



**Division of Surface Water
Response to Proposed Rules Comments**

Ohio Administrative Code (OAC) Rules:

<u>Rule Number</u>	<u>Rule Title</u>	<u>Proposed Action</u>
3745-42-01	Definitions.	Rescind
3745-42-01	Definitions.	New
3745-42-06	General permit to install requirements.	Rescind
3745-42-06	General permit to install requirements.	New
3745-42-08	General isolation distance requirements.	Rescind
3745-42-08	Isolation distance requirements.	New
3745-42-09	Requirements for filter sand.	Rescind
3745-42-11	Holding tanks.	Rescind
3745-42-11	Holding tanks.	New

Agency Contact for this Package

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This document summarizes the 32 comments and questions received during the proposed rule comment period, which ended February 24, 2009 at 5:00 p.m.

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 3745-42-01 Definitions.

Comment 1: Item U, Design flow. This change would effectively de-rate our sewage treatment plants as viewed by the NPDES program, significantly

reducing allowable discharge loadings. At a time when we are working to increase flow to the plants for CSO control, we find this unacceptable and request that the definition be withdrawn.

Ohio EPA Response 1: Ohio EPA will delete this definition from Rule 3745-42-01.

Comment 2: Item Z, the Emergency management zone is defined as --a semi-circle that extends five hundred feet upstream ... and one hundred feet downstream". Please clarify the point on the semi-circle that separates the extensions.

Ohio EPA Response 2: The semi circle is formed from an extension of 500 feet upstream of the water intake location and 100 feet downstream of the water intake location.

Comment 3: Paragraph (BBB) of rule 3745-42-01 of the Administrative Code (Septage) includes "material removed from any ... holding tank" in the definition of septage. As noted under item BB, this includes "device(s) ... used to accumulate ... industrial waste." As a long time septage receiving facility, we are concerned that this change to accepted terminology by the Agency could lead to process issues at our treatment plant. Therefore, we request that the definition be revised to coincide with standard industry practices or deleted altogether.

Ohio EPA Response 3: Ohio EPA will delete this definition from Rule 3745-42-01.

Rule 3745-42-06 General permit to install requirements.

Comment 4: Paragraph (C)(2)(c) states: Be made only on forms deemed acceptable by the director or an authorized representative. On this face of it, this paragraph authorizes each Ohio EPA District Office to create its own forms for general permits to install. We believe that this is overly confusing and should be edited.

Ohio EPA Response 4: This paragraph does not authorize each Ohio EPA district office to create its own forms. Nor would it ever be practical or the intent of the Ohio EPA to have unique forms for each district office. Rather the statement "director or an authorized representative" allows the director to delegate the duty of form development and is necessary to ensure effective use of Agency resources.

Comment 5: We are confused by paragraph (C)(2)(e)(iii) [of Rule 3745-42-06]. In a previous rule making, we commented that, in the case of sewer extensions, the point of connection to the existing system was a much more descriptive and

useful measure, and that was added to the final regulation. Now, it has been deleted. We request that it be reinstated or that the Agency fully justify its deletion and provide guidance to local sewer operators who will be relying on these documents to manage their systems.

Ohio EPA Response 5: The previous rule referred to “approximate center of the treatment works or the point of connection to the sewerage system”, where as the revised rule refers to the universal term of “disposal system”. The term “disposal system” includes the definition of both a “treatment works” and a “sewerage system” and was chosen to provide for consistency throughout the chapter. All previous references to “treatment works” and “sewerage systems” were replaced with the term “disposal system”.

To provide the requested clarification, the following will be added to the comment under paragraph (C)(2)(e)(iii) of Rule 3745-42-06:

[Comment: **When considering the components of a disposal system, the latitude and longitude of the approximate center of the treatment works or the point of connection to the sewerage system**, to the nearest five seconds should be used for the location. Latitude and longitude are available from USGS topographical maps, available at the following web link: <http://mapping.usgs.gov>.]

Comment 6: Paragraph (G)(I)(c) [of Rule 3745-42-06] would appear to bar issuance of a general permit to install to the Cities of Gahanna and Westerville, since they have recently had findings and orders issued to them. However, a developer intending to connect to the subject sewer systems would not be similarly barred. We believe that this is contradictory.

