

OHIO NPDES PERMITS

Chapter 3745-33 of the ADMINISTRATIVE CODE

Most Recent Revision:

Adopted December 20, 2016
Effective March 31, 2017

Ohio Environmental Protection Agency
Division of Surface Water
Permits & Compliance Section

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3745-33-01 **Definitions.**

- (A) Except as otherwise provided in this rule, the definitions in sections 6111.01 and 6111.13 of the Revised Code shall have the same meaning in this rule as in that section.
- (B) "Act" means Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) 33 U.S.C. sections 1251 to 1387 as amended through July 1, 2010.
- (C) "Administrator" means the administrator of the U.S. environmental protection agency.
- (D) "Applicable water quality standards" means all water quality standards that apply under Chapter 3745-1 of the Administrative Code and under federal regulations to the waters of the state except as defined in rule 3745-33-07 of the Administrative Code.
- (E) "Applicable effluent guideline" means a treatment-technology performance standard, prohibition, or other performance standard promulgated by USEPA under section 301, 306, or 307 of the act.
- (F) "Applicable effluent standards and limitations" means all state and federal effluent standards, and limitations to which a discharge is subject under the act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.
- (G) "Applicant" means any person who files for an Ohio NPDES permit.
- (H) "Application" means the form used to apply for an Ohio NPDES permit.
- (I) "Area of initial mixing" or "AIM" means the limited zone where discharge-induced mixing causes the effluent to mix rapidly with the receiving water such that the area may not be physically inhabitable by aquatic life. The inside mixing zone maximum criteria may be exceeded within the AIM but must be met on the perimeter of the AIM.
- (J) "Best management practices" or "BMPs" means activities, prohibitions or practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (K) "Biological index measurement" means a measurement of fish or macroinvertebrate communities in a water of the state using the IBI, modified Iwb or ICI indices as specified in "Biological Criteria for the Protection of Aquatic Life: Volume II, Users

Manual for Biological Field Assessment of Ohio Surface Waters," October 30, 1987, updated January 1, 1988, amended September 30, 1989, updated November 8, 2006.

- (L) "Building sewer" means that part of the horizontal piping of drainage system that receives and conveys the discharge from a building drain to the public sanitary sewer, private sanitary sewer or other point of disposal.
- (M) "Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)" means Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sections 9601 to 9675 as amended through July 1, 2010.
- (N) "Cost effective" means the optimum combination of monetary costs, environmental impacts, system operability and reliability, and public acceptance.
- (O) "Director" means the director of the Ohio environmental protection agency.
- (P) "Discharge" means discharge of any pollutant or pollutants from a point source.
- (Q) "Discharge of a pollutant or pollutants" means any addition of any pollutant to waters of the state from a point source.
- (R) "Domestic sewage" means waste and wastewater from household operations that are discharged to or otherwise enter treatment works.
- (S) "Federal NPDES permit application" means an application for a discharge permit filed under the 1899 Refuse Act (33 U.S.C. sections 407 to 426 as amended through July 1, 2010) or an application for a discharge permit filed under the act.
- (T) "Method detection limit" or "MDL" means the same as defined in section 6111.13 of the Revised Code.
- (U) "Minimum level" or "ML" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration of a pollutant in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.
- (V) "Nonpoint source" means any source of pollutants other than those defined or designated as point sources.
- (W) "NPDES" means national pollutant discharge elimination system.
- (X) "Ohio EPA" means the Ohio environmental protection agency or its director, as the context or other law or regulations may require.

- (Y) "Ohio NPDES permit" means a permit issued by the state of Ohio for a discharge that is either in compliance with authorized discharge levels or that includes a schedule that will bring the point source into compliance with authorized discharge levels.
- (Z) "Person" means the same as defined in section 6111.01 of the Revised Code.
- (AA) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- (BB) "Pollutant" means sewage, industrial waste or other waste as defined by divisions (B) to (D) of section 6111.01 of the Revised Code.
- (CC) "Practical quantification level" or "PQL" means the same as defined in section 6111.13 of the Revised Code.
- (DD) "Preliminary effluent limit" or "PEL" means the most stringent applicable wasteload allocation (WLA) expressed as both an average and a maximum. The average PEL is the lowest WLA to maintain chronic criteria and the maximum PEL is the lowest WLA to maintain acute criteria.
- (EE) "Projected effluent quality" or "PEQ" means the estimated level of a pollutant in an effluent, as established in rule 3745-2-04 of the Administrative Code.
- (FF) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of domestic sewage or industrial waste of a liquid nature that is owned by a municipality, county or state entity or any public body created under state law that has authority over disposal of sewage.
- (GG) "Quantification level" or "QL" means a measurement of the concentration of a pollutant obtained by using a specified laboratory procedure calibrated at a specified concentration above the method detection limit. The QL is considered the lowest concentration at which a particular pollutant can be measured using a specified laboratory procedure for the monitoring of the pollutant.
- (HH) "Reasonable potential" means the likelihood of a pollutant to cause or contribute to an excursion of water quality standards. For chemical-specific determinations, a grouping system for assessing whether to establish WQBELs as limits in NPDES permits consists of five categories that rank the reasonable potential.
- (1) "Group one" pollutants have no applicable criteria and the director has determined that data are insufficient to calculate criteria or values. The reasonable potential for this group cannot be determined.

- (2) "Group two" pollutants have minimal potential based on water quality data to cause or contribute to a water quality excursion.
 - (3) "Group three" pollutants have some potential based on water quality data to cause or contribute to a water quality excursion; permit requirements may not be warranted based solely on water quality considerations.
 - (4) "Group four" pollutants have significant potential based on water quality data to cause or contribute to a water quality excursion; permit monitoring requirements are generally warranted based solely on water quality considerations.
 - (5) "Group five" pollutants have the highest potential based on water quality data to cause or contribute to a water quality excursion; permit limitations are generally warranted based solely on water quality considerations.
- (II) "Regional administrator" means the administrator of U.S. environmental protection agency, region V.
- (JJ) "Reservoir" means any impoundment, or any potential impoundment, that will be created by a dam.
- (KK) "Resource Conservation and Recovery Act (RCRA)" means Resource Conservation and Recovery Act, 42 U.S.C. sections 6901 to 6992 as amended through July 1, 2010.
- (LL) "Schedule of compliance" means the same as defined in section 6111.01 of the Revised Code.
- (MM) "Semi-public disposal system" means a disposal system that treats the sanitary sewage discharged from publicly or privately owned buildings or place of assemblage, entertainment, recreation, education, correction, hospitalization, housing or employment, but does not include a disposal system that treats sewage in amounts of more than twenty-five thousand gallons per day; a disposal system for the treatment of sewage that is exempt from the requirements of division (F) of section 6111.04 of the Revised Code; or a disposal system for the treatment of industrial waste.
- (NN) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system or a holding tank when the system is cleaned and maintained.
- (OO) "Sewage sludge" means the same as defined in section 6111.01 of the Revised Code.
- (PP) "Surface waters of the state" or "water bodies" means the same as defined in rule 3745-1-02 of the Administrative Code.

- (QQ) "Tier I criteria" means the same as defined in rule 3745-1-02 of the Administrative Code.
- (RR) "Tier II value" means the same as defined in rule 3745-1-02 of the Administrative Code.
- (SS) "Toxicity test" means a test that determines the toxicity of a chemical, substance, wastewater effluent, or other aqueous mixture, using living organisms. A toxicity test measures the degree of response of exposed test organisms to a specific chemical substance, wastewater effluent, or other aqueous mixture.
- (TT) "Upground reservoir" means a reservoir formed by artificial barriers on two or more sides and that impounds water or liquefied material pumped or otherwise imported from an exterior source. Lagoons are considered upground reservoirs.
- (UU) "Wastewater treatment facility" means treatment works as defined by division (F) of section 6111.01 of the Revised Code that convey or may convey effluents that will be discharged into the waters of the state.
- (VV) "USEPA" means the United States environmental protection agency.
- (WW) "Wasteload allocation" or "WLA" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. In the absence of a TMDL or TMDL implementation plan, a WLA is the allocation for an individual point source that ensures that the level of water quality to be achieved by the point source is derived from and complies with all applicable water quality standards.
- (XX) "Water quality based effluent limitation" or "WQBEL" means an effluent limitation determined on the basis of water quality standards (contained in Chapter 3745-1 of the Administrative Code) or wasteload allocation procedures (contained in Chapter 3745-2 of the Administrative Code).
- (YY) "Waters of the state" means the same as defined in section 6111.01 of the Revised Code.
- (ZZ) "WET level" means numeric values defined in rule 3745-2-09 of the Administrative Code.
- (AAA) "Whole effluent toxicity" or "WET" means the total toxic effect of an effluent measured directly with a toxicity test.
- (BBB) As used in this chapter "40 C.F.R." means Title 40 of the Code of Federal Regulations effective July 1, 2010 and "50 C.F.R." means Title 50 of the Code of Federal Regulations effective July 1, 2010.

[Comment: The Code of Federal Regulations can generally be found in public libraries, and can be viewed electronically online at <http://www.gpo.gov/fdsys/> and purchased by writing to: "Superintendent of Documents. Attn: New Orders, PO Box 371954, Pittsburg, PA 15250-7954."]

Effective: 6/7/2011

R.C. 119.032 review dates: 11/30/2010 and 6/7/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973, 2/28/1990, 10/31/1997, 12/1/2006

3745-33-02 **Ohio NPDES permit required.**

[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 3745-33-01 of the Administrative Code.]

- (A) No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this chapter. Any person who holds a federal NPDES permit issued under Section 402 (a) of the act is not required to obtain an Ohio NPDES permit until its expiration date. The director shall administer and enforce permits issued under Section 402 (a) of the act within this state, and may modify the terms and conditions thereof, in accordance with division (J) of section 6111.03 of the Revised Code. This includes discharging land application systems as defined in rule 3745-42-13 of the Administrative Code.
- (B) Each point source shall come under the Ohio NPDES permit system. This chapter shall be administered in a manner no less stringent than the act and regulations adopted or subsequently amended by the administrator including 40 C.F.R. 122 to 125, 129 to 133, 136, 400 to 471, 501 and 503. The director may issue a single permit covering more than one point source, but authorized discharge levels, monitoring requirements, and other appropriate requirements shall be specified for each point source.
- (C) No Ohio NPDES permit shall be required for any discharge exempted from the NPDES permit system by regulations adopted or subsequently amended by the administrator, including 40 C.F.R. 122.3.
- (D) Ohio NPDES permits are required for sludge disposal facilities subject to Chapter 3745-40 of the Administrative Code.

