



Draft Rules – Surface Water Quality

Water Quality Standards (OAC Chapter 3745-1)

NOTE: Draft revisions to the water quality standards rules in OAC Chapter 3745-1 were originally made available for interested party review in August 2008. A subset of the items from the draft rules package was proposed to the Joint Committee on Agency Rule Review (JCARR) on December 28, 2011. These rules were withdrawn from JCARR's jurisdiction on February 1, 2012 so the rules could be vetted through the new Senate Bill 2 process. A very focused and limited subset of rule amendments proposed in 2011 is now being made available for a second interested party review.

What are water quality standards?

Water quality standards are state regulations or rules that protect lakes, rivers, streams and other surface water bodies from pollution. The rules are in Chapter 3745-1 of the Ohio Administrative Code (OAC). 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 use designations; and an antidegradation rule. The antidegradation rule establishes a procedure to determine that a discharge is necessary before authorizing it. It contains provisions that must be followed before authorizing any increased activity on a water body that may result in a lowering of water quality, including an increase in the discharge of a regulated pollutant, or activities that may significantly alter the physical habitat.

Water quality standards serve as: the water quality goals for water uses and cleanliness; the benchmarks to measure and report on meeting Clean Water Act goals; the water quality targets to meet when setting wastewater permit limits and total maximum daily loads.

Which water quality standards rules are under review at this time?

This rule package addresses existing rules 3745-1-01, 02, 03, 04, 05, 07, 31-34 and 36-39, and new rules 40-43. These rules define beneficial use designations, establish water quality criteria protective of the use designations and establish antidegradation procedures.

The rule package does not address mixing zones, drainage basin-specific use designation rules, site-specific criteria or water quality standards for wetlands.

Why are these rules under review?

Section 119.032 of the Ohio Revised Code (ORC) requires Ohio EPA to review its rules every five years to determine whether they should be changed. In addition, section 303(c) of the Clean Water Act requires states to periodically review and update their water quality standards. The Agency has reviewed these rules and has identified necessary changes. Draft revisions incorporate new scientific information and to provide clarifications to existing the rules. Several rules are being reorganized, without revision to requirements.

What changes are being considered?

At this time, the Agency is moving forward with a very small subset of revisions released in the 2008 interested party review. The following summarizes the main revisions in this rule package:

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Beneficial use designations

Rule changes include new beneficial use designations: lake habitat, sport fishing recreation use and base aquatic life use. Criteria associated with all three of these uses are currently in effect but not associated with a named beneficial use. The change is intended to establish clarity in the rule regarding what beneficial use is being protected through application of the criteria.

Water quality criteria

Rule changes include: extension of human health criteria based on drinking water maximum contaminant levels applicable within 500 yards of a public water supply intake statewide, inclusion of updated 2012 Ohio River Valley Water Sanitation Commission (ORSANCO) Pollution Control Standards for the Ohio River mainstem and new and revised aquatic life criteria for six chemicals.

Antidegradation

Rule changes include clarifications on loss of use concepts for surface waters, especially in relation to dredge and fill projects.

Are there changes from the 2011 proposed rule versions?

Yes. Several items in the 2011 proposed rules were removed from the draft rule package, resulting in a very limited rule package. Draft revisions have been made to nine rules within the water quality standards chapter. One rule, 3745-1-35 was removed from this rule package so it can proceed through the rule review process as a stand-alone rulemaking. The related rulemaking containing the section 401 water quality certification rules (OAC Chapters 3745-32 and 3745-45) is currently on hold. Please see the table at the end of this fact sheet for additional information and specific revisions in each rule.

Who will be regulated by these rules?

Water quality standards are implemented in other Clean Water Act programs such as the National Pollutant Discharge Elimination System (NPDES) permit program, Section 401 water quality certification program and Total Maximum Daily Load (TMDL) program. Local governments and businesses that operate wastewater treatment facilities could see changes in discharge permit limits as a result of these rules. Construction or mining projects that place fill material in surface waters may also be impacted by these rules.

What additional information is the Agency seeking?

The Agency is seeking comments from interested stakeholders (public, local officials, and National Pollutant Discharge Elimination System [NPDES] permit holders, industry sectors, other state agencies, consultants and environmental organizations) who may be impacted by these rule revisions. General comments and specific factual information are welcome.

In addition to the draft rule amendments, Ohio EPA is also seeking comments and feedback on the draft Common Sense Initiative (CSI) Business Regulation Impact Analysis form, which is being released with these draft rules during interested party review.