Ohio EPA Response 6: Paragraph (G)(1)(c) of Rule 3745-42-06 applies to any applicant, whether a developer or a city/municipality, that has documented non-compliance. In either case, an applicant with documented non-compliance would not qualify for a general permit. This provision is in the current rule and has, to date, not created a problem.

Rule 3745-42-08 Isolation distance requirements.

Comment 7: The isolation distances from surface waters of the state are excessive considering the ultimate discharge point is typically the adjacent stream. The 300 foot distance is an arbitrary value with no consideration to floodplain location, topography, etc.; a more realistic value would be 75 feet.

Ohio EPA Response 7: The isolation distances from surface waters of the state were developed to protect public health and the environment. In

addition, the rule was developed to be more consistent with setbacks for similar facilities under other programs and types of waste, such as the guidance from the Ohio Water Resources Council, which recommends setbacks from conveyance mechanisms (such as drainage wells, water supplies and sinkholes) to our lakes, rivers and streams. These isolation distances allow for a buffer area, as well as the needed time for emergency notifications/procedures to take place in the event that a wastewater treatment works unit would overflow or breach. Rule 3745-42-08 also includes a mechanism for reducing an isolation distance, as provided in paragraphs (C) and (D).

Comment 8: The requirement for a 300 foot distance for a package plant is an extra cost to the builder to provide the buffer from the receiving stream. Based on this requirement it would be better to build the facilities in the center of a development with its 200' isolation requirement than along the receiving stream.

Ohio EPA Response 8: The costs associated with building the facilities in the center of a development may not be lower due to the extra costs associated with the construction of a longer discharge pipe and the potential for a pump station. In addition, the set back distance requirement of 300 feet from waters of the state does not require the package plant owner to own the "buffer" area of associated with the 300 feet.

Comment 9: Based on a 20,000 gpd package plant size of 65'x75' the needed land area required for the plant with a surface water buffer of 300' and residential isolation of 200' would result in an area of 565'x475' (6.16 acres). Thus the actual treatment plant would comprise of less than 2% of the entire area.

Ohio EPA Response 9: It should be noted that the set back distances from occupied buildings may not be relevant if the wastewater facilities are being proposed where no occupied buildings exist. In addition, the set back distance requirement of 300 feet from waters of the state and 200 feet from occupied buildings does not require the package plant owner to own the "buffer" area of associated with the either the 300-foot or 200-foot isolation distance.

Comment 10: The additional buffer area would result in additional cost to the final facility owner for the lawn maintenance and care of the extra buffer zone, turning the plant operators into lawn care professionals and reducing the time available for actual plant operation and maintenance.

Ohio EPA Response 10: The rules do not require that the buffer area be comprised of a "maintained grassy lawn". In addition, as noted in our

responses above, the owner of the package plant is not required to own the land associated with the an isolation distance.

Comment 11: Isolation Distances From Surface Waters. DSW is proposing to add minimum isolation distance requirements that would be applicable to "surface waters of the state" in subsection (A) of Proposed OAC 3745-42-08. AOMWA questions the need for this new provision. There already exist programs that adequately control land use adjacent to surface waters of the state including floodplain and wellhead protection programs, 401 and 404 certification programs and storm water requirements. Adding this new requirement on all applicants is unwarranted. It is unaware of any water quality data that suggests the need for adding these minimum distance requirements. These new requirements will cause a significant and unnecessary hardship for existing disposal systems that are presently located near surface waters and that are planning to implement system or wet weather improvements. Ohio EPA should delete such requirements from the proposed rule.

Ohio EPA Response 11: The isolation distances from surface waters of the state were developed to protect public health and the environment. The rule was also developed to be more consistent with setbacks for similar facilities under other programs and types of waste, such as the guidance from the Ohio Water Resources Council, which recommends setbacks from conveyance mechanisms (such as drainage well, water supplies and sinkholes) to our lakes, rivers and streams. These isolation distances allow for a buffer area, as well as the needed time for emergency notifications/procedures to take place in the event that a wastewater treatment works unit would overflow or breach. The draft rule was previously revised to provide clarification, as requested by the City of Columbus. As noted in the response to interested party comments on the draft rule, it was not Ohio EPA's intent to require existing facilities to retroactively have to meet the minimum isolation distances in Table A-1. In addition, it was not Ohio EPA's intent to require wet weather management facilities to meet the isolation distance requirements in Table A-1 (please see the response to Comment Number 15 below). As noted below, any expansion of such facilities will be evaluated on a case-by-case basis.