Effective: 6/7/2011

R.C. 119.032 review dates: 11/30/2010 and 6/7/2016

Promulgated Under: R.C. 119.03
Statutory Authority: R.C. 6111.03
Rule Amplifies: R.C. 6111.03
Prior Effective Dates: 12/30/1973, 12/30/2002

3745-33-03 **Permit applications.**

[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 3745-33-01 of the Administrative Code.]

- (A) Applications for Ohio NPDES permits shall be filed only on forms approved by Ohio EPA and shall contain such information as Ohio EPA deems necessary. These forms may be electronic. As a minimum, these applications shall contain any NPDES application information required by regulations adopted by the administrator, including 40 C.F.R. 122 to 125, 129 to 133, 136, 400 to 471, 501 and 503.
- (B) Any person proposing to commence the discharge of pollutants shall file an application at least one hundred eighty days prior to commencement of the discharge. If a permit renewal application is submitted at least one hundred eighty days prior to the expiration date of the existing permit, and the director does not issue a new permit before the expiration date, the conditions of the expired permit shall continue in force until the director acts on the permit application.
- (C) Application requirements for materials added to wastewater.
 - (1) The applicant shall attach to the application a list of chemicals or substances that the applicant proposes to add to the wastewater being or to be discharged including, but not limited to, maintenance chemicals and chemicals used to aid in the treatment of the wastewater.
 - (2) If these chemicals or substances have not been approved in a permit to install issued under Chapter 3745-42 of the Administrative Code or director's final findings and orders, the applicant shall also attach to the application, for each chemical or substance, material safety data sheets (MSDS). The following substances are exempt from the MSDS submission requirement:
 - (a) Acids and bases used only to alter the pH of discharge;
 - (b) Ferric chloride;
 - (c) Aluminum sulfate; and
 - (d) Sodium bisulfite.
- (D) Any application that on its face fails to provide Ohio EPA with requested information needed for ascertaining compliance with the applicable provisions of this chapter, may be considered defective. Ohio EPA may either request additional information or

return the application to the applicant without further processing. An indication of the deficiency shall accompany the application returned.

- (E) An applicant may request that information submitted with applications be treated as confidential business information.
- (1) A request for confidential treatment shall be submitted to Ohio EPA simultaneously with an application with documentation sufficient to support that the information is confidential. Failure to make such a timely request shall constitute a waiver of the right to prevent public disclosure. A request at a later time will be entertained by Ohio EPA, but Ohio EPA will not be liable for any information released prior to receiving the request.
 - (2) A decision as to whether to treat the information as confidential shall be made by the director within forty-five days of receipt of the request and accompanying documentation. Until such decision is made, the information or part thereof, shall be treated as confidential. The applicant requesting confidentiality shall be notified in writing of the director's decision.
 - (3) Any information determined to be confidential may be disclosed:
 - (a) To officers, employees, or authorized representatives of the state or a federal agency, without the consent of the affected person, when necessary to sustain an action brought pursuant to Chapter 6111. of the Revised Code or during an adjudication hearing or when otherwise necessary to fulfill any requirement of the act or Chapter 6111. of the Revised Code;
 - (b) In any judicial proceeding in accordance with paragraph (E)(3)(d) of this rule; and
 - (c) In any administrative hearing in accordance with paragraph (E)(3)(d) of this rule.
 - (d) Information determined to be confidential may be disclosed in any judicial proceeding or in any administrative hearing after notification to the affected person and the presiding officer sufficient to allow submission of comments by the affected person prior to disclosure of the information. Upon consideration of such comments, the presiding officer may condition disclosure of the information on the making of such protective arrangements and commitments found to be necessary and appropriate.
 - (e) Disclosure of information determined to be confidential in accordance with paragraph (E)(3) of this rule shall not, of itself, affect the eligibility of information for confidential treatment under the other provisions of this rule.

(4) Information required by NPDES application forms provided by the director under this rule may not be claimed confidential. This includes information on the forms themselves and any attachments used to supply information required by the forms. Claims for confidentiality will be denied for the following information:

(a) The name and address of any permit applicant or permittee; and

(b) Permit applications, permits, and effluent data.

(F) An application submitted to the director pursuant to this chapter shall be signed as follows:

(1) In the case of a corporation, by a responsible corporate officer. For these purposes, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(b) The manager of one or more manufacturing, production or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal, state, or other public facility, by either the principal executive officer, the ranking elected official or other duly authorized employee.

Effective: 6/7/2011

R.C. 119.032 review dates: 11/30/2010 and 6/7/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03, 6111.05

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973, 12/20/2002, 12/1/2006

3745-33-04 **Permit actions.**

[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 3745-33-01 of the Administrative Code.]

(A) Criteria for issuing Ohio NPDES permits.

- (1) The director shall issue an Ohio NPDES permit for the discharge if, on the basis of all information available to Ohio EPA, the director determines that:
 - (a) The authorized discharge levels specified in paragraphs (A), (B), (C), and (D) of rule 3745-33-05 of the Administrative Code are not being exceeded by the applicant; and
 - (b) An application form completed in accordance with rule 3745-33-03 of the Administrative Code and any supplemental information requested by the director have been submitted; and
 - (c) Adequate provisions for monitoring to obtain required pollutant discharge information have been made; and
 - (d) If required by Ohio EPA, performance tests, conducted at the applicant's expense after the application was filed and in accordance with methods prescribed by Ohio EPA, demonstrate that the discharge is in compliance with the authorized discharge levels.

- (2) The director shall deny an application for a permit or renewal thereof if:
 - (a) The secretary of the army determines in writing that anchorage or navigation would be substantially impaired thereby;
 - (b) The director determines that the proposed discharge or source would conflict with an area-wide waste treatment management plan adopted in accordance with section 208 of the act;
 - (c) The administrator objects in writing to the issuance or renewal of the permit in accordance with section 402 (d) of the act;
 - (d) The imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
 - (e) The application is for the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste into the waters of the state.

- (3) Possession of an Ohio NPDES permit shall not relieve any person of the responsibility to comply with the authorized discharge levels specified in the permit or other provisions of applicable law.
- (B) Time for issuance. The director shall issue or deny an application for a permit for a new discharge for the installation or modification of a disposal system, or for renewal of a permit, within one hundred eighty days of the date on which the director receives a complete application with all plans, specifications, construction schedules, and other pertinent information required by the director.
- (C) Renewal of permits.
- (1) The director shall notify the permittee that any permittee who wishes to continue to discharge after the expiration date of the permittee's Ohio NPDES permit must file for reissuance of the permit at least one hundred eighty days prior to the expiration of the permit. Ohio NPDES permits shall be renewed in accordance with the provisions for issuance of permits under this chapter.
- (2) In renewing a permit, the director shall consider the compliance history of the permit holder and may deny the renewal if the director determines that the permit holder has not complied with the terms and conditions of the existing permit. If a permit renewal application is submitted at least one hundred eighty days prior to the expiration date of the existing permit, and the director proposes to deny the renewal of the permit in accordance with rule 3745-49-05 of the Administrative Code, the expired permit shall continue to be in effect in accordance with section 119.06 of the Revised Code until such time as the director issues a final action.
- (3) For new sources or new dischargers as defined in 40 C.F.R. 122.2, see 40 C.F.R. 122.29(d) for applicability of more stringent new source performance standards or technology-based standards under section 301 (b)(2) of the act.
- [Comment: Pursuant to 301 (b)(2) of the act, this provision is not applicable to publicly owned treatment works or water quality standards.]
- (4) Any more stringent limitation on the thermal component of a discharge shall not be imposed as a condition of a permit or renewal thereof for a discharge during a ten year period in accordance with division (J)(3) of section 6111.03 of the Revised Code.
- (D) Modification of permits. Permits may be modified at the request of the permittee, any interested person, or upon the director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

- (1) Applications for modifications of permits shall be made only on forms approved by Ohio EPA and shall contain such information that Ohio EPA deems necessary. Such application or request shall contain:
 - (a) A specific description of the relevant provisions of the existing permit;
 - (b) The precise changes requested. Approvable causes for permit modifications can be found in 40 C.F.R. 122.62;
 - (c) The reasons for the changes requested; and
 - (d) An explanation demonstrating that the permit as modified will comply with applicable state and federal statutes and regulations.
- (2) If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision. A modification at the request of a permittee shall not be approved unless the director determines:
 - (a) That the permit as modified will comply with all applicable state and federal statutes and regulations; and
 - (b) That either:
 - (i) The permit would have been issued with the provisions contained in the proposed modifications if all information presently available had been available at that time; or
 - (ii) Valid cause for such revision exists over which the permittee had little or no control; or
 - (iii) A good faith modification in the nature of the operation was made; and
 - (c) That the regional administrator does not object in writing to such modification within thirty days following receipt of notice from the director.
- (3) Minor modifications. With the consent of the permittee, the director may modify a permit to make corrections or allow for changes in the permitted activity listed in this paragraph, without meeting the requirements of paragraphs (D)(1) and (D)(2) of this rule and without following the procedures of rule 3745-33-10 of the Administrative Code and 40 C.F.R. Part 124. Minor modifications may only:
 - (a) Correct typographical errors;
 - (b) Require more frequent monitoring by the permittee;

- (c) Revise the months for which monitoring is required, if the monitoring frequency and number of samples per year remain the same;
 - (d) Change a reporting code for a monitoring parameter, if the associated concentration units are not less sensitive;
 - (e) Change the expiration of the permit to a date that is not later than five years after the effective date of the permit. The effective date is the date that the permit or most recent renewal became effective;
 - (f) Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty days after the date specified in the existing permit and does not interfere with the attainment of the final compliance date requirement;
 - (g) Change the construction schedule for a discharger that is a new source. No change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge;
 - (h) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;
 - (i) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in rule 3745-3-03 of the Administrative Code (or a modification thereto that has been approved in accordance with the procedures in rule 3745-3-03 of the Administrative Code) as enforceable conditions of the POTW's program; or
 - (j) Incorporate storm water pollution prevention requirements.
- (4) Changes to nutrient management plans for concentrated animal feeding operations. Until the date that USEPA approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, permits shall be modified in accordance with 40 C.F.R. 122.42(e) when a concentrated animal feeding operation proposes to change a nutrient management plan.
- (E) Transfer of permits.
- (1) An Ohio NPDES permit is transferable. The permittee shall notify the succeeding owner or successor of the existence of the Ohio NPDES permit by letter, a copy of which shall be forwarded to Ohio EPA. The copy of the letter shall be received by Ohio EPA at least sixty days prior to any proposed transfer of an Ohio NPDES permit and shall serve as the permittee's notice to the director of the proposed transfer.

