporated. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new dates.

(1) Availability. The acts and regulations incorporated by reference are available as follows:

- (a) Acts of the United States Government. Information and copies may be obtained by writing to: "Superintendent of Documents. Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954." The full text is also available in electronic format at <http://www.epa.gov/water/laws.html#laws>. A copy of federal acts are also available for inspection and copying at the state library of Ohio and most public libraries. The laws listed in this chapter are those effective through July 1, 2012.
- (b) Federal regulations ("Code of Federal Regulations" or "C.F.R."). Information and copies may be obtained by writing to: "Superintendent of Documents. Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954." The full text is also available in electronic format at <http://www.epa.gov/water/laws.html#laws>. Compilations are also available for inspection and copying at the state library of Ohio and most public libraries. The regulations listed in this chapter are those effective through July 1, 2012.

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3745-5-03

Prohibitions and restrictions.

[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 3745-5-02 of the Administrative Code.]

(A) The use of a water quality credit shall:

- (1) Not cause or contribute to a violation of water quality standards;
- (2) Not cause impairment of existing use or designated uses, as defined in Chapter 3745-1 of the Administrative Code, including adversely affecting water quality at an intake for drinking water supply;
- (3) Not exceed a loading capacity established by a TMDL;
- (4) Not be used to comply with a technology based effluent limit; ~~or~~ based on either the secondary treatment regulations as specified in 40 C.F.R. 133, the national effluent limitations guidelines and performance standards as specified in 40 C.F.R. 405 through 499, or established based on the best professional judgment of the permit writer pursuant to section 402(a)(1) of the Clean Water Act and 40 C.F.R. 122.44(a)(1); or
- (5) In accordance with section 6111.03 of the Revised Code, not conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

(B) A water quality credit shall not be developed for a bioaccumulative chemical of concern.

(C) Concentrated animal feeding operations may participate in water quality trading activities subject to the following restrictions:

- (1) Load reductions that result from implementing structural controls or management practices in a CAFO production area are not eligible for the generation of water quality credits;
- (2) A concentrated animal feeding operation may not use water quality credits to comply with the no discharge technology limit that applies to a CAFO production area; and
- (3) Load reductions that are achieved by implementing BMPs or habitat restoration projects are eligible for the generation of water quality credits provided the

practices or projects are not implemented to comply with a nutrient management plan required under an NPDES permit or a permit-to-operate.

- (D) The director may consider the generation of water quality credits from habitat restoration projects, provided the pollutant load reductions can be calculated in accordance with this chapter.

[Comment: Examples of habitat restoration projects include dam removal projects, stream bank stabilization and stream channel reconfiguration.]

- (E) Nonpoint source load reductions that result from the implementation of BMPs shall:

- (1) Except as provided in paragraph (E)(2) of this rule, be eligible to generate water quality credits in direct proportion to the per cent local contribution, where the BMPs are funded under a federal grant program; and
- (2) Not be eligible for the generation of water quality credits where the BMPs are partially or in total funded by a grant, under section 319 of the Federal Water Pollution Control Act or through Ohio EPA's water resource restoration sponsor program.

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3745-5-04

Water quality trading: general requirements.

- (A) Water quality trading activities shall be in accordance with this chapter and all other applicable rules and laws. The director may deny any water quality trading management plan application that does not contain the required information.
- (B) An approved water quality trading management plan shall be effective for up to five years from the date it is approved by the director.
- (C) Except as provided in paragraph (D) of this rule, after ~~the effective date of this rule~~ January 1, 2007, no person shall participate in water quality trading activities without an approved water quality trading management plan.
- (1) When a water quality trading management plan application is part of an NPDES permit, the only application fee required is the NPDES permit application fee, in accordance with section 3745.11 of the Revised Code.
- (2) When a water quality trading management plan application is not part of an NPDES permit, the plan application fee and plan review fee, in accordance with section 3745.11 of the Revised Code shall apply.
- (D) For any water quality trading activities in effect ~~prior to the effective date of this rule~~ on January 1, 2007, a water quality trading management plan shall be submitted to the director as follows:
- (1) For the great Miami river watershed water quality credit trading program, not later than ~~ten years after effective date of this rule~~ five years from the date that Ohio EPA adopts nutrient criteria that apply to streams.
- (a) Until the date that a water quality trading management plan is approved by the director, water quality trading activities shall be in accordance with the great Miami river watershed water quality credit trading program operations manual, dated February 8, 2005, as endorsed by Ohio EPA.
- (b) Any changes to the operations manual shall be mutually agreeable to the director and all permittees, organizations and agencies responsible for implementing the program.
- (c) The director may deny water quality credits for any trading activities that:
- (i) Are not in accordance with the operations manual;