Paragraph (A) states:

"Except as provided in paragraphs (B) to (E) of this rule, the minimum isolation distances in table A-1 of this rule shall be maintained."

Paragraph (D) will be revised to state (please also see response to Comment Number 14):

“(D) For any disposal system constructed prior to the effective date of this rule and proposed to be modified after the effective date of this rule, smaller isolation distances *will* be allowed, provided the applicant provides documentation that meeting the isolation distances in paragraphs (A) and (B) of this rule would impede the function of the existing disposal system or cause the applicant to incur more cost. To protect public health or the environment from a *significant threat*, the director may require other mitigative measures, such as additional freeboard, landscape mounds, fencing, trees or other means to reduce the impacts when smaller isolation distances are allowed.”

Comment 12: Increases in Isolation Distances. For large utilities, proposed OAC 3745-42-08(B)(2) authorizes the Director to increase the isolation distances proposed in OAC 3745-4208(A) or to require mitigative measures to protect the following from "potential impacts" from a wastewater treatment works:

- (a) A high density development;
- (b) A day care facility;
- (c) A hospital; or
- (d) Waters of the state.

This proposed rule gives the director this broad discretion without standards or justification to assist him in setting reasonable isolation distances or to require reasonable mitigative measures for large utilities. Presumably the existing isolation distance requirements for occupied structures are sufficiently protective of day care facilities and hospitals. As to protecting a "high density development" this term is vague and undefined. If it means occupied structures, again the existing isolation requirements for such structures should be sufficiently protective. The same argument applies to the "waters of the state" element of proposed OAC 3745-42-08(B)(2). Presumably the new isolation distances for the waters of the state are sufficiently protective. Wastewater utilities require standards and as much certainty as possible when designing and constructing new treatment works subject to the isolation distances. The uncertainty created by this proposed rule is arbitrary and unreasonable. OAC 3745-42-08(B)(2) of the proposed rule should be deleted from the final rule package.

Ohio EPA Response 12: The intent of this paragraph is to ensure that the environment and public health are protected in those situations that do not fit a “cookie-cutter” approach. The list provided in paragraph (B)(2) of Rule 3745-42-08 is relevant to those situations where the director has considered either potential impacts to neighboring buildings or potential impacts due to prevailing winds (please see the response to Comment Number 21, where we explain that potential impacts to neighboring buildings could include odors or the probability that either an overflow or a breach could inundate neighboring buildings, causing harm to life or

property) and has determined that an increased isolation distance or other measures such as fencing or landscape mounds are necessary to mitigate these impacts from a wastewater treatment works with a design flow greater than 100,000 gpd. High density development is a development where many people live, work or gather. Examples of a high density development include a residential development of homes or condominiums, a commercial development such as a shopping mall, or a business park development. The list is not arbitrary, but rather a list of those items that the director is specifically concerned about. A comment will be added, which provides examples of "high density developments".

Comment 13: No Viable Option. Proposed OAC 3745-42-08(C)(2)(b) would allow the Director to reduce a required isolation distance only after the utility demonstrates financial and technical hardship, appropriate public notice, and where there is "no other viable options." This proposed language imposes an unreasonably stringent standard for isolation distance reductions and obviates the other demonstration requirements. This proposed language should be modified to read "no other reasonable options."

Ohio EPA Response 13: Reducing an isolation distance should first and foremost be protective of public health and the general public should be informed of such a proposal. In addition, Ohio EPA would contend that if something is not viable it is certainly not reasonable. Viable, is a more objective term that lends itself to whether a solution is workable, feasible or executable. Finally, these parameters were only meant to apply to the request for a smaller isolation distance from waters of the state. Paragraph (C)(2) will be revised, as follows:

(2) The applicant can demonstrate to the director **"for any request to reduce an isolation distance from waters of the state"**:

- (a) That there is a technical or financial hardship in implementing a minimum isolation distance;
- (b) That there are no other viable options; and
- (c) That the general public that is located within the disposal system service area has been notified of the proposed reduced isolation distances and has been given an opportunity to view the proposal and comment. All comments shall be forwarded to the director or an authorized representative for their consideration.

