

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Ohio NPDES General Permit Program

Rule Number(s): OAC Rules 3745-38-01 and 3745-38-02

Date: October 29, 2014

Rule Type:

New

5-Year Review

Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 3745-38 of the Ohio Administrative Code (OAC) contains two rules addressing the procedural and technical requirements for the administration of Ohio EPA's National Pollutant Discharge Elimination System (NPDES) General Permits program. The chapter details the procedures Ohio EPA must follow in the issuance, modification and revocation of general NPDES permits as well as procedures for granting and terminating authorizations to discharge under the general permits. The chapter also contains requirements applicable to entities seeking general permit coverage. The specific General NPDES permit terms and conditions are not part of this rulemaking.

Whenever a municipality, industry, or other entity wishes to discharge water to a surface water of the State, they must first obtain a permit from the Ohio EPA Division of Surface Water (DSW). This permit is called a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits regulate wastewater discharges by limiting the quantities of pollutants to be discharged and imposing monitoring requirements and other conditions. The limits and/or requirements in the permit help ensure compliance with Ohio's Water Quality Standards and Federal Regulations, all of which were written to protect public health and the aquatic environment.

There are two types of NPDES permits; individual and general. An individual NPDES permit is unique to each facility. The limitations and requirements in an individual permit are based on the facility's operations, type and amount of discharge, and receiving stream, among other factors. Some types of discharges contain very similar or, in many cases, identical effluent limitations and requirements; for these discharges requirements can be written into one permit that can be applied to certain categories of discharges. This is a general permit.

A general permit is one permit that covers facilities that have similar operations and type of discharge. It may apply statewide, or cover a specified geographic area. By covering many discharges under one permit, a general NPDES permit is an efficient alternative to an individual NPDES permit. General permits are used to cover discharges that will have a minimal effect on the environment.

Both rules in OAC Chapter 3745-38 have been reviewed as part of the five year rule review process. Only minor revisions and clarifications are proposed for the rules. Please see the related fact sheet for the draft rules comment period for additional information.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

OAC Rule 3745-38-01 is authorized by Ohio Revised Code 6111.03(G) and 6111.035.

OAC Rule 3745-38-02 is authorized by Ohio Revised Code 6111.03(G) and 6111.035.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

Yes, the regulations implement federal requirements. The corresponding federal requirements can be found in 40 C.F.R. 122.28. As mentioned above, an entity must obtain an NPDES permit from Ohio EPA prior to discharging pollutants into waters of the state. If available, an entity can apply for coverage under an NPDES General permit to meet this regulatory requirement.

Yes, these regulations enable the state to maintain delegation to administer the General NPDES permit program. In August of 1992, the U.S. EPA delegated to Ohio EPA the authority to issue general NPDES permits. Ohio law regarding general permits (Ohio Revised Code Section 6111.035) was originally written to apply to coal mining and reclamation activities. It was revised to expand the scope of general permits to storm water discharges and then, in 1993, to include wastewater discharges with a de minimis impact on the receiving stream. Rules addressing the general NPDES permit program are in Ohio Administrative Code Chapter 3745-38. DSW has developed and issued general permits for a variety of discharges in order to increase efficiency and to help make it easier for various dischargers to obtain an NPDES permit.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

No. OAC Chapter 3745-38 mirrors requirements found in 40 C.F.R. 122.28.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

There are several advantages to obtaining coverage under a general NPDES permit instead of an individual NPDES permit, such as: simplified one-page application form; the one-page application form doesn't require the inclusion of effluent data for most dischargers; Ohio EPA processing time is reduced, allowing quicker review time; permit consistency with other similar facilities; permit requirements are available prior to applying; and the annual discharge fee may not apply. Permit issuance fees also do not apply.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

In terms of surface water quality, Ohio EPA, Division of Surface Water measures the success of its programs through biological and chemical sampling and determines whether or not a water body is attaining its designated uses. The status or health of Ohio's streams, rivers and lakes is reported every two years in the Integrated Water Quality Monitoring and Assessment Report, which is available on Ohio EPA's website at:

<http://www.epa.ohio.gov/dsw/tmdl/OhioIntegratedReport.aspx>.

Water quality attainment measured downstream of entities regulated under General NPDES permit is a measure of success of the permit requirements.

Administrative success is measured by the permit backlog; general permits assist DSW in maintaining a low backlog of expired permits by allowing the Division to save time by drafting a permit only once, and using it for a number of facilities.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio EPA sent electronic and hard copy interested party notification of the rules' availability for Early Stakeholder Outreach to the Division of Surface Water's rulemaking interested party list on August 20, 2014. The comment period ended on September 22, 2014.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Ohio EPA received comments from three stakeholders. The following is a summary of the comments received:

- U.S. EPA Region 5 commented that the definition of "point source" in OAC rule 3745-38-01 did not include leachate and the federal regulations at 40 C.F.R. 122.2 do.
- Ohio Home Builders Association made the following comments:
 - Encourages movement toward increasing availability of general permits
 - Encourages electronic submission where feasible

- In regards to storm water general permits, strongly discourages Ohio EPA from developing numeric nutrient standards when developing nutrient water quality criteria
- Concerned with and possibly opposed to potential adoption of Effluent Limitation Guidelines as well as effluent testing during and post construction.
- Concerned with possible inclusion of any “green” infrastructure practices as new storm water best management practices. Comments include several questions about “green” infrastructure.
- Ohio Environmental Council made the following comments:
 - Recommends OAC rule 3745-38-02 be amended to exclude general permit eligibility for any and all point sources discharging to “high quality waters” as defined in OAC rule 3745-1-05(A)(10)(a)-(d).
 - Recommends Ohio EPA consider eliminating “water-borne wastes resulting from coal mining and reclamation activities” from general permit eligibility.