- (ii) Are causing adverse local impacts; or
 - (iii) Are not achieving the program measures of success and benefits included in section 1.3 of the operations manual.
 - (2) For the alpine cheese phosphorus nutrient trading program, not later than ~~ten years after the effective date of this rule~~ January 1, 2017.
 - (a) Until the date that a water quality trading management plan is approved by the director, water quality trading activities shall be in accordance with the alpine cheese phosphorus nutrient trading plan, dated January 1, 2006, as required by NPDES permit number 3PH00100.
 - (b) Any changes to the trading plan shall be mutually agreeable to the director and all permittees, organizations and agencies responsible for implementing the program.
 - (c) The director may deny water quality credits for any trading activities that:
 - (i) Are not in accordance with the trading plan;
 - (ii) Are causing adverse local impacts; or
 - (iii) Are not achieving the criteria for success that are included on pages seventeen and eighteen of the trading plan.
 - ~~(3) For any other water quality trading activities, not later than five years after the effective date of this rule.~~
- (E) Water quality trading activities can occur:
- (1) In a watershed;
 - (2) In a TMDL area; or
 - (3) In any other area, where the director determines that water quality trading activities will achieve the purpose of this chapter.
- (F) After applying the appropriate trading ratio, all nonpoint source pollutant reductions funded by a permittee shall be available as water quality credits for the permittee to

use in meeting its NPDES permit effluent limits.

- (G) Any water quality trading activity in impaired waters, where there is not an approved TMDL, shall achieve progress towards meeting water quality standards. Data and information in endorsed watershed plans and other locally developed watershed plans that have been reviewed and deemed acceptable by the director, may be used to provide the necessary scientific basis for pre-TMDL trading.
- (H) Water quality trading activities in impaired waters, with an approved TMDL, shall be consistent with the assumptions and requirements upon which the TMDL is established and shall not delay implementation of an approved TMDL.
- (I) Best management practices may generate water quality credits as long as they are fully maintained and continue to function as designed and shall be inspected at least annually by a qualified soil and water conservation professional.
- (J) Best management practices may have contracts that extend beyond the expiration date of an approved water quality trading management plan. Upon renewal of the plan, these BMPs may continue to generate water quality credits provided the provisions of paragraph (I) of this rule are met.
- (K) A qualified soil and water conservation professional shall:
 - (1) Calculate any point source-nonpoint source water quality credit;
 - (2) Select the appropriate BMP;
 - (3) Determine the baseline for the generation of water quality credits and quantifying pollutant load reductions for any BMP;
 - (4) Conduct field inspections of any BMP to ensure correct installation and proper function, and to determine BMP failure; and
 - (5) Conduct water quality monitoring to obtain data to evaluate BMP effectiveness and to evaluate and improve the method used to quantify pollutant load reductions and water quality credits.

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3745-5-05

Water quality trading: general requirements for a water quality trading management plan application.

- (A) A water quality management plan application shall be developed in accordance with this chapter.
- (B) Any person proposing to modify water quality trading activities that are in an approved water quality trading management plan or any person that proposes to expand a watershed water quality trading area shall submit to the director a new water quality trading management plan application. The new water quality trading management plan application shall:
- (1) Be submitted to the director at least six months prior to modifying any water quality trading activities or expanding a water quality trading area; and
 - (2) Be in accordance with this chapter.
- (C) A water quality trading management plan renewal application shall be submitted to the director at least six months prior an approved water quality trading management plan's expiration date. A water quality trading management plan renewal application shall be in accordance with this chapter and shall also:
- (1) Include an economic evaluation of the water quality trading activities, including the number and types of water quality trades, prices paid for any water quality credits, all administrative costs, and a determination of any net cost savings resulting from the water quality trading activities;
 - (2) Assess both the overall environmental and the economic effectiveness of all water quality trading activity; and
 - (3) If necessary, propose revisions or corrective measures; ~~and~~.
- (D) The director may waive or reduce the scope of the evaluation and assessment required under paragraphs (C)(1) and (C)(2) of this rule based on consideration of factors such as the number of trades that have occurred , the number of nonpoint source BMPs that have been implemented, the status of the BMPs and the overall participation level in a trading program.