Comment 14: Standard for Case-by-Case Application of Isolation Distance Requirements for Existing Disposal Systems. In addition to adding new isolation criteria, Ohio EPA has revised the standard so that an existing disposal system could be subjected to a reduced isolation distance with respect to a permit modification. That this new standard is to be applied to existing facilities is

most troublesome in that it may serve to impede or make wet weather or disposal system improvements scheduled by AOMWA members more difficult to plan and execute and may increase their costs. Under existing OAC 3745-42-08, if an applicant makes the required demonstration under (D) that isolation distances will impede the function of the existing system or require it to "incur more costs", then Ohio EPA "will" approve reduced distances "unless the director determines that there is a significant threat to public health or the environment." The proposed rule, however, would provide that upon a demonstration, Ohio EPA "may", as opposed to "will", approve a reduced isolation distance for an existing system "unless the director determines that public health or the environment will be negatively impacted." Accordingly, under the proposed rule, Ohio EPA is no longer required to grant existing systems reduced isolation distances upon a demonstration under (D) or where the planned improvement does not result in a significant threat. Instead, the propose rule would permit a demonstration to be denied for a mere "negative impact" and at the express discretion of the agency. The current standard properly balances the factors for establishing isolation distances. It considers significant threats along with facility's capabilities and cost. We are very concerned that the proposed standard will result in potentially significant costs and major disruptions of facilities without a recognized environmental benefit. Thus, Ohio EPA should maintain the existing rule standard in OAC 3745-42-08(D).

Ohio EPA Response 14:

Paragraph (D) of Rule 3745-42-08 will be revised, as follows, to replace the word "may" with the word "will" and to replace the words "negative impact" with "significant threat":

(D) For any disposal system constructed prior to the effective date of this rule and proposed to be modified after the effective date of this rule, smaller isolation distances *will* be allowed, provided the applicant provides documentation that meeting the isolation distances in paragraphs (A) and (B) of this rule would impede the function of the existing disposal system or cause the applicant to incur more cost. To protect public health or the environment from a *significant threat*, the director may require other mitigative measures, such as additional freeboard, landscape mounds, fencing, trees or other means to reduce the impacts when smaller isolation distances are allowed.

Comment 15: Approved CSO/SSO Wet Weather Management Plans and Long Term Control Plans. Proposed OAC 3745-42-08(D) must exempt from the application of the new proposed isolation distance requirements CSO/SSO Wet Weather Management Plans and Long Term Control Plans approved pursuant to judicial orders. These plans are complex and enormous undertakings that may

be significantly disrupted at great cost to utilities and their ratepayers by the retroactive application of new isolation distance requirements.

Ohio EPA Response 15: It was not Ohio EPA's intent to require CSO/SSO wet weather management facilities to maintain the 300 foot isolation distance from waters of the state. Table A-1 will be revised, as follows, to provide for clarification:

“Any other component of a treatment works, not including (1) a disposal field, (2) a land application area or (3) **a wet weather management facility for treating combined sewer overflows or sanitary sewer overflow**”

Comment 16: Mitigative Measures for Modifications at Existing Systems. In connection with Comment #4, proposed OAC 3745-42-08(D) would also provide that “[t]he director may require other mitigative measures when smaller isolation distances are allowed” for existing systems seeking modifications. Ohio EPA has not defined what constitutes a “mitigative measure” and AOMWA would at least initially ask for further clarification of what measures Ohio EPA would seek to impose by this requirement. Ohio EPA should further clarify what these measures may entail or delete this provision from the proposed rule.

Ohio EPA Response 16: Mitigative measures could include additional freeboard, landscape mounds, fencing, trees or other means to reduce the impacts. A comment will be added, to provide for clarification.

Comment 17: Mitigative Measures for Existing Systems. AOMWA is also concerned with proposed OAC 3745-42-08(E). This new section would permit undefined “mitigative measures” to be imposed upon an existing system if that system is within the isolation distance zone even if that existing system is not seeking a modification. Absent a change in a system that warrants a permit-to-install or plan approval, we question whether such a provision is lawful or necessary. We are concerned that this provision will not only result in additional costs to our members' operations but create unnecessary uncertainty. Accordingly, AOMWA believes that proposed (E) should be deleted in the proposed rule in its entirety.

