

Proposed Rules – Wastewater Permitting

Water Quality Standards Rule (OAC 3745-1-06), Implementation of Water Quality Standards Rules (OAC 3745-2), and Ohio NPDES Permit Rules (OAC 3745-33)

What do these chapters of the OAC cover?

These chapters of the Ohio Administrative Code (OAC) protect lakes, rivers, streams and other surface water bodies from pollution.

Chapter 3745-2 covers the technical process for converting Ohio water quality standards (WQS) to wasteload allocations that can be used as permit limits.

Chapter 3745-33 contains the administrative and technical requirements for writing and obtaining National Pollutant Discharge Elimination System (NPDES) permits.

Rule 3745-1-06 pertains to mixing zone requirements for non-thermal and thermal constituents.

Why are the rules under review and what changes are being proposed?

The rules under OAC Chapters 3745-2 and 3745-33 have been reviewed and amended pursuant to section 119.032 of the Ohio Revised Code (ORC). Ohio EPA is required to review its rules every five years to determine if the rules need to be revisited. The Agency has reviewed eighteen rules at this time and has identified changes needed to these rules. The eighteen rules reviewed and being changed are listed on the last page of this fact sheet.

Three broad types of changes are being considered: citations to documents incorporated by reference are updated; grammatical edits are made; and equations that could not be recreated using the standard rule authoring software are inserted, unchanged, as graphics.

In addition, the following specific changes are proposed. Some of these changes are required by U.S. EPA as a condition of maintaining NPDES permit delegation.

Rule 3745-1-06

Revisions would remove language regarding the prohibition of mixing zones but retain the reference to Chapter 3745-2 for mixing zone requirements.

Rule 3745-2-02

Revisions would amend the definition of “Nonpoint source” in response to U.S. EPA comments.

Rule 3745-2-06

Revisions would remove expired language pertaining to the consideration of pollutants in a discharger’s intake water in establishing water quality-based effluent limitations (WQBELs).

Rule 3745-2-08

Revisions would allow and limit thermal mixing zones in state lakes, and in waters designated Exceptional Warmwater Habitat and Coldwater Habitat.

In response to comments, Ohio EPA is also proposing to add a mixing zone criterion to protect human health from scalding or burns in the event of a temporary exposure. Revisions would also clarify that 316(a) demonstrations do not need to go through alternatives analysis because this analysis is built into the thermal limits review process.

Rule 3745-2-12

In response to comments, revisions would clarify that a TMDL is the sum of all existing or projected loads and remove a reference to sum as it relates to the margin of safety.

Rule 3745-33-01

Revisions would amend the definition of “Nonpoint source” in response to U.S. EPA comments.

Rule 3745-33-02

Revisions would clarify that Ohio NPDES permits are required for discharging land application systems for treated sanitary wastewater and clarify that Ohio NPDES permits are required for sludge disposal facilities. Ohio EPA uses NPDES permits to administer the federally-delegated sludge permit program.

Revisions would include clarifying language that Ohio NPDES rules shall be no less stringent than federal regulations.

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Rule 3745-33-03

Revisions would include a requirement that NPDES permit application forms contain federal requirements at a minimum.

Revisions would also include confidential business information restrictions from federal NPDES rules, in response to U.S. EPA comments and legal review.

Rule 3745-33-04

Revisions would amend the requirement prohibiting the imposition of more stringent standards of performance for 10 years after completion of construction. U.S. EPA is requiring Ohio to revise this language because this exception does not exist for publicly-owned treatment works (POTWs) or water quality standards in either the federal Clean Water Act or NPDES regulations. U.S. EPA considers this provision inconsistent with the Clean Water Act. In response to comments, in place of current rule language we have included a reference to federal requirements, thereby eliminating any inconsistency.

The proposed rule also contains several federal rule provisions in response to U.S. EPA legal review. These include when an application is complete, protection of other states' WQS, and provisions for permit modifications, revocations and terminations requested by interested parties.

Revisions also include a provision for the modification of concentrated animal feeding operation NPDES permits in accordance with federal regulations for revisions to nutrient management plans.

Rule 3745-33-05

This rule contains several revisions: (1) Paragraph (A)(3)(b) currently contains a fish tissue value of 1.0 mg/kg that may be used as an alternative to determine compliance with the mercury water quality standard. The rule would change this fish tissue value to 0.3 mg/kg to conform to current science and U.S. EPA guidance. In response to comments, revisions also include the option of using a weighted average of various fish species locally consumed to determine compliance; (2) New paragraphs (C)(1) and (C)(2) include clarifications on when 7-day average and daily maximum effluent limits are used in permits; these requirements are based on federal rules 40 CFR 122.45(d) and (e); (3) New paragraph (E) allows the director to set effluent limits based on the design specifications of a treatment plant; and (4) The compliance schedule language would be revised to allow for a short "break-in" period for new source treatment plants, similar to federal rule 40 CFR 122.29(d)(4).