- (2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the permittee and successor, including acknowledgment that the existing permittee is liable for violations up to the transfer date and the successor is liable for violations from that date forth, shall be received by Ohio EPA at least thirty days prior to the proposed transfer.
 - (3) At any time during the sixty-day period between notification of the proposed transfer and the effective date of the transfer, the director may deny the transfer if the director concludes that such transfer will jeopardize compliance with the terms and conditions of the permit. The director shall notify both the original permittee transferor and the transferee in writing of the director's decision.
- (F) Termination of permits. Each Ohio NPDES permit shall expire as of the date indicated on the permit. No permit shall be issued that will run for a period of more than five years. Permits may be terminated at the request of the permittee, any interested person, or upon the director's initiative for causes listed in 40 C.F.R. 122.64. All requests shall be in writing and shall contain facts or reasons supporting the request. If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision.
- (G) Revocation of permits.
- (1) Permits may be revoked at the request of the permittee, any interested person, or upon the director's initiative for causes listed in 40 C.F.R. 122.64. All requests shall be in writing and shall contain facts or reasons supporting the request. The director may revoke a permit at any time if the director determines that any applicable laws, rules, regulations or permit terms or conditions have been violated.
 - (2) The permittee shall be notified of the proposed revocation and reasons for such proposed revocation. The director shall afford a prompt hearing to any permittee whose permit the director proposes to revoke and who requests such a hearing, in accordance with the provisions of the rules of procedure, Chapters 3745-47 and 3745-49 of the Administrative Code.
 - (3) If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision.

Effective: 5/1/2013

R.C. 119.032 review dates: 6/7/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973, 12/29/1995, 10/31/1997, 12/30/2002,
12/1/2006, 6/7/2011

3745-33-05 **Authorized discharge levels.**

[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 3745-33-01 of the Administrative Code.]

(A) Final limitations.

- (1) Except as provided by paragraph (G) of this rule, for each point source from which pollutants are discharged, the director shall determine and specify in the permit the maximum levels of pollutants that may be discharged to ensure compliance with:
 - (a) Applicable water quality standards; and
 - (b) Applicable effluent limitations, which shall be the national effluent limitations and guidelines adopted by the administrator pursuant to sections 301 and 302 of the act, and national standards of performance for new sources pursuant to section 306 of the act, and national toxic and pretreatment effluent limitations pursuant to section 307 of the act; and
 - (c) Standards that prohibit significant degradation of the waters of the state, if the point source was installed or should have been installed pursuant to a permit to install under Chapter 3745-42 of the Administrative Code; and
 - (d) Any more stringent requirements necessary to comply with a plan for area-wide waste treatment management, approved pursuant to section 208(b) of the act; and
 - (e) Any more stringent limitations required to comply with any other state or federal law or regulation.
- (2) Prior to promulgation of regulations by the administrator setting forth effluent standards or limitations, or standards of performance pursuant to the act, the director may impose standards, limitations, or conditions in an Ohio NPDES permit necessary to ensure compliance with Chapter 6111. of the Revised Code and the act.
- (3) A discharge shall be deemed to be in compliance with an effluent limitation based upon the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury specified in Chapter 3745-1 of the Administrative Code if:
 - (a) The discharge does not exceed the effluent limitation established in the NPDES permit based upon the 0.012 ug/l thirty-day average criterion; or

(b) The permittee demonstrates to the director's satisfaction that the concentration of methylmercury in the edible portion of consumed species - or weighted average of various species based upon local consumption - exposed to the discharge does not exceed 0.3 mg/kg. Any discharger seeking to make a demonstration pursuant to paragraph (A)(3)(b) of this rule must include a notification of its intent to perform such a study in the monthly operating report that reports any exceedance of a mercury effluent limit based on the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury. Such demonstration shall be based upon results of a fish tissue study, conducted in accordance with a methodology approved by the director. The results of the fish tissue study must be submitted to the director for review and approval within one hundred and twenty days of the discharge, or such additional period of time as specified by the director. Provided that the study is submitted within the time allowed, the determination of whether or not the discharger is in compliance with the applicable effluent limitation will be made when the director approves or disapproves the demonstration. If the geometric mean of all representative samples of any species or weighted average of various locally consumed species exceeds 0.3 mg/kg methylmercury, the director shall disapprove the demonstration and the discharger shall implement a strategy to reduce sources of mercury. This rule does not apply to any mercury effluent limitation other than the thirty-day average effluent limitation based upon the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury specified in Chapter 3745-1 of the Administrative Code.

(B) Interim limitations. Except as provided in paragraph (D) of this rule, the director may establish the maximum levels of pollutants that may be discharged during the period of the compliance program.

(C) Characterization of discharge levels.

(1) Expression of permit limits for continuous discharges. These requirements shall apply unless the director determines that expressing limits in these terms is impracticable.

(a) For discharges from a publicly owned treatment works or other treatment works that treats exclusively domestic sewage, limits for the parameters listed in this paragraph shall be expressed as average weekly and average monthly limits, unless more restrictive limits for other periods are needed to meet water quality standards or other regulatory requirements.

(i) Carbonaceous biochemical oxygen demand (CBOD).

(ii) Total suspended solids.

- (iii) Ammonia-nitrogen.
 - (iv) Nitrate/nitrite-nitrogen.
 - (v) Total nitrogen.
 - (vi) Phosphorus.
 - (vii) All pathogen parameters.
- (b) For all other discharges, limits shall be expressed as daily maximum and monthly average limits, unless limits for other periods are needed to meet water quality standards or other regulatory requirements.
- (2) Expression of permit limits for non-continuous discharges. Discharges that are not continuous, as continuous is defined in 40 C.F.R. 122.2, shall be particularly described and limited, considering the following factors, as appropriate:
- (a) Frequency (for example, a batch discharge shall not occur more than once every three weeks);
 - (b) Total mass (for example, not to exceed one hundred kilograms of zinc and two hundred kilograms of chromium per batch discharge);
 - (c) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute); and
 - (d) Prohibition or limitation of specified pollutants by mass, concentrations, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than two hundred fifty grams (one-fourth kilogram) of zinc in any discharge).
- (3) Concentration and loading limitations. Authorized levels of pollutants that may be discharged shall be stated to the extent possible given the nature of the pollutant in terms of the volume, weight in pounds or kilograms per day (except for those pollutants not expressible by weight), duration, frequency and, where appropriate, concentration (except for those pollutants not expressible by concentration) of each pollutant discharge. The director shall specify average and maximum daily quantitative limitations, where appropriate. Whenever a water quality-based effluent limitation (WQBEL) is developed under Chapter 3745-2 of the Administrative Code, the WQBEL shall be expressed as both a concentration value and a corresponding mass loading limit, except as provided in paragraph (C)(3)(d) of this rule. Limits for chronic whole effluent toxicity may be expressed in terms of an average of multiple toxicity tests.

- (a) Both mass and concentration limits must be based on the same permit averaging periods, except as allowed under paragraph (C)(3)(d) of this rule.
 - (b) The mass loading limits shall be calculated using effluent flow rates that are consistent with those used in establishing the WQBEL that are expressed as concentrations, except as allowed under paragraphs (C)(3)(c) and (C)(3)(d) of this rule.
 - (c) For facilities that, during wet weather conditions, are subject to flows that exceed dry weather treatment facility design conditions, the director may, upon review of supporting information, authorize mass loading limits based on a more appropriate flow rate.
 - (d) For facilities utilizing water conservation or flow reduction practices, the director may specify more appropriate mass and concentration limits based on wasteload allocation results as developed under Chapter 3745-2 of the Administrative Code.
- (4) Metals. All permit effluent limitations, standards, or prohibitions for a metal must be expressed in terms of "total recoverable" metal as defined in 40 C.F.R. 136, Appendix C unless:
- (a) An applicable metal effluent standard or limitation has been established under the act in the dissolved or valent or total form;
 - (b) In establishing permit limitations on a case-by-case basis under 40 C.F.R. 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the act; or
 - (c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).
- (5) Ambient sampling. When a site-specific dissolved metals translator is used in the calculation of effluent limitations, the NPDES permit shall require the permittee to conduct ambient sampling to confirm the continued validity of the site-specific translator.
- (a) The ambient sampling shall be conducted once during the term of the Ohio NPDES permit using procedures specified in paragraph (G) of rule 3745-2-04 of the Administrative Code.
 - (b) If the director determines that adequate site-specific dissolved metals translator data exists, the ambient sampling may not be required.

- (D) Present discharge levels. The director may fix the maximum levels of pollutants specified in an Ohio NPDES permit as either final limitations or interim limitations at the levels indicated by the applicant as its current maximum levels of discharge, even where limitations to such discharge levels are not essential to avoid violation of either applicable water quality standards or effluent standards.
- (E) Treatment system design levels. The director may establish limitations for any discharge based on the level of performance that a proposed treatment system is designed to achieve, as documented in an approved permit to install under Chapter 3745-42 of the Administrative Code. These limitations are limited to those pollutants that the proposed treatment system is designed to remove.
- (F) Antibacksliding.
- (1) Ohio NPDES permits may not be renewed, reissued or modified to contain effluent limitations that are less stringent than the comparable final effluent limitations in the previous permit except when:
- (a) Material and substantial additions or alterations to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;
 - (b) Information is available that was not available at the time of permit issuance (other than revised regulations, guidance or test methods) and that would have justified the application of a less stringent effluent limitation at the time of permit issuance;
 - (c) For technology-based limitations, the director determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;
 - (d) A less stringent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy provided that the revised limitation is a WQBEL limitation or is a limitation based on effluent limitation guidelines that was formerly based on best professional judgement;
 - (e) The permittee has received a modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n) or 316(a) of the act or rule 3745-33-04 of the Administrative Code;
 - (f) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed, reissued, or modified permit may reflect the level of pollution control actually achieved, but shall not be less stringent than required by the

effluent guidelines in effect at the time of permit renewal, reissuance or modification; or

(g) For water quality-based effluent limitations,

(i) If the water quality standard is attained and applicable antidegradation requirements of rule 3745-1-05 of the Administrative Code are met; or

(ii) If the water quality standard is not attained and the cumulative effect of changing wasteload allocations or total maximum daily loads will assure attainment of the water quality standard or the designated use not being attained is removed, and applicable antidegradation requirements of rule 3745-1-05 of the Administrative Code are met.