Ohio EPA Response 17: To provide clarification, paragraph (E), will be revised, as follows:

For any disposal system constructed prior to the effective date of this rule, to protect public health or the environment, the director may require other mitigative measures when isolation distances smaller than those listed in table A-1 of this rule exist. **For example, mitigative measures could be**

required as a result of documented odor complaints or if a breach or overflow caused harm to life, health or property. Mitigative measures could include additional freeboard, landscape mounds, fencing, trees or other means to reduce the impacts.

Comment 18: The Butler County Water and Sewer Department (BCWS) provides safe, reliable water and sewer services to Butler County Ohio. Under the direction of the Board of County Commissioners, BCWS provides services to a growing population of over 100,000 in West Chester, Liberty, Fairfield, Ross, Lemon and Hanover Townships.

As background to our comments, five of our treatment plants are currently less than the proposed minimum isolation distances. Our New Miami facility is far enough from buildings and barely far enough from waters of the state. Our Wade Mill plant is close to a building, and close to the river. Alamo is not near any buildings, but too close to the stream. Queen Acres is not near any buildings, but too close to the stream. Our LeSourdsville facility is not near any buildings, but too close to the creek and may be precluded from using the north east area of the property for new aeration tanks in our planned expansion. Upper Mill Creek is too close to buildings and if the ponds are considered "waters of the state", too close to waters of the state.

We believe many utilities in Ohio have purchased sites long ago and planned for future expansions on those sites. Without the allowances for existing plants the proposed rule could cost billions of dollars if new sites have to be secured and new plants or expansions have to be constructed at areas disconnected from original sites.

BCWS understands OEPA's desire to set minimum isolation distances for new facilities and appreciates OEPA's efforts to be flexible with existing facilities as outlined in the proposed changes. However, with so many potential individual adjustments to the proposed rules for existing facilities, we see little reason to set an across the board rule for existing facilities. If OEPA continues with the rule changes as proposed, BCWS requests that OEPA make available the criteria that OEPA will use to determine that a reduced isolation distance will be allowable.

There are existing floodplains and floodway regulations that facilities must comply with. Ohio communities frequently adopt special purpose floodplain regulations that combine both building code and subdivision requirements. As an example, floodplain regulations are included in Butler County local zoning, building codes and subdivision regulations, and in Butler County they have been adopted as special purpose regulations. The Butler County rules are available at: <http://development.butlercountyohio.org/content/txtcontent/bz/floodplain.cfm>

As an alternative to the proposed rule, perhaps OEPA could apply the proposed minimum isolation distances only to new facilities where a community has not adopted protective floodplain regulations.

The language of 3745-42-08 (D) in the proposed rule has been changed to be more broadly defined as being applicable when public health or the environment will be negatively impacted as opposed to when there is a significant threat to public health or the environment as in the existing rule. BCWS opposes this change in language as we believe the current rule language is more appropriate especially when exceptions can be made to setback distances. Having a broader application as in the proposed rule change will be negated by the exemptions that will come up due to economic hardship or impeded function of the existing systems. Therefore BCWS recommends the language in paragraph (D) of the existing rule be retained and not be changed as proposed. Proposed rule 3745-42-08 (E) implies that any existing plant with less than the minimum isolation distance may be subject to mitigative measures even without applying for a PTI. We suggest OEPA use language that makes it clearer that this would only apply in cases of a significant risk to environmental or public health and would not automatically apply to all systems existing prior to the rule being in effect. Undefined "mitigative measures" may add substantial costs to a project. BCWS strives to operate our facilities to a high standard to be protective of both public health and the environment. The lengths we go to for ensuring these goals are met are often better than a rigidly defined set back distance as proposed in the rule changes. BCWS recommends listing clear triggers for this proposed rule, and we request that OEPA list examples of mitigative measures that may be required.

Ohio EPA Response 18: Please see the response to Comment Numbers 11 through 17.

In addition, if an applicant wants to request a reduced isolation distance, as stated in the rule, they would need to show that the isolation distances in table A-1 would impede the function of the existing disposal system or cause the applicant to incur more cost.

