



Proposed Rules – Storm Water Program and General NPDES Permits (OAC Chapters 3745-38 and 3745-39)

What do OAC Chapter 3745-39 and OAC Rule 3745-38-02 cover?

The Storm Water Program rules are found in Ohio Administrative Code (OAC) Chapter 3745-39. The first three rules in the chapter pertain to small municipal separate storm sewer systems (MS4s). The fourth rule in the chapter contains the regulations for all other storm water discharges subject to NPDES permit requirements (medium and large MS4s, industries and construction sites). OAC 3745-38-02 covers requirements for general NPDES permits.

These rules are being updated to mirror the latest revisions to the corresponding federal regulations in 40 C.F.R. Parts 122.26, 122.28 and 40 C.F.R. 122.30 to 122.37. The Agency is also seeking an exemption from the five-year rule review requirement in the Ohio Revised Code for rules 3745-39-02, 3745-39-03, and 3745-39-04, as these rules are equivalent to the federal regulations. This is also the five-year rule review for rule 3745-39-04.

Which rules are under review at this time?

Rule Number	Title
3745-38-02	Requirements for general national pollutant discharge elimination system (NPDES) permits.
3745-39-01	Applicability of rules of procedure and definitions.
3745-39-02	Objectives of the Ohio EPA storm water management program for small MS4s.
3745-39-03	Ohio EPA NPDES requirements for small MS4s.
3745-39-04	Ohio EPA NPDES requirements for industries, including construction activities, and large and medium MS4s.

What changes are being proposed?

The proposed rule amendments include:

3745-38-02:

- Adding a provision that the Director shall establish the terms and conditions necessary to meet the requirements of paragraph (C) of rule 39-03 through one of two methods: a comprehensive general permit or a two-step general permit. (from 40 C.F.R. 122.28)
- Exempt construction storm water general permit applicants who have paid an application fee within twelve months of the expiration of the past general permit from paying the renewal application fee for the new general permit. (This change is not from the federal regulations)
- Updates to references and style.

3745-39-01:

- Updates to references and style.
- Movement of the definition for “point source” from rule 3745-39-04 to this rule.
- Creation of an incorporation by reference section.

3745-39-02:

- Deletion of Paragraph (C). This paragraph is unnecessary as this same concept is eluded to in rule 3745-39-01.

3745-39-03:

- Updates to references and style.
- Restructuring the rule to mirror the newly restructured federal regulations in 40 C.F.R. 122.32 – 122.37 and 122.26(f).

3745-39-04:

- Style and reference updates. Mirrors the federal regulation in 40 C.F.R. 122.26.
- Added clarification about co-permittee requirements.
- Included language stating that the Director may require electronic reporting of information.

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Are there changes from the July 2018 draft rule revisions?

The Agency made two changes in response to comments received during the Interested Party Review comment period. In rule 3745-38-02, paragraph (F)(7) was deleted, and “the director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent” was added at the end of paragraph (F)(7). Secondly, the phrase from 40 CFR Part 122.28 (b)(2)(v) “without submitting a notice of intent under paragraph (E) of this rule where the director finds that a notice of intent requirement would be inappropriate,” was added to the paragraph (F).

Paragraph (F) will now read:

~~(F) After considering the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; the estimated number of discharges to be covered by the permit; and notwithstanding the notice of intent requirements of paragraph (E) of this rule, the~~ The director may develop a general permit that contains alternative means for persons to obtain coverage under a general permit without submitting a notice of intent under paragraph (E) of this rule where the director finds that a notice of intent requirement would be inappropriate, in accordance with 40 C.F.R. 122.28(b)(2)(v), after considering the following: This provision does not apply to publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities and storm water discharges associated with industrial activity.

(1) The type of discharge.

(2) The expected nature of the discharge.

(3) The potential for toxic and conventional pollutants in the discharges.

(4) The expected volume of the discharges.

(5) Other means of identifying discharges covered by the permit.

(6) The estimated number of discharges to be covered by the permit.

The director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

This provision does not apply to publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities and storm water discharges associated with industrial activity.

Paragraph (E)(2)(a)(ii) in 3745-38-02 was also reworded for clarity and in rule 3745-39-01, the reference to the 1990 census was changed to 2010, and a reference to SIC codes was added.

Who will be regulated by these rules?

The draft revisions will not impose any new requirements on the regulated community, as most of the revisions under consideration mirror the most recent federal storm water and general NPDES permit requirements, except for the new construction storm water application fee exclusion.

These rules regulate storm water discharges, which are generated by runoff from land and impervious areas such as paved streets, parking lots, and building rooftops during rainfall and snow events. Most storm water discharges are considered point sources and require coverage by a National Pollutant Discharge Elimination System (NPDES) permit. Construction activities, MS4s, and industrial activities are regulated by these rules.

What additional information is the Agency seeking?

The Agency wants to hear from interested stakeholders (public, local officials, industry sectors, other state agencies, consultants and environmental organizations) who may be impacted by these rule revisions and additions. 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. Rule 3745-39-03 is being rescinded and filed as new due to a change in more than fifty percent of the rule text.

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What is the rulemaking schedule?

A public hearing on the 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 A, 50 West Town Street, Suite 700, in Columbus, Ohio at 10:30 a.m. on December 5, 2018.** 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. The final rules could be adopted in early 2019.

How can I comment on the proposed rules?

Please submit your comments in one of the following ways:

- By email: dsw_rulecomments@epa.ohio.gov
- By fax: (614) 644-2745
- By postal mail:

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

Comments on the proposed rules must be received no later than 5:00 p.m. on December 5, 2018.

How can I get more information?

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

For more information about the proposed rules, please contact Jason Fyffe at (614) 728-1793 or Jason.Fyffe@epa.ohio.gov.