(2) Any increase in authorized pollutant loadings shall be subject to any applicable antidegradation requirements contained in rule 3745-1-05 of the Administrative Code.

(3) A permit shall not be renewed, reissued or modified to contain limitations that are less stringent than the applicable effluent guidelines at the time the permit is renewed, reissued or modified, or to contain effluent limits that would result in a violation of applicable water quality standards.

(G) Schedules of compliance.

(1) If construction of a point source commenced after March 23, 1997 for which an initial Ohio NPDES permit containing a water quality-based effluent limitation is issued on or after March 23, 1997, the permittee shall comply with such a discharge limitation upon commencement of the discharge, except as allowed in this paragraph:

A point source that commenced discharge after March 23, 1997, or a recommencing discharger, shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed ninety days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 40 C.F.R. 122.47(a)(2).

(2) The director may grant a point source an Ohio NPDES permit with a satisfactory schedule of compliance leading to compliance with section 6111. of the Revised Code, the act and its regulations. Any schedules of compliance issued under this paragraph shall require compliance as soon as possible, but not later than the applicable statutory deadline under the act. This schedule shall become a

condition of the NPDES permit, if the director determines that any of the following conditions apply:

- (a) The permit is reissued or modified to contain a new or more restrictive WQBEL and the discharger cannot meet the WQBEL, or there is not enough information to determine whether the discharger can meet the WQBEL; or
 - (b) A schedule is necessary under paragraph (C) of rule 3745-33-07 of the Administrative Code; or
 - (c) Authorized discharge levels specified in paragraphs (A)(1)(d) and (A)(1)(e) of this rule cannot be met; or
 - (d) A schedule is necessary in order for the submission of other information, reports, or documents, or to perform activities, relative to special conditions in the permit consistent with provisions of the act or federal rules promulgated thereunder, or Chapter 6111. of the Revised Code or rules adopted thereunder.
- (3) A satisfactory schedule of compliance shall include the following elements:
- (a) An enforceable schedule of steps and dates for their achievement, no two of which shall be separated by more than twelve months, to be taken by the applicant that will bring the discharge into compliance with authorized discharge levels at the earliest possible date but no later than those dates necessary to achieve the objectives set forth in the act;
 - (b) Such additional steps as the director shall specify, including interim measures, to eliminate any danger or serious threat of danger to human health and to minimize any deleterious effect on the environment. Such measures may include interim treatment techniques, reduced levels of operations, or the imposition of a connection ban;
 - (c) When the compliance schedule goes beyond the term of the permit, an interim effluent limit or other appropriate requirements and schedules effective upon the expiration date; these shall also be addressed in the permit fact sheet. The administrative record for the permit shall reflect the final limit, or requirements for developing limits and other appropriate requirements and schedules, and its compliance date; and
 - (d) A reasonable period of time, up to five years from the date of permit renewal or modification, for the permittee to comply with a WQBEL for whole effluent toxicity or a WQBEL for a pollutant excluding those listed in table 33-1 of rule 3745-1-33 of the Administrative Code. When the permit is renewed or modified to contain a new or more restrictive WQBEL, the

WQBEL must be based on a whole effluent toxicity level contained in rule 3745-2-09 of the Administrative Code or on a criterion or tier II value adopted in, or derived pursuant to, Chapter 3745-1 of the Administrative Code to qualify for a compliance schedule under this rule except as provided for in this paragraph.

- (i) If construction of a point source commenced on or before March 23, 1997 and a renewed or modified permit includes a limit based upon a tier II value, the permit may provide a reasonable period of time, up to two years, in which to provide additional studies necessary to develop a tier I criterion or to modify the tier II value. In such cases, the permit must require compliance with the tier II limitation within a reasonable period of time, no later than five years after permit renewal or modification, and contain a reopener clause.
 - (ii) The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third-party during the time allowed to conduct the specified studies that demonstrate, to the director's satisfaction, that a revised limit is appropriate. Such a revised limit may be incorporated through a permit modification and a reasonable time period, up to five years, may be allowed for compliance. If incorporated prior to the compliance date of the original tier II limitation, any such revised limit shall not be considered less stringent for purposes of the antibacksliding provisions of paragraph (F) of this rule.
 - (iii) If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the director may provide a reasonable additional period of time, up to five years, for the permittee to achieve compliance with the original effluent limitation.
 - (iv) Where a permit is modified to include new or more stringent limitations on a date within five years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with paragraph (G)(3)(c) of this rule.
- (4) Where necessary to achieve compliance with standards for whole effluent toxicity, the compliance schedule may include specific requirements to conduct a toxicity reduction evaluation (TRE). If a properly conducted TRE fails to identify the source, cause or treatability of the toxicant, the director may modify the permit and extend the schedule not to exceed five years in total, to include requirements for additional investigation or special control measures.
- (5) No later than fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with interim or final requirements.

Effective: 6/7/2011

R.C. 119.032 review dates: 11/30/2010 and 6/7/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973, 2/28/1990, 12/29/1995, 10/31/1997,
12/30/2002

3745-33-06 **Treatment and disposal standards and permit limits.**

- (A) The director shall include in Ohio NPDES permits the treatment and disposal standards and effluent limitations for discharges described in paragraph (C) of this rule. Effluent limitations for these discharges will be based on the requirements of this rule, or any more stringent water-quality-based limitations required by rule 3745-33-07 of the Administrative Code. The effluent limitations under this rule apply at the last point where the discharge from the applicable treatment system can be monitored, prior to both:
- (1) The discharge entering waters of the state; and
 - (2) Dilution of the discharge by other wastewaters.
- (B) If, for any limitation or standard under this rule, an applicant demonstrates to the director that site-specific conditions are fundamentally different from those considered in the development of the limitation or standard, the director may establish and include in the permit for the facility a site-specific limitation or standard instead of the limitation or standard set forth in this rule. Conditions that the director considers in development of standards and conditions under this rule may include items set forth in section 6111.42 of the Revised Code and other information relevant to the director's general supervision of the treatment and disposal of sewage and industrial wastes under section 6111.46 of the Revised Code or the setting of terms and conditions of permits under section 6111.03 of the Revised Code.
- (C) Phosphorus treatment.
- (1) Lake Erie basin. Any publicly owned treatment works (POTW) in the Lake Erie basin with a design flow of 1.0 million gallons per day or more, or designated as a major discharger by the director, must meet a total phosphorus discharge limit of 1.0 milligram per liter as a thirty-day average.
 - (2) POTW and semi-public discharges to state lakes. Any POTW or semi-public discharger with a design flow of 0.2 million gallons per day or more that discharges to a publicly owned lake or reservoir must meet a total phosphorus discharge limit of 1.0 milligram per liter (thirty-day average). This limit also applies to discharges of this magnitude to a tributary of such lake or reservoir if the discharge would contribute significant loadings of phosphorus to the reservoir. This paragraph does not apply to discharges to upground reservoirs or privately owned lakes, or to point source discharges to Lake Erie.

Effective: 12/1/2006

R.C. 119.032 review date: 03/22/2011 and 03/22/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03, 6111.042, 6111.46

Rule Amplifies: R.C. 6111.03, 6111.042, 6111.46

Prior Effective Dates: None

3745-33-07 **Establishing permit conditions.**

[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 3745-33-01 of the Administrative Code.]

- (A) Establishing final permit conditions for physical and chemical specific parameters. Final effluent limitations and monitoring requirements shall be established in an NPDES permit in accordance with this rule and the reasonable potential recommendations determined pursuant to rule 3745-2-06 of the Administrative Code. The director may impose additional terms and conditions as part of an NPDES permit as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality.
- (1) Final effluent limitations shall be required for pollutants that meet any of the following conditions:
- (a) Pollutants assigned to group five of the pollutant assessment;
 - (b) Pollutants that are treatment plant design parameters; or
 - (c) Pollutants that are subject to effluent limitations established under sections 301, 306 and 307 of the act.
- (2) Final effluent monitoring shall be required for pollutants assigned to group four of the pollutant assessment. In addition, the permit shall include a tracking mechanism for all group four parameters with a projected effluent quality (PEQ) equivalent to or exceeding seventy-five per cent of the PEL. The tracking language shall contain the following:
- (a) Projected effluent limit (PEL) values for applicable parameters;
 - (b) Requirements for the permittee to notify Ohio EPA in writing within thirty days of an effluent concentration sample result greater than the PEL. Written notification shall detail the reasons for the level being above the PEL and for expectation of continued levels above the PEL;
 - (c) Requirements for the permittee to reduce discharge levels to below the PEL within six months if either of the following conditions are met:
 - (i) The maximum detected concentration per month is greater than the maximum PEL for four or more months during a consecutive six month period; or

- (ii) The thirty-day average for any pollutant is greater than the average PEL for two or more months during a consecutive six month period; and
 - (d) If the permittee cannot reduce discharge levels within six months to below the PEL, the permittee may request to modify the permit to contain a compliance schedule. This request shall contain a justification for the additional time necessary to reduce discharge levels.
- (3) Pollutant monitoring for pollutants in groups one, two or three of the pollutant assessment may be specified by the director.
 - (4) Final effluent monitoring for dioxin shall be required for a minimum of twelve months when detectable levels of pentachlorophenol are present in the effluent.
 - (5) The director may make exceptions to the effluent limitations under paragraph (A)(1) of this rule if the data used to determine the PEQ are invalid or unrepresentative.
 - (6) The director may make exceptions to the monitoring requirements under paragraph (A)(2) of this rule after consideration of other relevant factors including, but not limited to, the frequency of occurrences and variability of the levels of pollutants.
 - (7) The director may establish water quality-based effluent limits (WQBELs) that represent the sum of all wastestreams containing a pollutant in a discharge or group of discharges under the same NPDES permit, using the wasteload allocation (WLA) and total maximum daily load (TMDL) methods in Chapter 3745-2 of the Administrative Code and the reasonable potential procedures in rules 3745-2-06 and 3745-33-07 of the Administrative Code.
 - (8) Additivity of pollutant effects.
 - (a) When a point source discharge is subject to a WQBEL for pollutants considered additive, the permit for that discharge shall contain a limitation on the additivity of the pollutants unless:
 - (i) Effluent limitations needed to meet other state or federal laws or regulations result in limitations more stringent than limitations on the additivity of the pollutants; or
 - (ii) There is no reasonable potential for the additive effects of discharged pollutants to cause or contribute to a lifetime upper bound incremental risk greater than one in one hundred thousand of developing cancer for carcinogens or an appreciable risk of adverse human health effects (e.g. acute, subchronic, or chronic toxicity, or increased reproductive or developmental effects) during a lifetime of exposure for non-

carcinogens. Reasonable potential for additive effects is determined by dividing the PEQ average for each pollutant by the human health wasteload allocation for that pollutant and adding these values for all additive pollutants. If the sum is equal to or greater than 1.0, the permit shall contain a limitation regulating the additivity of these pollutants.