Comment 19: The Metropolitan Sewer District of Greater Cincinnati ("MSDGC") appreciates the opportunity to provide comments on the Division of Surface Water's (DSW) proposed revisions to OAC Chapter 3745-42. MSDGC raises the following specific comments on the proposed revisions to OAC 3745-42-08:

Rule 3745-42-08 The Metropolitan Sewer District of Greater Cincinnati (MSDGC) prepared a comprehensive Wet Weather Improvement Program (WWIP) that was submitted to the Government in June 2006. The WWIP includes over 300 projects related to reducing combined sewer overflow and providing capacity assurance in the separate sanitary system. The program includes a wide range

of infrastructure improvements including satellite treatment facilities and storage facilities. The setback provisions of proposed Rule 3745-42-08 would greatly affect proposed improvement and facilities - impeding the implementation of the WWIP projects and resulting in significant additional costs. Sewer overflow locations tend to be adjacent to water courses, and proposed control facilities, such as satellite treatment facilities and storage facilities are often located in the same vicinity. Restrictions on placement of the facilities would cause significant additional cost and time in implementing control projects. Setback requirements can complicate issues involving topography and other physical barriers (i.e. highways, roadways) and present significant challenges to locating facilities. Also, additional setback distance is expected to require additional land acquisition and infrastructure. These conditions result in increased cost and time to implement overflow control projects. We are also concerned regarding the "case-by-case" evaluation process and the impact it will have on the project approval process. The evaluation process could easily prolong the review cycle and ultimately delay project implementation, which is critical in our Wet Weather Program.

Ohio EPA Response 19: Please see the response to Comment Numbers 11 through 17.

Comment 20: Paragraph (A) of rule 3745-42-08 places a number of District facilities in violation of the regulation. Given the litigious nature of our society we believe that exposes us to unnecessary third party liability, and request that the previous language regarding date of installation of the system be reinstated.

Table A-I introduces the new concept of "isolation distance required from surface waters of the state." However, we have not been able to locate any analysis of either the benefit or the cost of these requirements. Therefore, we request that this be deleted entirely.

Ohio EPA Response 20: Please see the response to Comment Number 11.

Comment 21: This paragraph [Paragraph (B)] fails to delineate the decision factors or processes the director will use to make these decisions. Therefore, we request that it be deleted.

Ohio EPA Response 21: Please see the response to Comment Number 12. In addition, the following comment will be added:

“[Comment: Potential impacts to neighboring buildings could include odors or the probability that either an overflow or a breach could inundate neighboring buildings, causing harm to life or property. Applicants proposing to construct above ground

impoundments should also contact the Ohio department of natural resources division of dam safety. Their web page is: <http://www.dnr.state.oh.us/dsafety/default/tabid/3329/Default.aspx> .]

Comment 22: We find the list of protected items in paragraph (B)(2) interesting if not arbitrary. For instance, what constitutes "a high density development?" Therefore, we request that this be deleted.

Ohio EPA Response 22: Please see the response to Comment Number 12.

Comment 23: By requiring in paragraph (C)(l)(a), that an applicant demonstrate that "any component of a disposal system will not negatively impact ... the environment," the Agency has essentially instituted a new anti-degradation criterion which cannot be accomplished. We request that this be deleted as it is adequately covered by existing regulations.

Ohio EPA Response 23: It was Ohio EPA's intent that this requirement apply to new facilities, where the applicant wishes to request a smaller isolation distance than one defined in Table A-1 from occupied buildings. In addition, when smaller isolation distances are requested, Ohio EPA feels that the general public should be notified. Paragraph (C)(1) will be revised, as follows:

(C)(1) The applicant can demonstrate to the director "**for any request to reduce an isolation distance from an occupied building**"...

Comment 24: Paragraphs (C)(l)(b) and (C)(2)(b) would require the District to inform hundreds of thousands of people prior to installing a satellite CSO treatment facility. We request that they be deleted.

Ohio EPA Response 24: "Wet weather management facilities for treating combined sewer overflows or sanitary sewer overflow" have been exempted from this isolation distance requirement in table A-1 of Rule 3745-42-08 (please see the response to Comment Number 15). In addition, this requirement is only relevant to new facilities and should the applicant wish to request a smaller isolation distance than one defined in Table A-1. When smaller isolation distances are requested, Ohio EPA feels that the general public should be notified.