How are the amendments formatted in the draft rules?

Text that is considered for deletion is identified in strikeout font; new text is underlined. Rules being rescinded have "To Be Rescinded" at the top of the first page of the rule. Rules that have not been revised since December 2011 have "2013 Interested Party Draft – No Revisions Made Since December 2011" at the top of the first page of the rule.

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What is the rulemaking schedule?

At this time, the Agency is soliciting input on these draft rule revisions. Ohio EPA is required by section 121.39(D) of the Revised Code to contact potentially affected parties prior to adopting rule changes.

At the close of the draft rules comment period, the Agency will review the comments and make necessary changes to the rules. The Agency will then file proposed rules with the Joint Committee on Agency Rule Review, the Legislative Service Commission and the Secretary of State.

At that point, another comment period, including one or more public hearings, will be scheduled. After the close of the comment period, the Agency will review the comments, make any necessary changes and then adopt the final rules.

Ohio EPA expects to file the proposed rules in the summer of 2013. The final rules could be adopted by early fall 2013.

How can I comment on the draft rules?

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

Comments on the draft rules must be received no later than 5:00 p.m. on May 20, 2013.

How can I get more information?

Copies of this fact sheet, CSI form and the draft rules are on the Division of Surface Water website at www.epa.ohio.gov/dsw/dswrules.aspx.

For more information about these draft rules, please contact:

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Summary of Revisions to Draft Rules since December 2011

Rule Number	Rule Title	Changes from rules proposed in December 2011
3745-1-01	Purpose and applicability	Misc. grammatical and cross reference edits
3745-1-02	Definitions	Removed new definition of cold water fauna; re-instated prior definition of cold water fish; added definition of jurisdictional ditch
3745-1-03	Analytical methods and availability of documents	Removed reference to the Primary Headwater Habitat Field Manual; Misc. grammatical edits; updated citations to federal laws and regulations and Ohio EPA field sampling method documents
3745-1-04	Criteria applicable to all waters	NO CHANGES
3745-1-05	Antidegradation	Undo the split of antidegradation requirements into two separate rules (requirements for discharge permits and dredge and fill projects will remain in this rule); removed the nutrient design criteria for wastewater treatment plants; added 2 definitions and language regarding loss of use attributable to permitted dredge and fill activities ¹ ; Misc. grammatical edits and citation updates
3745-1-07	Beneficial use designations	Removed Primary Headwater Habitat use; Removed revisions to Cold Water Habitat use; Inclusion of language agreed to in the settlement of the City of Akron's appeal of the 2009 rulemaking
3745-1-31	Lake Erie standards	NO CHANGES
3745-1-32	Ohio river standards	Updated to include new ORSANCO standards
3745-1-33	Water quality criteria for the lake Erie drainage basin	NO CHANGE (rule rescinded, content moved to other rules)
3745-1-34	Water quality criteria for the Ohio river drainage basin	NO CHANGE (rule rescinded, content moved to other rules)
3745-1-35	Site-specific modifications to criteria and values	Removed from rule package, see separate rule filing ²
3745-1-36	Methodologies for development of aquatic life criteria & values	NO CHANGES
3745-1-37	Methodology for deriving bioaccumulation factors	NO CHANGES
3745-1-38	Methodologies for development of human health criteria & values	NO CHANGES
3745-1-39	Methodology for the development of wildlife criteria for the lake Erie drainage basin	NO CHANGES
3745-1-40	Water quality criteria for water supply use designations	Removed thallium criteria ³
3745-1-41	Water quality criteria for recreation use designations	Inclusion of language agreed to in the settlement of the City of Akron's appeal of the 2009 rulemaking; removed thallium criteria
3745-1-42	Water quality criteria for the base aquatic life use designation	NO CHANGES
3745-1-43	Water quality criteria for the tiered aquatic life use designations	Removed Primary Headwater Habitat criteria

¹ The language and 2 definitions (local drainage network and 12-digit HUC watershed) were originally included as part of the antidegradation portion of proposed 401 program rules. The language is the same as proposed in December 2011 except for removing a reference to classes of primary headwater habitat streams.

² After vetting the rule content and proposed changes with the external workgroup, rule 3745-1-35 is being handled through a separate rulemaking process.

³ The 2-route of exposure thallium human health criterion will be removed because U.S. EPA withdrew their previously published reference dose for thallium. There is no other credible human toxicity value with which to calculate a criterion.