- (b) If a PEL for an additive pollutant is less than the quantification level for that pollutant, the director may remove that pollutant from the consideration of additivity.
- (9) Reasonable potential for noncontact cooling water. For the purposes of this paragraph, "once-through noncontact cooling water" means water used for cooling that does not come into direct contact with any raw material, intermediate product, final product or waste product, not including additives, and makes one or two passes for the purpose of removing waste heat. This paragraph shall not apply to temperature and pH.
- (a) The director shall not impose WQBELs for a discharge consisting solely of once-through noncontact cooling water drawn from the same body of water that the effluent is discharged to as determined under paragraph (C) of rule 3745-2-06 of the Administrative Code, except in the following situations:
 - (i) The director shall require a WQBEL for a pollutant or a whole effluent toxicity (WET) limit when information is available indicating that such a limit is necessary to protect existing or designated uses, unless the discharger is able to demonstrate that the presence of the pollutant or WET is due solely to its presence in the intake water as determined under paragraph (C) of rule 3745-2-06 of the Administrative Code.
 - (ii) The director shall require a WQBEL for a pollutant when the pollutant concentration in the discharge exhibits reasonable potential, is higher than ambient concentrations in the receiving water due to recirculation of the cooling water in the receiving water body, and available information indicates that a limit is necessary to protect existing or designated uses.
 - (iii) The director shall establish a WQBEL or other requirement in the permit for the noncontact cooling water wastestream if biological index measurements or WET measurements indicate that the noncontact cooling water discharge contributes to an impairment of an existing or designated use of the receiving waters.
 - (iv) If a pollutant is present at elevated levels in the noncontact cooling water wastestream due to pollutants entering the cooling system, paragraph (A)(9) of this rule shall not apply to the discharge of pollutants present at elevated levels.

- (v) If the permittee uses or proposes to use additives in the noncontact cooling water wastestream, the director shall evaluate the additives to determine whether there is a reasonable potential for the additive to cause or contribute to an excursion of the water quality standards contained in Chapter 3745-1 of the Administrative Code. The director shall establish permit conditions and/or other requirements for the additives or their ingredients that ensure that Ohio water quality standards are attained.
- (vi) If the source of the noncontact cooling water wastestream is contaminated groundwater, paragraph (A)(9) of this rule does not apply to the discharge of pollutants in the groundwater that exhibit reasonable potential.
- (vii) If the noncontact cooling water is combined with other wastestreams prior to final discharge, the provisions of paragraph (A)(9) of this rule are restricted to the noncontact cooling water wastestream, and WQBELs shall be established on a reasonable potential analysis for the sum of the other wastestreams conducted according to rules 3745-2-06 and 3745-33-07 of the Administrative Code. If other individual wastestreams cannot be practically monitored, the director shall require WQBELs at the final discharge point.
- (viii) The director shall require monitoring of the intake and any other locations necessary to verify and confirm the conclusions about reasonable potential under paragraph (A)(9)(a) of this rule.

(B) Establishing final limitations for whole effluent toxicity.

- (1) The director shall evaluate whole effluent toxicity for a discharge using available data on the factors listed in paragraphs (B)(1)(a) to (B)(1)(d) of this rule and the evaluation matrix in table 1 of this rule to determine whether the discharge has the reasonable potential to cause or contribute to violations of water quality standards contained in Chapter 3745-1 of the Administrative Code. The director shall classify the toxicity hazard of the discharge in one of the four categories listed in table 1 of this rule.
 - (a) The magnitude, frequency and variability of toxicity discharged;
 - (b) The degree and type of near-field and far-field effects in the receiving water as measured by physical, chemical, toxicity or biological index measurements;
 - (c) The quality and quantity of each type of data available; and
 - (d) Other relevant factors.

- (2) When the director determines that the discharge has the reasonable potential to cause or contribute to an exceedance of the water quality standards contained in paragraph (D) of rule 3745-1-04 of the Administrative Code, the discharger shall be classified in hazard category 1 of table 1 of this rule, and the permit shall contain a discharge limitation for toxicity as determined using the procedures in rule 3745-2-09 of the Administrative Code, and any applicable procedures in paragraphs (B)(5) to (B)(10) of this rule.
- (3) For dischargers classified in hazard category 2, the director shall require monitoring with a permit limit for WET that is triggered by events specified in the permit. As an alternative to limits, the director may require the permittee to conduct a plant performance evaluation (PPE). A PPE contains an evaluation of processes, inputs and treatment including but not limited to toxicity pass-through at the treatment plant, chemicals used in the treatment process, and the effect of plant processes or industrial users on WET discharged by the treatment plant.
- (4) When the evaluation from paragraph (B)(1) of this rule using factors in paragraphs (B)(1)(a) to (B)(1)(d) of this rule indicates the discharger is classified in hazard category 3 of table 1 of this rule, the permit shall contain a monitoring requirement.
- (5) Limits for acute toxicity of 1.0 TUa that are based on protecting the inside-mixing-zone water quality standard in paragraph (D) of rule 3745-1-04 of the Administrative Code may be modified if the discharger demonstrates attainment of this water quality standard using one of the following methods:
 - (a) An AIM study approved under rule 3745-2-08 of the Administrative Code;
 - (b) A correlation of effluent and near-field toxicity data for the discharge that indicates that the narrative water quality standard is being attained; or
 - (c) Biological index measurements taken within the area defined in paragraph (I)(1) of rule 3745-2-08 of the Administrative Code that indicate the absence of toxic conditions.
- (6) Demonstrations conducted under paragraph (B)(5)(b) or (B)(5)(c) of this rule shall meet the requirements of paragraphs (C)(4) to (C)(7) and (C)(9) to (C)(13) of rule 3745-2-08 of the Administrative Code. In addition, the director may modify maximum limitations that are approved under paragraph (B)(5)(b) or (B)(5)(c) of this rule using the results of an AIM computer modeling or field study performed in accordance with rule 3745-2-08 of the Administrative Code.
- (7) The director shall review demonstrations under paragraphs (B)(5) and (B)(6) of this rule using the factors in paragraphs (B)(1)(a) to (B)(1)(d) of this rule to

ensure that uses are not impaired by toxicity before approving modified limitations for whole effluent toxicity.

- (8) The director may modify limitations for acute or chronic toxicity that are based on protecting the water quality standard in paragraph (D) of rule 3745-1-04 of the Administrative Code if the discharger reduces effluent toxicity by a substantial amount after the issuance of the effluent limit, and if subsequent biological index measurements indicate the absence of toxic conditions downstream of the discharge or mixing zone, as appropriate.
- (9) The director may modify limitations for acute toxicity for discharges to water bodies designated limited resource water under Chapter 3745-1 of the Administrative Code if the discharger demonstrates that severe habitat degradation prevents the presence of biological communities typically associated with this water body use.
- (10) For the purposes of establishing whole effluent toxicity limitations, the values of 1.0 TU_a and 1.0 TU_c shall be the most restrictive limitations applied in permits. If the ratio of stream design flow to effluent flow is less than 3.3 to 1.0, the director may require special measures to investigate and remediate acute toxicity when an effluent consistently exhibits thirty per cent to fifty per cent mortality in one hundred per cent effluent.
- (11) Minimum monitoring requirements for whole effluent toxicity. These requirements satisfy the application toxicity test requirements in 40 C.F.R. 122.21(j)(5). These requirements do not apply to discharges from facilities that treat only combined sewer overflows.
 - (a) The following testing requirements apply to permits for:
 - (i) Any publicly-owned treatment works (POTW) with design flow rates greater than or equal to one million gallons per day; or
 - (ii) Any POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program.
 - (b) Permits shall contain testing requirements for at least two species.
 - (c) Permits shall contain chronic toxicity testing requirements if the ratio of the downstream or mixing zone dilution is less than twenty to one, according to the procedures in rule 3745-2-09 of the Administrative Code.
 - (d) Permits shall contain acute toxicity testing requirements if the ratio of the downstream or mixing zone dilution is twenty to one or greater, according to the procedures in rule 3745-2-09 of the Administrative Code.

- (e) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving water segment, the director may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The director may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.
- (C) WQBELs below quantification levels. This paragraph shall apply when a water quality based effluent limit for a pollutant is calculated to be less than the quantification level.
- (1) The director shall designate as the limit in the NPDES permit the WQBEL exactly as calculated.
 - (2) Analytical methods, quantification and compliance levels.
 - (a) The permittee shall use the most sensitive analytical procedure currently approved under 40 C.F.R. 136 for each individual pollutant.
 - (b) If the most sensitive analytical procedure in paragraph (C)(2)(a) of this rule changes, resulting in a more sensitive quantification level, the director may issue a compliance schedule to allow the permittee to implement the new quantification level and demonstrate compliance using the revised quantification level or WQBEL, whichever is higher.
 - (c) For the purpose of assessing compliance with an NPDES permit, any value reported below the quantification level shall be considered in compliance with the effluent limit. For the purpose of calculating compliance with average limitations contained in an NPDES permit, compliance shall be determined by taking the arithmetic mean of reported values for a given reporting period and comparing that mean to the appropriate average permit limitation, using zero for any values detected at concentrations less than the quantification level. Arithmetic mean values that are less than or equal to the permit limitation shall be considered in compliance with the effluent limit.
 - (d) The quantification level is defined as the practical quantification level (PQL) except, for discharges to the lake Erie drainage basin, the quantification level shall be the minimum level for analytical procedures that have minimum levels specified in, or approved under, 40 C.F.R. 136.
 - (e) The director may establish PQLs for a pollutant with a listed method in 40 C.F.R. 136 or, if no analytical method for the pollutant has been promulgated under 40 C.F.R. 136, the director may establish a PQL for the pollutant using an appropriate consensus standard or other generally accepted standard for the analytical method; if no such standard exists, the

director may establish a PQL in the permit based on MDLs determined using the procedures in 40 C.F.R. 136, appendix B.

