

## Wastewater Pollution Control – Proposed Rules

### Water Quality Trading Rules

(OAC 3745-5-01 through 3745-5-14)

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#### What does OAC 3745-5 cover?

This chapter of the Ohio Administrative Code (OAC) provides the administrative requirements for the development and implementation of water quality trading programs in Ohio. Water quality trading is a voluntary program that allows a National Pollutant Discharge Elimination System (NPDES) permit holder (point source) to meet its regulatory obligations by using pollutant reductions generated by another wastewater point source or non-point source. Water quality trading is a tool for achieving water quality improvements, and under the right circumstances, has the potential to yield both environmental and economic benefits, while promoting increased interaction among watershed stakeholders.

#### Why are these rules being amended?

The rules under OAC Chapter 3745-5 have been reviewed 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 revisited.

State law and the federal Clean Water Act require Ohio EPA to periodically update rules to reflect the latest scientific information. The Agency has reviewed 14 rules due for review at this time and has identified changes needed to eleven of the rules. Therefore, we are planning revisions to eleven rules and no changes to three rules, as listed in the table on the next page.

#### What changes are being proposed?

A majority of the revisions consist of minor updates to references and grammatical edits.

In addition, the following specific proposed rule changes are summarized below:

- **Rule 01** – Updating references, titles and Web links; Deleting definition for technology based effluent limit.
- **Rule 02** – Updating references.
- **Rule 03** – Revising rule to state that use of a water quality credit shall not cause **or contribute to** a violation of water quality standards; adding a provision that water quality credits may be used to comply with technology based limits for total nitrogen and total phosphorus specified in the antidegradation rule; adding provision that nonpoint source load reductions

funded through Ohio EPA's Water Resource Restoration Sponsor Program are not eligible to generate water quality credits; including the definition of "technology based effluent limit" within rule 3745-5-03; revising the definition of "technology based effluent limit" to include a limit established based on the best professional judgment of the permit writer pursuant to section 402(a)(1) of the Clean Water Act and 40 C.F.R. § 122.44(a)(1); and prohibiting load reductions that are achieved by implementing BMPs or habitat restoration projects from being eligible for the generation of water quality credits when the practices or projects are implemented to comply with a nutrient management plan required under a permit-to-operate.

- **Rule 04** – Adding date by which two existing trading programs must submit water quality trading management plans.
- **Rule 05** – Fixing a punctuation error.
- **Rule 06** – Changing the size of the hydrologic unit codes that must be used when identifying areas where nonpoint source projects might be located.
- **Rule 09** - Revising water quality baseline provisions for areas where there is not an approved TMDL or where water quality fully supports designated uses
- **Rule 11** – Identifying additional compliance-related provisions that will be included in NPDES permits when the permittee is participating in a water quality trading program.
- **Rule 12** – Revising the word "his" to "the director's" in the first paragraph to provide for gender neutral language.
- **Rule 13** – Fixing a punctuation error.
- **Rule 14** – Revising language to include biological and stream habitat parameters in ambient water quality monitoring plans.

#### Who will be regulated by these rules?

Applicability of the rules will not differ from the current version of the rules, which includes NPDES permit holders. However, the water quality trading rules are voluntary, so an NPDES permit holder will be affected by the rules only if they decide to participate in a water quality trading program.

#### What additional information is the Agency

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Proposed Rules for OAC 3745-5*

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**seeking?**

The Agency wants to hear from interested stakeholders who may be impacted by these proposed rule revisions. General comments and specific factual information are welcome.

**How are the amendments formatted in the proposed rules?**

Text proposed for deletion is struck through; new text is underlined.

**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 10:30 a.m. on August 21, 2012.** 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. Final rules could be adopted in winter 2012.

**How can I comment on the proposed rules?**

Please submit your comments in one of the following ways:

By email: [dsw\\_rulecomments@epa.state.oh.us](mailto: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 draft rules must be received no later than **5:00 p.m. on August 21, 2012.**

**How can I get 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](http://www.epa.ohio.gov/dsw/Home.aspx).

For more information about the proposed rules, please contact Gary Stuhlfauth by phone at (614) 644-2026 or via email at: [gary.stuhlfauth@epa.state.oh.us](mailto:gary.stuhlfauth@epa.state.oh.us).

**Rules in OAC Chapter 3745-5 with 5-Year Review Dates of 1/1/2012**

<b>Rule Number</b>	<b>Rule Title</b>	<b>Action</b>
3745-5-01	Definitions: as used in this chapter.	Amend
3745-5-02	Purpose and applicability.	Amend
3745-5-03	Prohibitions and restrictions.	Amend
3745-5-04	Water quality trading: general requirements.	Amend
3745-5-05	Water quality trading: general requirements for a water quality trading management plan application.	Amend
3745-5-06	Water quality trading: requirements for a water quality trading management plan application.	Amend
3745-5-07	Requirements for water quality credits.	No Change
3745-5-08	Water quality credits and pollutant loading calculations.	No Change
3745-5-09	Determining water quality baselines.	Amend
3745-5-10	Water quality trading: trading ratios.	No Change
3745-5-11	Water quality trading: incorporating trades into individual NPDES permits and general permits.	Amend
3745-5-12	Record keeping, reporting requirements, compliance, enforcement, and oversight.	Amend
3745-5-13	Public participation requirements.	Amend
3745-5-14	Ambient water quality monitoring requirements.	Amend