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3745-5-06

Water quality trading: requirements for a water quality trading management plan application.

(A) A water quality trading management plan application shall:

- (1) Be in narrative form;
- (2) Include forms specified by the director; and
- (3) Include additional information as the director deems necessary, such as memoranda of understanding or other agreements between persons participating in the trading activities or between Ohio EPA and persons participating in the trading activities, land use plans, or other watershed-based agreements.

(B) When point source trading occurs between permittees, the water quality trading management plan application shall:

- (1) Be submitted as part of each permittee's NPDES permit application;
- (2) Include a statement of purpose;
- (3) Include a map of the entire water quality trading area that identifies and delineates:
 - (a) The boundaries of all receiving waters;
 - (b) A TMDL area; or
 - (c) The entire watershed area where trading will occur;
- (4) Identify all permittees participating in the trading activity at the time the water quality trading management plan is submitted along with the names of responsible contact persons;
- (5) Include a list of pollutants being proposed for water quality trading;
- (6) Include an assessment of all readily available information of the existing water quality, along with a comparison to water quality standards for the receiving waters, TMDL area or watershed where trading will occur;

- (7) Provide justification for all trading ratios, in accordance with this chapter;
 - (8) Identify any pollutant-specific cap, wasteload allocations or load allocations that have been developed;
 - (9) In accordance with this chapter, provide justification for all water quality baselines for the generation of water quality credits for all sources participating in the trading activity, as well as the procedures used to determine the baselines;
 - (10) Describe the water quality trading activities;
 - (11) Include a schedule for implementing the trading activity;
 - (12) In accordance with rule 3745-5-13 of the Administrative Code, describe the process for public participation throughout the development, implementation and revision of the trading activities;
 - (13) In accordance with rule 3745-5-14 of the Administrative Code, include a schedule for conducting ambient water quality monitoring to determine if there have been negative impacts to water quality and to document the presence or absence of improvements in water quality; and
 - (14) Include corrective measures, should any negotiated water quality credit not be produced.
- (C) In addition to meeting all requirements in paragraphs (A) and (B)(1) to (B)(14) of this rule, when point source-nonpoint source trading occurs between one permittee and one or more nonpoint sources, the water quality trading management plan application shall also:
- (1) Identify other persons, organizations, agencies and qualified soil and water conservation professionals responsible for implementing the proposal;
 - (2) Describe current and projected land use activities within the area where trading will occur;
 - (3) Include a map on which is identified all hydrologic assessment units where nonpoint sources that might participate in the water quality trading activities are located. The hydrologic assessment units shall be identified using either

the ~~eleven~~ digit or ~~fourteen~~^{twelve} digit hydrologic unit code as appropriate for the size of the water quality trading area; and

- (4) Include a list that illustrates the range of BMPs anticipated to be used in the trading activity, including the frequency for:
 - (a) Conducting field inspections of any BMP;
 - (b) Assessing the pollutant removal rates and the load reductions for each BMP; and
 - (c) Collecting water quality monitoring data for evaluating BMP effectiveness.
- (D) In addition to meeting all the requirements in paragraphs (A), (B)(2) to (B)(14) and (C)(1) to (C)(4) of this rule, an application for watershed trading shall:

[Comment: Watershed trading means water quality trading activities within an area that occur between two or more permittees and one or more nonpoint sources.]

 - (1) Include all water quality baselines, developed in accordance with this chapter, for the generation of water quality credits for all sources anticipated to participate in the plan, as well as the procedures used to determine the baselines; and
 - (2) Include a map on which is identified all hydrologic assessment units where nonpoint sources that might participate in the water quality trading activities are located. The hydrologic assessment units shall be identified using either the ~~eleven~~ digit or ~~fourteen~~^{twelve} digit hydrologic unit code as appropriate for the size of the water quality trading area.

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3745-5-09

Determining water quality baselines.