Comment 25: Sub-section (D) and (E) again fail to delineate the decision factors or processes the director will use to make these decisions. Therefore, we request that they be deleted

Ohio EPA Response 25: In accordance with paragraph (D) of rule 3745-42-08, the director will make his determination based on the documentation from that applicant that meeting the isolation distances in paragraphs (A) and (B) of this rule would impede the function of the existing disposal system or cause the applicant to incur more cost.

To provide clarification, paragraph (E), will be revised, as follows:

(E) For any disposal system constructed prior to the effective date of this rule, to protect public health or the environment, the director may require other mitigative measures when isolation distances smaller than those listed in table A-1 of this rule exist. **For example, mitigative measures could be required as a result of documented odor complaints or if a breach or overflow caused documented harm to life, health or property.**

Comment 26: In Paragraph C, which sets out requirements that must be met before Ohio EPA reduces any minimum isolation distances, language has been added that requires applicants to notify the local public and provide them with an opportunity to review and comment on the proposal. Sierra Club approves of this addition and wishes to thank Ohio EPA for its recognition of the importance of public notice and participation in such permitting processes. However, Paragraph C also contains a crucial switch of the word 'and' to the word 'or'. Under the rule being rescinded, the applicant must prove that no negative impact will result from the reduction in isolation distance AND that there is a technical or financial hardship in implementing the required minimum distance. Under the proposed new rule, though public notice requirements have been added, the applicant now would only have to demonstrate one of the two conditions: that no negative impact would result OR that there is a technical or financial hardship. Sierra Club strongly opposes this word change. Minimum isolation distances are set for a reason, and Ohio EPA staff have presumably worked hard to determine where, and under what conditions, responsible distances should be set. It should not be made easy to waive these requirements. Applicants should have to prove no negative impact AND financial hardship in order to reduce minimum distances, as well as implement the new public notice requirements.

Ohio EPA Response 26: The rewording of this paragraph took into consideration the addition of the new isolation distance requirements from surface waters of the state. Paragraphs (C)(1)(a) & (C)(1)(b) are applicable as criteria when looking at impacts to occupied buildings. While Paragraphs (C)(2)(a) to (C)(2)(c) are applicable as criteria when looking at impacts to waters of the state.

In regards to paragraphs (C)(1)(a) & (C)(1)(b), if no negative impacts will occur and the general public does not object, it seems unreasonable to

expect the proposal to also cause a financial hardship, prior to allowing the director discretion to reduce the isolation distance requirement.

To provide for clarification, the following changes will be made:

“(C) For the construction of any new disposal system after the effective date of this rule, the director may reduce any minimum isolation distance in table A-1 of this rule if:

(1) The applicant can demonstrate to the director **“for any request to reduce an isolation distance from an occupied building”**:

(a) That by taking into account prevailing wind directions, screening, or other means of noise and odor control, that any component of a disposal system will not negatively impact a neighboring building, public health or the environment; and

(b) That the general public that is located within the disposal system service area has been notified of the proposed reduced isolation distances and has been given an opportunity to view the proposal and comment. All comments shall be forwarded to the director or an authorized representative for their consideration; or

(2) The applicant can demonstrate to the director **“for any request to reduce an isolation distance from waters of the state”**:

(a) That there is a technical or financial hardship in implementing a minimum isolation distance;

(b) That there are no other viable options; and

(c) That the general public that is located within the disposal system service area has been notified of the proposed reduced isolation distances and has been given an opportunity to view the proposal and comment. All comments shall be forwarded to the director or an authorized representative for their consideration.

Comment 27: Finally, in Paragraph D, Sierra Club seeks clarification on what appears to be a minor change in wording. Under the rule being rescinded, reduced distances for existing disposal systems can be approved unless the director determines 'there is a significant threat' to public health or the environment. Under the proposed new rule, this has been changed to 'public health or the environment will be negatively impacted.' We request that Ohio EPA clarify the ramifications of this change in wording. Specifically, does 'there is a significant threat' represent a higher threshold than 'will be negatively impacted'?