In response to U.S. EPA comments, Ohio EPA revised the definition of “point source” to include leachate.

Ohio EPA has not made any changes to the rule in response to the Home Builders’ Association comments. Most of these are comments directed toward general permit conditions for specific types of discharges, not the administrative processing of those permits. Those comments are appropriate when those particular permits come up for renewal. Ohio EPA would consider requests for additional types of general permits; the Agency is also developing electronic NOI capability, which is projected to be available in approximately one year.

Ohio EPA has also not made any changes to the rule in response to the Ohio Environmental Council comments. Excluding general high quality waters from coverage would so limit the applicability of general permits that few dischargers could qualify. This would severely limit the administrative usefulness of general permits. Ohio EPA will consider the comments on the Surface Coal Mining General Permit when that permit is published for public notice.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rule contains administrative requirements for the General NPDES permit program and is not based on science. Data used to support this rulemaking include:

- 40 C.F.R. 122

- OAC Chapter 3745-33
- ORC 6111.01

These items form the basis for the program requirements in Ohio EPA's rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Ohio EPA reviewed the rules and determined that major revisions are not necessary at this time. A major reorganization was made during the last five year rule review. No revisions have been made to U.S. EPA's General NPDES permit regulations since the last review. These rules are, in themselves, an alternative regulation to writing individual permits for each discharge. The streamlined process saves both the state and the regulated community time and money.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not applicable. As mentioned above, Ohio EPA has been delegated authority from U.S. EPA to implement the General NPDES permit program in accordance with, at minimum, federal requirements. The federal rules do not allow performance-based regulation in the NPDES permitting programs.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio EPA is the delegated state agency for the NPDES General Permit program. Only a review of existing Ohio EPA rules was necessary and no duplication was found.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Agency will continue to implement the rules through current practices, which include inspections and reporting requirements to ensure the rules are applied consistently throughout the state. As previously noted, development of electronic NOI submittal is expected to reduce permit processing time by reducing the number of processing steps.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

No new costs will be incurred through the draft revisions in this rulemaking.

In regards to the General NPDES permitting program as a whole:

- a. The impacted business community will include all discharges covered under or seeking coverage under General NPDES permits.
- b. The nature of the adverse impact may include: time required to complete the Notice of Intent application form; application fee as required by ORC Section 3745.11, which can range from \$100.00 to \$500.00 depending on the project; all necessary treatment of the wastewater to be discharged, if needed; proper maintenance and operations expense; wastewater sample collection and proper laboratory analysis; compliance monitoring paperwork; and any potential enforcement actions against a facility for noncompliance issues.
- c. The cost of compliance with the General NPDES permit program rules is site specific and will vary greatly based on the type of project generating the discharge of wastewater to waters of the state and type of general permit an applicant is covered under.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

In regard to the National Pollutant Discharge Elimination System (NPDES) permitting programs as a whole, the U.S. Congress made the determination that the intent (fishable, swimmable waters) justifies the adverse impact to the regulated business community when they passed the initial and subsequent amendments to the Federal Water Pollution Control Act (also known as the Clean Water Act).

General permits are one of the Clean Water Act’s provisions intended to minimize the cost of permitting on the regulated community. The shorter applications, lower fees, and reduced

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public notice requirements associated with general permits reduce the costs and processing time associated with the Act's requirements. Revisions to the draft rules in this rulemaking have no additional impact on the business community.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Overall, the regulations do not provide exemptions for small businesses. Corresponding federal regulations and the Ohio Revised Code do not provide for any general exemptions or alternative means of compliance for permittees. Specific general permits do provide alternate means of compliance or lesser requirements for small businesses and small public entities. For example, the Pesticide Applications General Permit and the Geothermal Heating and Cooling General Permit contain lesser requirements for small applications and small public entities.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The failure to obtain coverage under an NPDES permit (general or individual) is not considered a paperwork violation and would not fall under the scope of ORC 119.14. However, the Agency uses enforcement discretion and first-time violations of reporting requirements are typically waived.

18. What resources are available to assist small businesses with compliance of the regulation?

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.

- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- Ohio EPA, Division of Surface Water's Compliance Assistance Unit provides technical support to small (less than 0.5 million gallons per day) wastewater treatment plants. Additional information is available at: http://www.epa.ohio.gov/dsw/compl_assist/compasst.aspx.
- U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5888.
- Ohio EPA, Division of Surface Water's General Permit Program web page contains links to general permits, compliance documents and application forms. Additional information is available at: <http://epa.ohio.gov/dsw/permits/gpfact.aspx>.