- (f) Discharge-specific quantification levels. Permittees may apply for discharge-specific quantification levels. Discharge-specific quantification levels shall be calculated using the procedures provided in 40 C.F.R. 136, appendix B.
- (3) Permit reopener clause. Ohio NPDES permits shall contain a reopener clause authorizing modification or revocation and reissuance of the permit if new information generated as a result of special conditions included in the permit indicates the presence of the pollutant in the discharge at levels above the WQBEL. Special conditions that may be included in the permit include, but are not limited to, fish tissue sampling, whole effluent toxicity tests, monitoring requirements on internal waste streams, and monitoring for surrogate parameters. Data generated as a result of special conditions can be used to reopen the permit to establish more stringent effluent limits or conditions, if necessary.
- (4) Pollutant minimization program. For discharges to the lake Erie drainage basin, the director shall include a condition in the permit requiring the permittee to develop and conduct a pollutant minimization program in accordance with rule 3745-33-09 of the Administrative Code for each pollutant with a WQBEL below the quantification level.

(D) Variances from water quality standards for point sources.

- (1) Applicability. The director may grant a variance to a water quality standard (WQS, where WQS, for the purpose of paragraph (D) of this rule, means criteria and tier II values adopted in or developed under Chapter 3745-1 of the Administrative Code) which is the basis of a WQBEL included in an NPDES permit. A WQS variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect, or require the director to modify, the corresponding water quality standard for the water body. All variance requests and approvals must comply with applicable portions of rule 3745-1-05 of the Administrative Code. Paragraph (D) of this rule shall not apply:
 - (a) To any building, structure, facility, or installation from which there is or may be a "discharge of pollutants" (as defined in 40 C.F.R. 122.2), the construction of which commenced after March 23, 1997, unless:
 - (i) Such a discharge occurs as a result of a response or remedial action taken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or the Ohio EPA voluntary action program (VAP);

- (ii) WQS or method detection limit(s) are issued, modified, or adopted after the NPDES permit for the discharge is issued;
 - (iii) The discharge results from rerouting all or a portion of an existing permitted discharge to a new discharge point that discharges to the same body of water, and there is a pollutant reduction in the discharge being rerouted;
 - (iv) A new or expanded discharge of bioaccumulative chemicals of concern from a publicly owned treatment works or sewerage system is necessary to prevent or mitigate a public health threat to the community; or
 - (v) The discharge occurs as a result of an overall reduction in emissions of a pollutant from a facility existing as of March 23, 1997 to air, waters of the state or other media to which people or aquatic life are exposed.
- (b) To any source for which an NPDES permit was revoked or not renewed and for which a new NPDES permit has been subsequently issued, except that such a source may be eligible to receive a variance if WQS or method detection limit(s) are issued, modified, or adopted after the source's new NPDES permit is issued;
 - (c) If the variance would likely jeopardize the continued existence of any threatened or endangered species as defined in rule 3745-1-02 of the Administrative Code or result in the destruction or adverse modification of such species' critical habitat; or
 - (d) If WQS will be attained by implementing effluent limits required under sections 301(b) and 306 of the act as defined in rule 3745-33-01 of the Administrative Code and by the permittee implementing cost-effective and reasonable best management practices for nonpoint source control over which the permittee has control.
- (2) Maximum time frame for variances. A WQS variance shall not exceed five years or the term of the NPDES permit, whichever is less, with the exception that a WQS variance may remain in effect beyond the term of the NPDES permit if, at least one hundred eighty days prior to the date of expiration of the NPDES permit, the applicant submits to the director an application for renewal of the NPDES permit, in accordance with Chapter 119. of the Revised Code and paragraph (C) of rule 3745-33-04 of the Administrative Code, and an application for renewal of the variance in accordance with paragraph (D)(8) of this rule. Such a variance shall remain in effect until the director issues a final action on the NPDES permit renewal application unless the application for renewal of the variance is not substantially complete or not submitted within the time required in this paragraph, or unless the permittee did not substantially comply with the

conditions of the existing variance. The director shall review and modify as necessary WQS variances as part of each WQS review pursuant to section 303(c) of the act.

(3) Conditions to grant a variance.

(a) Except as provided in paragraph (D)(10) of this rule, a variance may be granted if the director determines, based on data and information provided by the permittee or data and information independently available to the director, that attainment of the WQS is not feasible because:

- (i) Naturally occurring pollutant concentrations prevent the attainment of the WQS;
- (ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the WQS, unless these conditions may be compensated for by the discharge of sufficient volume of effluent to enable WQS to be met;
- (iii) Human-caused conditions or sources of pollution prevent the attainment of the WQS and cannot be remedied, or would cause more environmental damage to correct than to leave in place;
- (iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the WQS, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the WQS;
- (v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of WQS; or
- (vi) Controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread economic and social impact. When evaluating substantial and widespread economic and social impact, the director shall consider, at a minimum, all of the following factors:
 - (a) The costs, cost-effectiveness (measured in dollars per pound equivalent), and affordability of pollutant removal that would result from implementing measures capable of attaining the WQS;
 - (b) The reduction in concentrations and loadings attainable by using measures capable of attaining the WQS;

- (c) The financial effects on the permittee of implementing measures capable of attaining the WQS;
 - (d) The type and magnitude of adverse or beneficial environmental impacts resulting from implementing measures capable of attaining the WQS; and
 - (e) The overall impact on employment at the facility and on the economy of the area in which the discharger is located resulting from implementing measures capable of attaining the WQS.
 - (b) In addition to the requirements of paragraph (D)(3)(a) of this rule, the permittee shall:
 - (i) Show that the variance requested complies with the antidegradation requirements of rule 3745-1-05 of the Administrative Code; and
 - (ii) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with the WQS absent the variance, such that the director is able to conclude that any such increased risk is consistent with the protection of the public health, safety, and welfare.
- (4) Submittal of variance application. The permittee shall submit an application for a variance to Ohio EPA. The variance application shall be considered a separate application from the NPDES permit application. The variance application shall include:
 - (a) All relevant information demonstrating that attaining the WQS is not feasible based on one or more of the conditions in paragraph (D)(3)(a) of this rule;
 - (b) All relevant information demonstrating compliance with the conditions in paragraph (D)(3)(b) of this rule;
 - (c) An attachment to the application that includes the following information, at a minimum, if the applicant is requesting a variance under paragraph (D)(3)(a)(vi) of this rule:
 - (i) For municipal dischargers:
 - (a) A general plan including a brief description of existing facilities; a brief description of lowest cost improvements to attain WQS; capital cost of improvements; and total annual operation and maintenance cost of facility after improvements;
 - (b) Existing rate structure with a copy of the authorizing ordinance(s);

- (c) Audited financial reports for the previous five years;
 - (d) Average daily flow for the following: total, residential, commercial, industrial, institutional/other, inflow and infiltration;
 - (e) Number of residential customers and non-residential customers served by the facility; and
 - (f) Any information that may indicate conditions in paragraph (D)(3)(a) of this rule for granting a variance; or
 - (ii) For industrial dischargers:
 - (a) General plan including brief description of existing facilities; brief description of lowest cost improvements to attain WQS; capital cost of improvements; total operation and maintenance cost of facility after improvements;
 - (b) Audited annual financial reports for the facility from the most recent five years;
 - (c) Standard industrial classification for facility;
 - (d) Total number of employees and total annual salary/wage/overhead costs; and
 - (e) Any information that may indicate conditions for granting a variance; and
 - (d) A plan of study if the variance is from a WQS for a bioaccumulative chemical of concern (BCC) in the lake Erie drainage basin. The plan of study shall include the following, at a minimum: data documenting the facility's current influent and effluent concentrations for the BCC; a preliminary identification of potential sources; a proposed schedule for evaluating those sources; and a proposed schedule for identifying and evaluating potential reduction, elimination, and prevention methods.
- (5) Public notice of preliminary decision. Upon receipt of a complete application for a variance (or in the case of a variance under paragraph (D)(10) of this rule, the information required by paragraphs (D)(10)(a) and (D)(10)(b) of this rule), and upon making a preliminary decision regarding the variance, the director shall public notice the variance application, the availability of the public record, the availability of the plan of study (if applicable) and the preliminary decision for public comment. For discharges in the lake Erie drainage basin, the other Great Lakes states and tribes shall be notified of the director's preliminary decision. These public notice requirements may be satisfied by including the supporting

information for the variance and the preliminary decision in the public notice of a draft NPDES permit.

(6) Final decision on variance request.

- (a) The director shall issue a variance or propose to deny a variance in accordance with Chapter 119. of the Revised Code. If all or part of the variance is approved by the director, the decision shall include all permit conditions needed to implement those parts of the variance so approved. Such permit conditions shall, at a minimum, require:
- (i) Compliance with an initial effluent limitation that, at the time the variance is granted, represents the level currently achievable by the permittee, and that is no less stringent than that achieved under the previous permit;
 - (ii) That reasonable progress be made toward attaining the WQS for the water body through appropriate permit conditions. If the variance was approved for a BCC in the lake Erie drainage basin or mercury statewide, the permittee shall develop and implement a pollutant minimization program (PMP) consistent with rule 3745-33-09 of the Administrative Code;
 - (iii) When the duration of a variance is shorter than the duration of a permit, compliance with an effluent limitation sufficient to meet the underlying WQS upon the expiration of said variance;
 - (iv) A provision that allows the director to reopen and modify the permit based on any Ohio EPA WQS revisions to the variance; and
 - (v) Such monitoring or analyses as are necessary in order to assess the impact of the variance on public health, safety, and welfare, that may include tests of the amount of the variance parameter in the discharger's influent and effluent, in fish tissue of resident species in the receiving water, and/or in the sediments in the vicinity of the discharge.
- (b) The director shall deny a variance request in accordance with Chapter 119. of the Revised Code if the permittee fails to make the demonstrations required under paragraph (D)(3) of this rule. Permit issuance shall not be affected if the variance is denied. If all, part, or parts of the variance is denied by the director, the decision may include, if necessary, an interim effluent limitation as specified under paragraph (D)(6)(a)(i) of this rule and a compliance schedule to meet final limits, at a minimum.