Ohio EPA Response 27: The language in paragraph (D) will be revised, as follows, to replace “negative impact” with the previous reference of “significant threat”:

(D) For any disposal system constructed prior to the effective date of this rule and proposed to be modified after the effective date of this rule, smaller isolation distances *will* be allowed, provided the applicant provides documentation that meeting the isolation distances in paragraphs (A) and (B) of this rule would impede the function of the existing disposal system or cause the applicant to incur more cost. To protect public health or the environment from a *significant threat*, the director may require other mitigative measures, such as additional freeboard, landscape mounds, fencing, trees or other means to reduce the impacts when smaller isolation distances are allowed.

Comment 28: As you are well aware, wastewater treatment facilities have been traditionally built in the lowest reaches of a community watershed, typically adjacent to a stream, in order to take advantage of gravity for material conveyance and the stream for effluent disposal. Over time, many community treatment plants have become surrounded by businesses and development and now have limited land upon which to construct required wet weather treatment facilities and process expansions. Springfield is one of these communities. Consequently, we have reviewed the proposed changes to Chapter 3745-42 and would like to offer some remarks. Springfield is currently developing a plan to meet permit obligations for the construction of a wet weather treatment facility and other ancillary and necessary process improvements. Due to limited available plant property, our draft facilities plan places some of our needed improvements within the proposed isolation distances from waters of the state. These new restrictions appear arbitrary relative to water quality impacts, restricts structures and facilities that should not have the potential to threaten waters of the state and will significantly affect our current and future improvement plans. To simplify, Springfield supports the concerns and positions of the **association of ohio metropolitan wastewater agencies** (aomwa), as presented in their letter to you, dated of February 23, 2009. The comments in their letter details the concerns which will directly affect our current efforts and could affect the cost of satisfying future customer needs.

Ohio EPA Response 28: Please see responses to Comments 11 through 17.

Rule 3745-42-09 Sand specifications

Comment 29: Sierra Club seeks reassurance from Ohio EPA that if this rule is rescinded, in the absence of new technology-specific sand specification rules, this will not result in the permitting of any new sand filter whose sand would not

have achieved outputs of desired environmental quality under the rescinded rule. If no such reassurance is forthcoming, we suggest that Rule 3745-42-09 remain in place until new, technology specific rules are drafted, reviewed and adopted.

Ohio EPA Response 29: This rule was rescinded to allow the Ohio EPA to require technology specific sand specifications. The current rule became outdated and did not reflect the sand specifications for the newer sand technologies. Rescinding this rule will actually allow better case-by-case review and approval of appropriate sands until new rules can be developed.

Rule 3745-42-11 Holding tanks

Comment 30: Paragraph (C)(4)(c) would appear to recognize the need for temporary facilities in at least one case. However, sub-section (E) introduces a multitude of requirements irrelevant to the specified usage. In fact, paragraph (E)(l)(b)(v) would be prohibitive in this case. We suggest that the Agency give more careful consideration to temporary facilities.

Ohio EPA Response 30: The requirements under paragraph (E)(1)(b)(v) are specific to a situation where a holding tank is being requested as a replacement for an existing sewage disposal system.

Comment 31: Paragraph (C)(3)(b) [of Rule 3745-42-11] discusses fees for a "sewage holding tank management plan." However, Ohio Revised Code does not provide authority for these fees. Therefore, we request that they be deleted.

Ohio EPA Response 31: This fee is in accordance with paragraph (S)(1) of Section 3745.11 of the Ohio Revised Code, which states: "Except as otherwise provided, any person applying for a permit, variance, or **plan approval** under Chapter 6109. or 6111. of the Revised Code shall pay a nonrefundable fee of one hundred dollars at the time the application is submitted through June 30, 2010..."

Comment 32: This section appears to empower unspecified persons to make decisions that may have significant financial implications while removing the statutory recourse normally available. Therefore, we request that the phrase "or an authorized representative" be deleted from paragraphs (F)(3) and (G)(3)(b).

Ohio EPA Response 32: These sections do not empower unspecified persons. Rather it empowers someone designated by the director as his representative to make a determination. Per paragraph (G)(3)(b) of Rule 3745-42-11, only the director can require a plan, which states:

"(b) Application shall be on forms approved by the director."

Per paragraph (F)(3), the mechanism for requiring this would be through an approval or a denial of the permit to install, which is appealable.

This phrase will remain to allow the director to delegate these duties, as necessary.

****End of Response to Comments****