

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Water Quality Standards

Rule Number(s): OAC 3745-1-34

Date: February 19, 2014

**Rule Type:**

- |   |  |
|---|--|
| <input type="checkbox"/> New                | <input type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded     |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

## **Regulatory Intent**

### **1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

Under the Clean Water Act (CWA) states are required to have water quality standards that protect lakes, rivers, streams or other surface waters from pollution. Ohio's water quality standards are in OAC Chapter 3745-1. The required components of a water quality standards program include: beneficial use designations; narrative and numeric criteria protective of the use designations; and implementation procedures used to evaluate decisions that could result in the lowering of water quality (referred to as the antidegradation policy or rule).

The water quality standards program rule OAC 3745-1-34 contains the numeric criteria protective of wildlife and human health for waters in the Ohio River drainage basin. These criteria protect humans and wildlife from the harmful effects of pollutants in ambient water.

Human health criteria consist of drink and nondrink values. The human health drink criteria are applicable to all waters within 500 yards of surface water intakes for public water systems with the intent that these waters, with conventional treatment, will be suitable for human intake and meet federal regulations for drinking water. The human health nondrink criteria are applicable to all surface waters. These criteria are protective of the human consumption of sport caught fish and the incidental water intake and exposure that may occur during recreation in surface waters.

In this draft rule amendment, the Agency is considering removing the nondrink human health water quality criterion for thallium. The human health nondrink thallium criterion was based on scientific studies that were later determined to have critical limitations; therefore, the criterion is unsupported (a reference dose is not available with which to calculate a criterion). When new research becomes available on thallium, a criterion will be calculated and adopted into rule. The Agency is also aware that additional updates to rule 3745-1-34 are necessary and plans to make updates available for review and comment in a future rulemaking.

### **2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Rule Number	Authorizing Statute	Draft Action
3745-1-34	ORC 6111.041	Amend

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

Yes, the regulation implements federal requirements in 40 C.F.R. Part 131. Under Part 131.4, states are “responsible for reviewing, establishing, and revising water quality standards.” Under Part 131.11, “States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.”

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The CWA section 303(c)(2)(A) requires that water quality standards protect “public health or welfare, enhance the quality of the water and serve the purposes of [the Act].” The CWA section 101(a)(2) establishes as a national goal “water quality which provides for protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable.” This rule serves the intent of the CWA through establishing water quality criteria that protect humans and wildlife from adverse impacts of pollutants through consumption of drinking water and sport caught fish from water bodies located in the Ohio River drainage basin.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Success can be measured in two ways: 1) tracking various administrative milestones in the programs that implement the WQS; and 2) monitoring the conditions of streams, rivers and lakes over time. The NPDES permit program and the 401 program routinely provide data and annual reports that describe the compliance performance of the regulated community. The Agency sets targets for achieving compliance with permit terms and conditions.

As described in the response to question # 11 the WQS regulations are performance based expectations regarding the quality of Ohio’s surface water. Ohio EPA measures the success

of the State's overall pollution control efforts through biological and chemical monitoring that determines whether or not a water body is attaining its designated uses. The status or health of Ohio's streams, rivers and lakes is reported every two years in the Integrated Water Quality Monitoring and Assessment Report, which is available on Ohio EPA's website at: <http://epa.ohio.gov/dsw/tmdl/OhioIntegratedReport.aspx>.

### **Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Ohio EPA sent electronic notice to DSW's rulemaking interested party list and posted the Early Stakeholder Outreach fact sheet on DSW's website on February 3, 2014. The comment period deadline was February 18, 2014.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Agency received comments from:

- Ohio Utility Group in support of the rulemaking.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

The following data was used to develop the existing criteria in the rule:

-U.S. EPA National Recommended Water Quality Criteria – Correction (EPA 882-Z-99-001) April 1999.

-U.S. EPA Drinking Water Standards and Health Advisories (EPA 882-B-00-001) Summer 2000.

-OAC 3745-81 Primary Drinking Water Rules, 2002.

The rule amendment is based on:

-U.S. EPA Integrated Risk Assessment System (IRIS) thallium summary at:  
<http://www.epa.gov/iris/subst/1012.htm>.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

Due to unresolved issues in completing a larger review of OAC Chapter 3745-1, the Agency has decided to move forward with one revision to one rule to address a permit schedule of compliance deadline for American Electric Power, Cardinal Operating Company. The alternative to amending the rule to remove the human health nondrink criterion is to maintain the current rule until the larger rulemaking effort and update of criteria based on new scientific information is complete. The Agency expects to complete additional human health criteria reviews in a future separate rulemaking.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

WQS function as a performance-based regulation because for each beneficial use defined in the rules there are measureable water quality criteria for determining if a water body meets its designated beneficial uses. Ohio's WQS include numeric criteria for many chemical substances to protect human health and aquatic life, bacteria indicators to protect water based recreation and biological criteria used to gauge attainment of certain aquatic life use designations. The inclusion of numeric biological criteria is an especially strong attribute of Ohio's rules, one that imparts flexibility and common sense into the listing of waters that fail to meet the standards.