Rule 3745-33-07

Revisions would add language pertaining to minimum monitoring requirements for whole effluent toxicity testing. U.S. EPA noted that Ohio's application rules and practices

require less whole effluent toxicity testing for POTWs than do federal rules. Federal rules require that four test results be submitted with the application, or that permits require annual testing. To meet this requirement, Ohio EPA is proposing a minimum annual test requirement in public permits for facilities with design flows of 1.0 million gallons per day or greater.

Are there changes from the March 2010 draft rule revisions?

Yes, changes were made to ten rules in response to comments received from interested parties. Several of these changes are mentioned in the previous section. In addition, draft rule language in OAC 3745-33-03(E) was revised to clarify notice requirements of confidential information; draft language in OAC 3745-33-04(A)(2)(f) pertaining to impaired waters was removed; draft language in OAC 3745-33-04 pertaining to permit modifications, revocations and terminations was revised to include additional language from federal regulations; and language in OAC 3745-33-07(C)(2)(f) specifying the practical quantification levels for PCBs to be U.S. EPA Method 1668B was removed. Rule OAC 3745-3-07 was removed from the package. Draft changes for this rule will be considered in the five-year review.

How are the revisions formatted in the rules?

Text proposed to be deleted is struck through. Proposed new text is underlined.

How will the revisions affect the regulated community?

The proposed rule changes are mostly housekeeping in nature or clarification of current practices. Proposed changes to rule 3745-33-07 would increase monitoring costs by \$1300-\$1600 per year for POTWs required to do chronic toxicity testing, or by \$500-\$750 for POTWs required to do acute toxicity testing. These extra costs would fall only on those POTWs under the rule that are not already testing toxicity.

Proposed changes to rule 3745-33-04 would not change overall costs, but may decrease the time in which they need to be paid for dischargers no longer included in the ten year protection period.

The fish tissue value change in rule 3745-33-05 would make it more difficult for dischargers to use this alternative method for determining compliance with the mercury water quality standard. The impact of this rule change cannot presently be estimated because no discharger has ever used this provision.

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What is the rulemaking schedule?

A public hearing on these proposed rules will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. This hearing will be held **at the Ohio EPA Conference Center, Room B, 50 West Town Street, Suite 700, in Columbus, Ohio at 2:00 p.m. on January 6, 2011**. The purpose of the public hearing is to give interested persons the opportunity to present oral or written comments on the proposed rules.

At the close of the public comment period, the Agency will review the comments, make any necessary changes to the rules, and then adopt the rules. This is roughly a two-month process from the close of the comment period. A responsiveness summary will be prepared and sent to everyone who comments on the proposed rules.

How can I comment on the proposed rules?

Please submit comments in one of the following ways:

Make oral comments or submit written comments at the public hearing on January 6, 2011.

By email: dsw_rulecomments@epa.state.oh.us

By fax: 614-644-2745

By postal mail:

Rule Coordinator
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Comments on the proposed rules must be received no later than 5:00 p.m. on January 6, 2011.

How can I get a copy of the proposed rules or more information?

Copies of this fact sheet and the proposed rules are on the Division of Surface Water website at www.epa.ohio.gov/dsw/Home.aspx.

For more information on the proposed rules, please contact:

Eric Nygaard
614-644-2024
eric.nygaard@epa.state.oh.us

Rules in OAC Chapters 3745-1, 3745-2, 3745-3 and 3745-33 Proposed for Revision

Rule #	Title	Action
OAC Chapter 3745-1 Water Quality Standards		
3745-1-06	Mixing zones.	Amend
OAC Chapter 3745-2 Implementation of Water Quality Standards		
3745-2-02	Definitions.	Amend
3745-2-04	Determinations preliminary to development of water quality-based effluent limitations.	Amend
3745-2-05	Calculating wasteload allocations.	Amend
3745-2-06	Application of preliminary effluent limitations.	Amend
3745-2-07	Additive effects of pollutants.	Amend
3745-2-08	Mixing zone demonstrations and sizing requirements.	Amend
3745-2-09	Whole effluent toxicity provisions and water quality based effluent limit calculation procedures.	Amend
3745-2-10	Wasteload allocation for ammonia-nitrogen toxicity.	Amend
3745-2-12	Total maximum daily loads.	Amend
OAC Chapter 3745-33 Ohio NPDES Permits		
3745-33-01	Definitions.	Amend
3745-33-02	Ohio NPDES permit required.	Amend
3745-33-03	Permit applications.	Amend
3745-33-04	Permit actions.	Amend
3745-33-05	Authorized discharge levels.	Amend
3745-33-07	Establishing permit conditions.	Amend
3745-33-08	Generic permit conditions.	Amend
3745-33-09	Pollutant minimization programs.	Amend