

OhioEPA
Division of Surface Water
Response to Comments

ERF Package Number: # 50137

Ohio Administrative Code (OAC) Proposed Rules:

<u>Rule Number</u>	<u>Rule Title</u>	<u>Final Action</u>
3745-38-01	Definitions.	Amend
3745-38-02	Requirements for general national pollutant discharge elimination system (NPDES) permits.	New
3745-38-02	Ohio NPDES permit required.	Rescind
3745-38-03	General permits coverage.	Rescind
3745-38-04	Individual or alternative general permit requirements.	Rescind
3745-38-05	Alternative NPDES authorization.	Rescind
3745-38-06	Notification of general permit coverage.	Rescind
3745-38-07	Criteria for issuing and renewing general permits.	Rescind
3745-38-08	Modification of general permits.	Rescind
3745-38-09	Transfer of general permit coverage.	Rescind
3745-38-10	Applicability of rules procedure.	Rescind
3745-38-11	Revocation of general permits.	Rescind
3745-38-12	Termination of general permit coverage.	Rescind

Agency Contact for this Package

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A public hearing was conducted on March 31, 2010 and this document summarizes the comments and questions received during the proposed rules interested party comment period, which ended March 31, 2010.

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

In an effort to help you review this document, the questions are grouped by rule number.

Rule 3745-38-02(E)(2)(a)(iii)

Comment: NEORSD appreciates the opportunity to comment on the proposed changes to Ohio Administrative Code (OAC) Chapter 3745-38. As a permittee with a

number of National Pollutant Discharge Elimination System (NPDES) General Permits and the potential to apply for coverage under additional General Permits we remain concerned with the renewal processes surrounding the General Permits. The language modifications made to OAC 3745-38-02(E)(2)(a)(iii) appear to address issues with lapses in permit coverage during the renewal process, however, other issues with the renewal process remain. The most significant of these issues is in regard to situations of mining and construction general permittees. The District appreciates that general permittees will only need to submit a NOI and fee once every five years, but are concerned with how a permittee's coverage will be tracked and if (as general permits currently state) Ohio EPA will notify a permittee prior to expiration of coverage. The District is also concerned with the situation when a project spans more than one permit cycle that the mining and construction permittee must request coverage under a new general permit. Will the permittee have to meet standards set in the new permit or be able to follow the standards set in the permit in effect when the NOI was submitted? This is especially troubling in the case of construction activities that are being performed under contracts. At best it would be difficult for the contractor to anticipate future permit requirements when entering into a contract for the project. The District recommends that Ohio EPA adopt language to allow shorter-term projects that cross more than one permit cycles to remain covered by the general permit in effect when the project was initiated. **(Julius Ciaccia, Executive Director, NEORSD)**

Response: We believe both of these issues are currently being addressed. First, coverage under an expired general permit remains in effect until we contact the permittee and provide instructions for the re-submission of a Notice of Intent(NOI). This process is contained within each general permit. Regarding the grandfathering of original construction general permit requirements, we do this within the construction general permit to the extent allowable under federal regulation. We do not have the authority to grandfather permittees out of federal minimum requirements and associated deadlines such as the recently finalized Construction and Development Effluent Guidelines, 40 CFR 450.

End of Comments.