The business community is not directly held accountable for these ambient water quality criteria, but any business that discharges pollutants or places fill or dredge materials into waters of the State must comply with permits designed to ensure the ambient standards are met. The Agency does not dictate how the permit limits are met.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

Ohio EPA is the delegated state agency for the water quality standards program. Only a review of existing Ohio EPA rules was necessary and no duplication was found.

**13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Agency will put the effective date of the adopted rules two months out from the date of adoption, which provides for U.S. EPA’s review and approval and gives the Agency time to update web pages and permit writing tools. Once U.S. EPA approves the rulemaking, discharges can request to have their permits modified to have effluent limits removed and/or monitoring reduced or the Agency will revise the thallium permit requirements at the time of permit renewal.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**
  - b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
  - c. Quantify the expected adverse impact from the regulation.**
- The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The WQS affect the business community indirectly through other regulatory programs that are designed to assure compliance with requirements based on meeting the WQS. These requirements take the form of effluent limits imposed by Ohio EPA through the NPDES permit program and the terms and conditions imposed through the 401 program for any activity that places dredge or fill materials into waters of the state. Though there is no direct cost associated with this WQS rulemaking, the Agency has evaluated potential costs the business community might incur through other CWA programs.

a. Overall, the impacted business community might include those located in the Ohio River basin and regulated through the NPDES program.

In regards to the draft rule amendment, in the Ohio River basin, there are 13 facilities with thallium monitoring requirements in their NPDES permits and 4 facilities with thallium effluent limitation requirements in their NPDES permits.

b. Overall, the nature of the adverse impact for those regulated through the NPDES program is the level of wastewater treatment necessary to meet the narrative and numeric criteria associated with the designated beneficial uses listed in the rule.

c. In regards to those regulated through the NPDES permit program, the overall adverse impact can vary greatly based on stream designated use, the type and quantity of pollutants discharged, the amount of dilution water available to mix with the discharge, and the amounts of pollutants in the dilution water. A higher level of wastewater treatment may be required of those discharging to a higher quality stream.

For this rulemaking, there should be no adverse impact. The NPDES permittees with thallium monitoring and effluent limits can expect reduced treatment costs and potentially less frequent thallium monitoring requirements in their NPDES permits.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The draft rule amendment does not adversely impact the regulated business community.

Clean water is recognized as a valued resource worth protecting. The WQS program is the primary means of ensuring that the quality of water in Ohio's streams, rivers and lakes is improved, maintained and remains suitable for swimming, drinking and fishing. The basic goal of meeting all beneficial uses and criteria established under the CWA is the normal requirement mandated by federal regulations. Deviation from that expectation is allowed in only a handful of extraordinary circumstances, one of which is imposition of widespread social and economic impact. Thus, it is incumbent upon states to establish the proper balance between the water quality goals (beneficial uses and criteria) and the costs to society of attaining those goals.

## **Regulatory Flexibility**

### **16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

In regards to the overall rule, yes. Flexibility has been built into certain aspects of the WQS program. This flexibility applies to businesses of all sizes. Ohio's system of beneficial uses accounts for environmental and landscape factors in setting the tiered aquatic life use and the associated performance based water quality criteria. In short, the tiered aquatic life uses provide a hierarchy of stream performance measures (biological and chemical water quality criteria) ranging from exceptional quality waters to highly modified waters that cannot fully support the "fishable" goals of the CWA. This system ensures that businesses, through the terms of their NPDES discharge permits, are required to meet limits that most closely match the actual water quality requirements that protect the aquatic environment in their immediate location. In other words, Ohio standards do not impose a one-size fits all mandate.

### **17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The first time paperwork violation waiver is not applicable to this rule package. The rules in OAC Chapter 3745-1 contain standards for CWA permitting programs to enforce. No paperwork or permits are required by the standards themselves.

### **18. What resources are available to assist small businesses with compliance of the regulation?**

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at:  
<http://epa.ohio.gov/ocapp/ComplianceAssistanceandPollutionPrevention.aspx>
- Ohio EPA also has a permit assistance web page ([http://epa.ohio.gov/dir/permit\\_assistance.aspx](http://epa.ohio.gov/dir/permit_assistance.aspx)) that contains links to several items to

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help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting, and eBusiness Center.

- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- Ohio EPA, Division of Surface Water's Compliance Assistance Unit provides technical support to small (less than 0.5 million gallons per day) wastewater treatment plants. Additional information is available at:  
[http://epa.ohio.gov/dsw/compl\\_assist/compasst.aspx](http://epa.ohio.gov/dsw/compl_assist/compasst.aspx)
- U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at: <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5888.
- The Division of Surface Water's Water Quality Standards program web page contains background information and direct links to sections of the regulations. Additional information is available at: <http://epa.ohio.gov/dsw/wqs/index.aspx>.
- U.S. EPA's Water Quality Standards Handbook, Second Edition available at: <http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>.
- U.S. EPA's Policy and Guidance: Reference Library contains an index of EPA documents related to water quality standards, including those referenced in the WQS Handbook. You can sort the index alphabetically, by publication date, or by topic. Available at: <http://water.epa.gov/scitech/swguidance/standards/library/index.cfm>.
- U.S. EPA's Water Quality Standards Human Health Criteria web page contains links to the current national human health criteria recommendations and methodology. Additional information is available at:  
<http://water.epa.gov/scitech/swguidance/standards/criteria/health/>.