- (7) Incorporating variance into permit. The director shall establish and incorporate into the permittee's NPDES permit all conditions needed to implement the variance as determined under paragraph (D)(6) of this rule.
- (8) Renewal of variance. A variance may be renewed, subject to the requirements of paragraphs (D)(1) to (D)(7) of this rule. As part of any renewal application, the permittee shall again demonstrate that attaining WQS is not feasible based on the requirements of paragraph (D)(3) of this rule, unless the variance being renewed was approved under paragraph (D)(10) of this rule. For variances approved under paragraph (D)(10) of this rule, the permittee shall, as a part of any renewal application, resubmit the information required under paragraphs (D)(10)(a) and (D)(10)(b) of this rule, the certification required by paragraph (D)(10)(d)(v) of this rule and the permit, as well as a status report on the progress being made in the pollutant minimization program. The permittee's application also shall contain information concerning its compliance with the conditions incorporated into its permit as part of the previous variance. Reasonable progress shall have been made in implementing the pollutant minimization program under the existing permit prior to renewing variances approved under paragraph (D)(9) or (D)(10) of this rule. The director may deny any variance renewal if the permittee did not comply with the conditions of the previous variance.
- (9) Multiple discharger determinations. Where necessary to address widespread WQS nonattainment issues, the director may make determinations about the factors listed in paragraphs (D)(3) and (D)(4) of this rule for a category of dischargers where the director has enough information to determine that variances are necessary for that category according to one or more of the conditions in paragraph (D)(3)(a) of this rule. These determinations and specific application requirements shall be made by rule. Dischargers applying for a variance based on multiple discharger determinations shall submit information demonstrating that the determinations of the director are applicable to the individual discharger.
- (10) The director has determined that the average cost to reduce mercury below twelve ng/l from a waste stream through end-of-pipe treatment is in excess of ten million dollars per pound of mercury removed. The director has determined that requiring removal of mercury by construction of end-of-pipe controls to attain mercury WQS, requiring controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread social and economic impact. The director may determine whether there are other means by which the permittee could comply with the WQBEL without constructing end-of-pipe treatment based on the information provided by the permittee in the application submitted in accordance with this paragraph. The director has also determined that the increased risk to human health and the environment associated with granting the variance compared with compliance

with the WQS absent the variance, is consistent with the protection of the public health, safety, and welfare.

- (a) The director may grant a variance under paragraph (D)(10) of this rule without giving any additional consideration to the factors specified in paragraphs (D)(3)(a) and (D)(3)(b)(ii) of this rule where the director determines:
 - (i) That an average mercury WQBEL based on the human health or wildlife criteria adopted in Chapter 3745-1 of the Administrative Code would be necessary for a particular permittee to comply with water quality standards in the absence of a variance;
 - (ii) That the permittee is not currently complying with the WQBEL and information available from the application required in paragraph (D)(10)(b) of this rule indicates that there is no readily apparent means of complying with the WQBEL without constructing end-of-pipe controls more stringent than those required by sections 301 (b) and 306 of the act; and
 - (iii) That the discharger is currently able to achieve or projects that it can achieve an annual average mercury effluent concentration of twelve ng/l within five years of the date that the variance is granted. For the purpose of determining eligibility under paragraph (D)(10) of this rule, the annual average mercury effluent concentration shall be the average of the most recent twelve months of effluent data.
- (b) In lieu of complying with the requirements of paragraph (D)(4) of this rule, a discharger seeking a variance under paragraph (D)(10) of this rule shall submit to the director an application containing the following information in writing:
 - (i) A certification that the discharger intends to be subject to the terms of paragraph (D)(10) of this rule;
 - (ii) A description of measures taken to date for mercury reduction or elimination projects;
 - (iii) A plan of study for the identification and evaluation of potential mercury sources and potential methods for reducing or eliminating mercury from the discharger's effluent. The plan of study shall include the following, at a minimum: data documenting the facility's current influent and effluent mercury concentrations; identification of all known mercury sources; a description of current plans to reduce or eliminate known sources of mercury; a preliminary identification of other potential mercury sources; a proposed schedule for evaluating the

mercury sources; and a proposed schedule for identifying and evaluating potential reduction, elimination, and prevention methods;

- (iv) An explanation of the discharger's basis for concluding that there are no readily available means of complying with the WQBEL without construction of end-of-pipe controls; and
 - (v) A demonstration of compliance with the conditions in paragraph (D)(3)(b)(i) of this rule.
- (c) The director shall deny the applicability of paragraph (D)(10)(a) of this rule to a discharger if the discharger fails to fulfill the requirements specified in paragraphs (D)(10)(a) and (D)(10)(b) of this rule.
- (d) If the conditions of paragraphs (D)(10)(a) and (D)(10)(b) of this rule are met, the director shall issue the variance and incorporate the following requirements, at a minimum, into the discharger's NPDES permit:
- (i) All conditions required under paragraph (D)(6)(a) of this rule;
 - (ii) A requirement that the discharger's average mercury effluent concentration as defined in paragraph (D)(10)(a) of this rule must remain less than or equal to twelve ng/l after the date specified in the discharger's accepted plan of study for the requirements under this paragraph to be applicable. The requirements of paragraph (D)(10)(f) of this rule shall be included in the permit;
 - (iii) Permit conditions needed to implement the plan of study submitted under paragraph (D)(10)(b)(iii) of this rule;
 - (iv) A requirement that the discharger use an approved USEPA analytical method that is capable of quantifying the applicable water quality standard; and
 - (v) A requirement that upon completion of the actions identified in the plan of study and in the PMP required by paragraph (D)(6)(a)(ii) of this rule, the permittee shall submit to the director a certification that all permit conditions imposed to implement the plan of study and PMP have been satisfied and shall include in this certification a statement as to whether compliance with the WQBEL has been achieved and can be maintained. This certification shall be accompanied by the following:
 - (a) All available data documenting the discharger's current influent and effluent mercury concentrations;

- (b) Data documenting all known significant sources of mercury and the steps that have been taken to reduce or eliminate those sources; and
 - (c) A determination of the lowest mercury concentration that currently available data indicate can be reliably achieved through implementation of the PMP.
- (e) Upon receipt of the certification required by paragraph (D)(10)(d)(v) of this rule, the director shall take the following action:
 - (i) If the permittee certifies that it has achieved and can maintain compliance with the WQBEL, the director shall incorporate the WQBEL into the permit in lieu of the variance either via a permit modification if the permit has not yet expired or as a part of any renewal of the permit if it has expired; or
 - (ii) If the permittee certifies that it has not achieved or can not maintain compliance with the WQBEL, the director shall review the data submitted with the certification and such other relevant information as may be available, and:
 - (a) If the director concurs with the certification, the director shall allow the variance to continue in force if the variance has not expired or renew the variance in accordance with paragraph (D)(8) of this rule if the variance has expired; or
 - (b) If the director concludes, despite contrary certification by the permittee, that the permittee has achieved and can maintain compliance with the WQBEL, the director shall incorporate the WQBEL into the permit in lieu of the variance via a permit modification if the permit has not yet expired or as a part of any renewal of the permit if it has expired.
- (f) If at any time after the date specified in a variance by which the discharger must meet an average annual mercury effluent concentration of twelve ng/l, as defined in paragraph (D)(10)(a) of this rule, or after the director's final approval of the variance renewal, whichever is earlier, the discharger's average mercury effluent concentration as defined in paragraph (D)(10)(a) of this rule exceeds twelve ng/l, the discharger shall submit an individual variance application, if a variance is desired, or request a permit modification for a compliance schedule to attain compliance with the WQBEL. Paragraph (D)(10) of this rule shall no longer apply to the discharger on the date the director acts on the discharger's individual variance application or the date the permit modification becomes effective. The requirements of this paragraph shall not apply to the discharger if the

discharger demonstrates to the satisfaction of the director that the mercury level in the discharger's effluent exceeds twelve ng/l due primarily to the presence of mercury in discharger's intake water.

- (11) All variances and supporting information shall be made available by the director to the USEPA region V office after the date of the final variance decision.
- (12) WQS revisions. All variances shall be distributed with Chapter 3745-1 of the Administrative Code and shall be made available upon request to all interested parties. The distributed information shall include at a minimum: the discharger receiving the variance; the term (beginning and ending dates) of the variance; the water body or water bodies affected by the variance; the pollutants affected by the variance; and the modified allowable ambient concentration values for those pollutants.

Table 1. Criteria for potential environmental hazard categories

Attribute Evaluated	Hazard Category 1	Hazard Category 2	Hazard Category 3	Hazard Category 4
Degree of toxicity problem	Adequately Documented	Strongly Suspected	Possible	None
(A) Effluent toxicity				
.....(1) Minimum number of tests (Actual number ___)	3	1	0 or 1	0 or 1
.....(2) Per cent of tests greater than WLA (Actual per cent ___)	greater than 30	20 to 30	10 to 20	less than 10
.....(3) Effluent geometric mean TU TUa (___) TUc (___)				
.....(4) Average exceedance ¹				
.....(a) Without paragraph (B) and (C) of this table available				
.....(i) Acute ²	greater than 0.3	greater than or equal to 0.3	greater than or equal to 0.2	less than 0.2
.....(ii) Chronic	greater than 0.3 x WLA	greater than or equal to 0.3 x WLA	greater than or equal to 0.2 x WLA	less than 0.2 x WLA
.....(b) With paragraph (B) or (C) of this table available				
.....(i) Acute ²	greater than 0.5	greater than or equal to 0.3	greater than or equal to 0.3	less than 0.3
.....(ii) Chronic	greater than 0.67 x WLA	greater than or equal to 0.5 x WLA	greater than or equal to 0.5 x WLA	less than 0.5 x WLA
.....(5) Maximum TU value				
.....(a) Without paragraph (B) and (C) of this table available	greater than or equal to 3 x WLA	greater than or equal to 1 x WLA	greater than or equal to 1 x WLA	less than 1 x WLA
.....(b) With paragraph (B) or (C) of this table available and	greater than 1 x WLA	greater than or equal to	greater than or	less than 0.5 x

confirming toxic impact		1 x WLA	equal to 0.5 x WLA	WLA
(B) Near-field impact				
.....(1) Mortality within mixing zone ³	greater than or equal to 20%	less than or equal to 20%	less than to equal to 20%	less than 20%
.....(2) Stream community impact within mixing zone				
.....(a) Implied chemically ⁴	greater than or equal to 3 x IMZM	greater than or equal to 1.5 x IMZM	greater than or equal to IMZM	less than or equal to 0.5 x IMZM
.....(b) Implied toxicologically ⁴	greater than or equal to 1.0 TUa	greater than or equal to 1.0 TUa	greater than or equal to 1.0 TUa	less than 1.0 TUa
.....(c) Measured biologically	Toxic or severe unknown signature	Fair/poor community	Slight impact or unknown impact signature	None or non-toxic signature
(C) Far-field impact				
.....(1) Aquatic life use impairment (Ohio EPA biological criteria)	Yes ⁵	Yes or partial ⁵	Partial	None or non-toxic signature
.....(2) Stream community impact				
.....(a) Implied toxicologically ³	Significant effect	Significant effect	Unknown or slight effect	None
.....(3) Other indicators	Stress indicated	Stress indicated	Stress indicated	No stress

¹ Compare (per cent exceedances x geometric mean TU) to table factor.

