



Response to Comments on Draft Rules

Rule: OAC 3745-39-04 Ohio EPA NPDES requirements for industries, and large and medium MS4s.

Agency Contact for this Package

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On September 14, 2012, Ohio EPA made available for review and comment one rule regarding the storm water program. This document identifies the comments and questions received during the associated comment period, which ended on October 15, 2012.

Ohio EPA reviewed and considered all comments received during the public comment periods. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the comments and questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

Specific Comments on Draft Rule

Comment 1: 3745-39-04(A)(1) The proposed changes in rule 3745-39-04 letter A subset 1 where the language is omitted and changed throughout is relevant and necessary with respect to discharges and the intent of the rule. (Scott Bushbaum)

Response 1: Comment acknowledged.

Comment 2: 3745-39-04(A)(6) The proposed addition of the language “shall” and omission of the language “must” is irrelevant and unnecessary. (Scott Bushbaum)

Response 2: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to use "shall" in cases where the intent of the rule is to require a person to take action.

Comment 3: 3745-39-04(A)(7) The proposed changes to the language in rule 3745-39-04 number 7, both omission and additions of any and all terms are important and relevant to the rule. (Scott Bushbaum)

Response 3: Comment acknowledged.

Comment 4: 3745-39-04(B) The proposed changes to the language in rule 3745-39-04 letter B throughout, including but not limited to the reassignment of number sets and subsets, omissions and additions are consistent with the rule and are important to the rule. (Scott Bushbaum)

Response 4: Comment acknowledged.

Comment 5: 3745-39-04(C)(1) The proposed omission and addition of the language in rule 3745-39-04 letter C, number 1 paragraph is consistent with the intent of the rule and relevant where rule 3745-38 is referenced. (Scott Bushbaum)

Response 5: Comment acknowledged.

Comment 6: 3745-39-04(C)(1) subset v: e-f The proposed changes in the language of rule 3745-39-04 letter C number 1 subset v letters e and f where the language "event(s)" is changed to "event" is unimportant and irrelevant with respect to an event itself or a number of events. (Scott Bushbaum)

Response 6: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to be written in the singular.

Comment 7: 3745-39-04(C)(1)(e) The proposed changes to the language in rule 3745-39-04 letter C number 1 subset e where the word "reasonably" is omitted is relevant and important to the rule and with respect to the Director. (Scott Bushbaum)

Response 7: Comment acknowledged.

Comment 8: 3745-39-04(D)(2)(c)(i)(b) The proposed change in the language in rule 3745-39-04 letter D subsets (d)(2)(c)(i)(b), where the word "event (s)" is changed to "event" is unimportant and irrelevant with respect to an event itself or a number of events. (Scott Bushbaum)

Response 8: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to be written in the singular.

Comment 9: 3745-39-04(G) The proposed change to rule 3745-39-04 letter G where the words "and/or" are proposed as changes to the word "or" is unnecessary to the rule. Furthermore, the conditional words "and/or" help maintain the integrity of the rule. (Scott Bushbaum)

Response 9: At the request of the Ohio Legislative Service Commission, the use of "and/or" in rule language is being discontinued.

Comment 10: 3745-39-04(G)(3)(c) The proposed change in rule 3745-39-04 letter G subsets (3)(c) where the words "and/or" are proposed as changed to the word "or" is unnecessary to the rule. Again, as in paragraph G, the conditional words "and/or" help maintain the integrity of the rule. (Scott Bushbaum)

Response 10: At the request of the Ohio Legislative Service Commission, the use of "and/or" in rule language is being discontinued.

Comment 11: 3745-39-04(G)(3)(c) The proposed change in rule 3745-39-04 letter G number (3)(c) where the word "should" is omitted and the word "shall" is added is important and necessary to maintain compliance with respect to those the rule pertains to. (Scott Bushbaum)

Response 11: Comment acknowledged.

Comment 12: 3745-39-04(G)(4)(c) The proposed changes in rule 3745-39-04 letter G subsets (4)(c) throughout are important where the added language quantifies the rule better. (Scott Bushbaum)

Response 12: Comment acknowledged.

Comment 13: The suggested solutions to rule 3745-39-04 are mentioned above. Many of my suggested solutions are noted as not to omit the language or to adopt the language in the proposed changes to the rule. Please note that the changes in language and words, whether omissions or additions, that I've suggested are represent of this rule and not necessarily the content of language or words that have been adopted in other OAC or ORC rules. In rule number 3745-39-04 letter G subset (3)(c), I suggest to use the word "must" instead of the word "shall" in order to maintain compliance to those the rule pertains to.

Response 13: Comment acknowledged. See the responses to the specific rule language comments above.

General Comments on Draft Rule

Comment 14: The DRAFT regulations incorporate administrative revisions and do not have a significant impact on the Ohio Business Community. (Jeffrey Miller)

Response 14: Comment acknowledged.

Comments on Draft CSI Business Regulation Impact Analysis Form

Comment 15: However, the Industrial General Permit OHR000005 (General Permit) signed December 15, 2011 by the Ohio Environmental Protection Agency (OEPA) is the implementing document specifically impacting Ohio businesses. This General Permit was a significant change to storm water management in Ohio. Specifically, the major change was from a performance-based general permit to a water quality-based permit including an increase from 31 to 141 pages.