- (A) For permittees in an area where there is an approved TMDL, the water quality baseline shall be the lower of:
- (1) The wasteload allocation established by the approved TMDL; or
 - (2) The current discharge level.
- (B) For permittees in an area where there is not an approved TMDL or where water quality fully supports designated uses assigned in Chapter 3745-1 of the Administrative Code, the water quality baseline shall be the lower of:
- (1) The existing ~~water quality based effluent limit~~ NPDES permit limit;
 - (2) A technology-based performance standard; or
 - (3) The current discharge level.
- (C) For nonpoint sources, the water quality baseline shall be the pollutant load associated with existing land uses and management practices. Existing management practices must comply with any applicable federal, state or local requirements and shall:
- (1) Be established by using an accurate, representative, and reliable process and operational information, available flow and monitoring data, pollutant loading data, and records that are available, and that are deemed acceptable by the director; and
 - (2) Unless otherwise specified in this chapter, be established using information and data representative of the three year period before the date that a change is made to generate a pollutant load reduction. A different time period, such as the previous full crop rotation history, that is representative of historical operations and provides accurate and reliable data on existing pollutant loads may be used if certified by a qualified soil and water conservation professional or deemed acceptable by the director.
- (D) For storm water sources regulated under an NPDES permit, the water quality baseline shall be:
- (1) The numeric effluent limit, if one is established in the NPDES permit; or
 - (2) The pollutant-specific loading achieved after implementation of management

practices specified in or approved under the NPDES permit.

(E) The director may consider data and information submitted as part of a water quality trading management plan application that supports the use of alternate methods of setting baselines, provided that:

- (1) The data is established using information representative of a three year period;
and
- (2) The data is established using accurate, representative, and reliable process and operational information, available flow and monitoring data, pollutant loading data, and records that are available and that are deemed acceptable by the director.

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3745-5-11

Water quality trading: incorporating trades into individual NPDES permits and general permits.

(A) For any permittee participating in trading activities, a special condition will be included in the NPDES permit ~~that: to authorize water quality trading.~~

(1) Authorizes water quality trading;

(2) Requires implementation of actions from the approved water quality trading management plan that are included in the NPDES permit and specifies that failure to implement these actions is a violation of the permit;

(3) Requires submittal of an annual report that identifies the actions implemented by the permittee in the previous twelve-month period; and

(4) Provides that the director may revoke the approved plan and require compliance with water quality based effluent limits based on:

(a) Failure by participants in the trading program to implement actions in the approved plan;

(b) A determination by the director that sufficient pollutant reductions have not been achieved by the participants in the trading program to meet the applicable water quality based effluent limits; or

(c) New information becomes available that changes the director's determination on the approvability of the water quality trading management plan or on the suitability of using water quality trading as a mechanism to achieve water quality improvements in the defined trading area..

(B) The director may incorporate special conditions in an NPDES permit to limit water quality trading activities so that adverse local impacts do not occur, including:

(1) Limiting water quality trading to upstream trades;

(2) Requiring a higher trading ratio; or

(3) Including a cap on the portion of its effluent limit that a permittee can replace with water quality credits.

(C) When deciding whether or not to limit water quality trading activity in an NPDES permit, the director may consider such information as:

(1) The results of Ohio EPA water quality surveys that indicate existing local

impacts;

- (2) The results of modeling and data assessment and the availability of assimilative capacity for the pollutant;
 - (3) The presence of environmental factors such as low flow areas or impoundments that would cause the pollutant to persist longer in the water column; or
 - (4) The potential for any pollutant to cause acute effects.
- (D) When water quality trading occurs between two permittees, the effluent limit in an NPDES permit will be based on the quantity of water quality credit being traded and will:
- (1) For the permittee using the water quality credit, be increased; and
 - (2) For the permittee generating the water quality credit, be decreased.
- (E) When point source-nonpoint source water quality trading occurs, the permittee's NPDES permit will:
- (1) Include the effluent limit that would apply without water quality trading;
 - (2) Include effluent monitoring and reporting requirements;
 - (3) Include any water quality credit being applied to the discharge; and
 - (4) Include special conditions necessary to determine compliance with any NPDES effluent limit.
- (F) In accordance with Chapter 3745-38 of the Administrative Code, the director may issue a watershed general permit to establish pollutant-specific limitations for a group of similar permittees to achieve the pollutant reductions specified by a TMDL or multiple TMDLs for the same watershed.

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3745-5-12

Record keeping, reporting requirements, compliance, enforcement, and oversight.

(A) Record keeping. Upon request by the director or ~~his~~ the director's authorized representative, any permittee, qualified soil and water conservation professional or other person participating in the administration of an approved water quality trading management plan shall make available, within a reasonable time for inspection and copying, all records pertaining to those activities, including:

- (1) Any records that are maintained to document point source-point source trades;
- (2) Any records that are maintained to document point source-nonpoint source trades;
- (3) Water quality monitoring data collected as part of the water quality trading activities; and
- (4) Any records necessary to assess the effectiveness of a BMP to reduce a pollutant load.