² Use 0.3 x WLA for situations where AIM exists.

³ Results of ambient toxicity test are not binding or required for classification as to category but, if available, will be interpreted under the weight of evidence principle giving due consideration as to sampling location and conditions.

⁴ Based on effluent data. May not be appropriate for situations where AIM exists.

⁵ Lack of attainment due to toxic, complex or unidentifiable type of impact.

Effective: 6/7/2011

R.C. 119.032 review dates: 11/30/2010 and 6/7/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03, 6111.031, 6111.13

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973, 10/31/1997, 12/30/2002,
4/1/2007

Generic permit conditions.

[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 3745-33-01 of the Administrative Code.]

(A) Each Ohio NPDES permit shall contain the following requirements:

- (1) That all discharges authorized under the NPDES permit shall be consistent with the terms and conditions of the permit. The discharge of any pollutants more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.
- (2) That facility expansions, production increases, or process modification that result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharge of pollutants.
- (3) That the permittee shall submit to Ohio EPA monthly reports containing such information as shall be specified by the director.
- (4) That the permittee shall submit an annual report containing such information as shall be specified by the director.
- (5) That the permittee shall report in such manner as shall be specified by the director, any discharge of pollutants in violation of permit terms and conditions.
- (6) That the point source is equipped with instrumentation to monitor and record data and other information about the operation of the point source, if required by the director. Reports of monitoring results obtained by the permittee shall be submitted annually (or on such a more frequent schedule as is required in the permit) to Ohio EPA. Monitoring and recording of monitoring results shall be conducted in accordance with regulations adopted or subsequently amended by the administrator, including paragraphs (e) and (j) of 40 C.F.R. 122.41 and 40 C.F.R. 122.48.
- (7) That the permittee shall allow the director or the director's authorized representative to enter upon the permittee's premises. The authorized representative shall have access to any records required to be kept under the terms of the permit and may copy any such records. The director or the director's authorized representative shall have access to any monitoring

equipment or wastewater treatment facilities operated by the permittee for the purpose of inspecting such equipment or method required in the permit and shall have access to point sources for the purposes of sampling the discharge.

- (8) That the permittee shall maintain in good working order and operate at optimum levels in accordance with good engineering practices any wastewater treatment facilities or control systems installed to achieve compliance with the terms and conditions of the permit regardless of the quality of the effluent.
- (9) That the permittee shall provide adequately trained and qualified personnel as required by Chapter 3745-7 of the Administrative Code to operate such wastewater treatment facilities.
- (10) That the permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to the following:
 - (a) Violation of any terms or conditions of the permit.
 - (b) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
 - (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
- (11) That if a toxic effluent standard or prohibition (including a schedule of compliance) is established under section 307 (a) of the act for a toxic pollutant that is present in the permittee's discharge and such standards or prohibition (including a schedule of compliance) is more stringent than any limitation upon such pollutant in the NPDES permit, the director shall modify the permit in accordance with the toxic effluent standard and so notify the permittee.
- (12) That all permittees meeting the requirements of this paragraph post and maintain permanent signs as follows:
 - (a) A sign shall be posted at each outfall under permit. Outfalls covered by this provision include, but are not limited to, discharges of process wastewater, non-contact cooling water, sewage or discharges from remediation sites, and bypass or combined sewer overflow discharges. The director may waive this requirement for outfalls discharging to

municipal storm sewers if the outfall is not in close proximity to a lake, reservoir, pond, river, stream, creek or other surface water of the state. Signs are not required at in-plant sampling outfalls, or at outfalls that are not accessible to the public by land or by recreational use of the water body.

- (b) The sign shall include, at a minimum, the name of the permittee, the permit number, and the outfall number identified in the permit. The information shall be printed in letters not less than two inches high.
 - (c) The sign shall be a minimum of two feet by two feet and the bottom of the sign shall be a minimum of three feet above the ground.
 - (d) The director may approve variations from these dimensions to increase the legibility or information of the sign.
- (B) No NPDES permit shall be issued for a semi-public disposal system whenever the sewage system of a publicly owned treatment works is available and accessible.
- (C) Notwithstanding the issuance or non-issuance of an NPDES permit to a semi-public disposal system, whenever the sewage system of a publicly owned treatment works becomes available and accessible, the permittee operating any semi-public disposal system shall abandon the semi-public disposal system and connect it into the publicly owned treatment works.
- (D) Notice by POTWs of new pollutants.
- (1) All publicly owned treatment works (POTWs) must provide adequate notice to the director of the following:
 - (a) Any new introduction of pollutants into the POTW from an industrial discharger, which new introduction of pollutants would be subject to treatment technology-based limits under section 301 or 306 of the act if the indirect discharger were directly discharging those pollutants to waters of the state.
 - (b) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - (2) For purposes of paragraph (D)(1) of this rule, adequate notice shall include the

following information:

- (a) The quality and quantity of effluent introduced into the POTW.
 - (b) Any anticipated impact of the change on the quality or quantity of effluent to be discharged from the POTW.
- (E) The director may require, as a permit condition or otherwise, electronic submittal of NPDES applications, reports and monitoring data using information systems compatible with those of Ohio EPA.
- (F) Notification to public water supply operators.
- (1) Permits for facilities designated by the director as major discharges, in any of the following locations, shall require the permittee to notify the public water supply operator as soon as practicable after a discharge begins that results from a spill, separate sewer overflow, bypass, upset, or combined sewer overflow that reaches waters of the state:
 - (a) Discharges within three thousand feet of a public water supply intake located in a lake.
 - (b) Discharges within ten stream miles upstream of a public water supply intake located in a reservoir or any other surface water of the state.
 - (2) The director shall include in the permit a requirement for the permittee to have a notification plan with the public water supply operator that defines specific notification requirements and what constitutes notification "as soon as practicable." In the affected permits, the director shall provide the telephone number and contact information related to the public water supply operator.
 - (3) For publicly owned treatment works and other permittees that discharge only domestic sewage, the only spills that need to be reported under paragraph (F) of this rule are those that occur at the treatment works.
- (G) The director shall include in the issuance of an Ohio NPDES permit any permit condition required by the act or regulations adopted by the administrator, including 40 C.F.R. 122 to 125, 129 to 133, 136, 400 to 471, 501 and 503. The director may include in an Ohio NPDES permit any other terms or conditions the director finds reasonable and appropriate for the prevention and abatement of pollution.

Effective: 03/31/2017
Five Year Review (FYR) Dates: 12/20/2021

Promulgated Under: 119.03
Statutory Authority: 6111.03
Rule Amplifies: 6111.03
Prior Effective Dates: 12/30/1973, 2/28/1990, 10/31/1997, 12/30/2002,
12/1/2006, 6/7/2011

3745-33-09 **Pollutant minimization programs.**

When pollutant minimization programs are required under Chapter 3745-1, 3745-2 or 3745-33 of the Administrative Code, the pollutant minimization program shall be developed in accordance with this rule.

- (A) The pollutant minimization program shall examine all potential sources of the pollutant with the goal of maintaining the effluent at or below the water quality-based effluent limit (WQBEL). The pollutant minimization program shall include, but is not limited to, the following:
 - (1) Submission of a control strategy designed to proceed toward the goal;
 - (2) Implementation of appropriate cost-effective control measures, consistent with the control strategy;
 - (3) Monitoring necessary to measure the progress toward the goal, including at least quarterly monitoring for the pollutant in the influent to the wastewater treatment facility and semi-annual monitoring of potential sources of the pollutant; and
 - (4) An annual status report that shall be sent to Ohio EPA including the following information. The report shall be submitted before March first of the following year, or, for discharges with approved pretreatment programs under Chapter 3745-3 of the Administrative Code, this information shall be submitted with annual reports required under that chapter:
 - (a) All minimization program monitoring results for the previous year;
 - (b) A list of potential sources of the pollutant; and
 - (c) A summary of all actions taken to meet the WQBEL for the pollutant.
- (B) A pollutant minimization program may include the submittal of pollution prevention strategies that use changes in production process technology, materials, processes, operations, or procedures to reduce or eliminate the source of the pollutant.
- (C) A pollutant minimization program shall not be required if the permittee demonstrates that the discharge of a pollutant with a WQBEL below the quantification level (QL) is reasonably expected to be in compliance with the WQBEL at the point of discharge into the receiving water. The demonstration may include, but is not limited to, the following:
 - (1) Treatment information, including information derived from modeling the destruction or removal of the pollutant in the treatment process;

- (2) Mass balance information; and
 - (3) Fish tissue studies or other biological studies.
- (D) In determining appropriate cost-effective control measures to be implemented in a pollutant minimization program, the permittee shall consider the following factors:
- (1) Significance of sources;
 - (2) Economic and technical feasibility; and
 - (3) Treatability.
- (E) The permit shall contain a reopener clause stating that the director may modify or revoke the permit to revise or remove the requirements of this rule if supported by information generated as a result of implementing the requirements of this rule.

Effective: 6/7/2011

R.C. 119.032 review dates: 11/30/2010 and 6/7/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973, 10/31/1997

3745-33-10 **Applicability of rules of procedure.**

Ohio NPDES permit applications shall be acted upon and challenged in accordance with provisions of Chapters 3745. and 119. of the Revised Code and Chapter 3745-47 of the Administrative Code.

Effective: 10/31/1997

R.C. 119.032 review dates: 03/22/2011 and 03/22/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973