During a recent presentation I had with the Ohio Manufactures Education Council (MEC) on storm water compliance, I asked those in attendance if the General Permit requirements changed from one where there was no sampling to one with sampling. About 1/2, of the 48 people in attendance indicated the General permit would now require sampling.

Additionally, the General Permit has pollutant benchmark requirements which are not permit effluent limits. These benchmarks are the same as the ones in the federal permit which was effectively adopted by the Ohio EPA. Ohio has rich soils where the anthropogenic zinc soil concentration can contribute significantly to the zinc storm water runoff concentration. It is likely the long legacy and economically important industrial sector will have significant costs associated with compliance. Some examples specific for zinc benchmarks include the impact to business chasing benchmark exceedances where there is a significant use of galvanized metal building materials and/or high anthropogenic soil concentrations. The effort Ohio businesses must go to for corrective actions, potential costs, and litigation risks could become significant.

Common Sense Initiative (CSI)

The (CSI) Adverse Impact Analysis does not account for the significant cost to Ohio industry to simply perform the required sampling. As described on page 19 of the Industrial General Permit Section, Section 4.2.1 Quarterly Visual Assessment Procedure, bullet point one, "The visual assessment of shall be made of a sample in a clean, clear glass, or plastic container, and examined in a well-lit area:." There are other certain requirements that require labor time to address, but the visual assessment quarterly is significant to General Permit holders whether they had sampling requirements or not before this General Permit.

Specifically, in the early phase of the development of the current General Permit, I calculated the cost of the quarterly sampling for visual analysis and the single yearly sample for laboratory analysis. For a hypothetical site with three outfalls requiring sampling quarterly for visual analysis and annually for pollutants, the calculated cost was \$9,600 to \$12,200/year.

The total number of General Permit holders listed on the Ohio EPA web site is 3833. A base case where 50% of the General permit holders must sample three additional quarters per year for visual analysis and the other 50% had no sampling requirements under the old General Permit, but now have four quarters per year is presented. The table below is the calculated incremental cost to Ohio Business.

Impacted Ohio Businesses	Low Cost Per Ohio Plant (\$)	High Cost Per Ohio Plant (\$)	Low Annual Cost (\$)	High Annual Cost (\$)	Low Cost for Five-Year Life of Permit (\$)	High Cost for Five-Year Life of Permit (\$)
1916	9,600	12,200	15,513,600	23,375,200	77,568,000	116,876,000
1917	7,200	9,150	13,802,400	17,540,550	69,012,000	87,702,750
	TOTAL		29,316,000	40,915,750	146,580,000	204,578,750

The above costs assume everything goes smoothly and does not account for time required for failed sampling events which always happen, time to track a storm event nor cleanup sampling equipment.

The California Storm Water Resources Control Board General Permit for Discharges of Storm water Associated with Industrial Activities Analysis of the Compliance Costs for the IGP (Industrial General Permit) dated July 16, 2012 projected a much higher annual cost range for compliance per plant at \$26,361 to \$194,212 per year. The costs above are significantly less than the high cost estimated by California and is likely due to the increased level of detail California incorporated into the cost analysis.

Certainly the cost is more than the \$350 per year entered in the CSI Business analysis. The incremental cost to Ohio Business in the above table indicates there is significant diversion of Ohio business dollars which could go towards capital equipment and new jobs rather than chasing anthropogenic concentrations of pollutants like zinc.

In summary above information illustrates item number 14 of the Adverse Impact to Business for the CSI is grossly underestimated. CSI should at the very least use the California cost model to estimate the impact to Ohio businesses and/or make efforts to educate Ohio industry to the compliance requirements.

In this case, bad permit writing from US EPA along with the, "one size fits all approach," and adopted by Ohio EPA, does not translate into environmental improvement. This only generates busy compliance activities providing opportunities to penalize Ohio businesses. (Jeffrey Miller)

Response 15: The cost information provided by the Agency on the Common Sense Initiative Business Impact Analysis (BIA) Form is accurate. The intent of the BIA Form is to consider the impact of the rule under review. The Storm Water Program rule OAC 3745-39-04 addresses administrative requirements for industries, construction, and large and medium municipal separate storm sewer systems (MS4s). The administrative requirements include: permit application deadlines, application contents, exempt discharges and no exposure certifications. This rule does not address permit conditions or compliance requirements, therefore the Agency did not consider these items in completion of the BIA form.

The Agency did consider the cost of compliance with the NPDES Industrial Storm Water General Permit during the most recent permit renewal and made revisions to the draft permit to address concerns raised by interested parties. The general permit requires quarterly visual assessments and a total of four business sector specific analytical monitoring samples over the 5-year permit; whereas, the previous general permit required five analytical monitoring samples. The use of visual assessment is a low cost, low tech method to assess whether BMPs are being implemented and are effective at minimizing the discharge of pollutants. The Agency acknowledges that there are costs associated with environmental compliance, but has tried to reduce that cost within the limits of the Agency's authority.

End of Response to Comments