(B) Reporting requirements. Upon discovering that water quality credits are insufficient to achieve compliance with an NPDES permit, a permittee shall:

- (1) Notify the director, in writing and within seven days of discovery;
- (2) Act as expeditiously as possible, but no later than ninety days from the date of discovery, to comply with its NPDES effluent limit through either:
 - (a) Obtaining sufficient water quality credits; or
 - (b) Reducing its hydraulic discharge or its pollutant loading to waters of the state; and
- (3) Notify the director in writing, within seven days of achieving compliance.

(C) Compliance, enforcement and oversight.

- (1) Any permittee who participates in water quality trading activities is responsible for meeting all applicable permit requirements, including all NPDES permit effluent limits.
- (2) The director may deny any water quality trading management plan application

not in compliance with this chapter.

- (3) For any water quality trading activities in effect that are not in accordance with an approved water quality trading management plan, except those water quality trading activities covered under paragraph (D) of rule 3745-5-04 of the Administrative Code, the director may:
 - (a) Require the submittal of a new water quality trading management plan application, including all applicable fees, to be submitted to Ohio EPA within thirty days; or
 - (b) Revoke the approved water quality trading management plan.
- (4) Participating in water quality trading activities does not prevent the director from taking enforcement action for violations of Chapter 6111. of the Revised Code or any other applicable rules or laws.
- (5) The director may require an evaluation of water quality trading activities that:
 - (a) Describes the number and types of water quality trades;
 - (b) Includes the costs for purchasing water quality credits;
 - (c) Includes any administrative costs associated with water quality trading activities;
 - (d) Provides a determination of any net cost savings resulting from the water quality trading activities;
 - (e) Includes an assessment of the overall environmental and the economic effectiveness of the water quality trading activities; and
 - (f) Describes any need for corrective measures.
- (6) The director may reduce the scope of the evaluation required under paragraph (C)(5) of this rule based on consideration of factors, such as the number of trades that occurred, the number of nonpoint source BMPs that were implemented, the status of the BMPs, and the overall participation level in the trading activities.

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3745-5-13

Public participation requirements.

Any person submitting a water quality trading management plan for approval shall:

- (A) Hold at least one public meeting for the submission of an initial water quality trading management plan or any revision of a water quality trading management plan that materially changes the nature of the water quality trading activities;
- (B) Hold the public meeting referred to in paragraph (A) of this rule after the submission of the proposed management plan or proposed revised management plan and before the plan's approval by the director;
- (C) Provide public notice of any public meeting at least thirty days prior to the public meeting in a generally circulated newspaper within each county that is within the water quality trading area. Each public notice shall:
 - (1) Identify the person, organization, agency or qualified soil and water conservation professional responsible for implementing the water quality trading activities;
 - (2) Identify any NPDES permit holder that will participate in the water quality trading activities;
 - (3) Include the delineations of watershed and trading boundaries; and
 - (4) Describe briefly the nature of the proposed water quality trading activities;
- (D) Notify the director of any public meeting at least thirty days prior to the date of the public meeting; and
- (E) Provide the director and all participants of the public meeting with a responsiveness summary that addresses each oral and written comment received as part of the public meeting.

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Ambient water quality monitoring requirements.

(A) The ambient water quality monitoring plan shall include sufficient information for the director to:

- (1) Determine if there have been negative impacts to water quality; and
- (2) Document the presence or absence of any improvements to water quality.

(B) The ambient water quality monitoring plan shall:

- (1) Include a list of ~~pollutants~~ chemical, biological and stream habitat parameters being monitored;
- (2) Provide the ~~monitoring~~ sampling frequency for each ~~pollutant~~ parameter being monitored;
- (3) Provide the location of each ~~pollutant monitoring~~ sampling site; and
- (4) Identify the methods and procedures used to monitor ~~for~~ each ~~pollutant~~ parameter.

(C) The director may require the applicant to submit additional information if the information submitted pursuant to paragraph (B) of this rule will not enable the director to determine if the trading activities have resulted in positive or negative impacts to water quality.

[Comment: For guidance on study plan design, sample collection, analytical methods, data assessment, and quality assurance and quality control procedures that are appropriate for the ambient water quality monitoring required under this rule, see appendices A, B and C to rule 3745-4-05 of the Administrative Code.]

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