

August 2009

## Surface Water Quality – Proposed Revisions to Water Quality Standards OAC Rules 3745-1-05 and 3745-1-07

**Note 1:** This rulemaking consists of a few of the changes that were already made available for review in other draft rule packages, specifically the water quality standards rulemaking ([www.epa.state.oh.us/dsw/rules/draft\\_wqs\\_aug08.html](http://www.epa.state.oh.us/dsw/rules/draft_wqs_aug08.html)) and the antidegradation rulemaking ([www.epa.state.oh.us/dsw/rules/draft\\_antidegradation\\_oct08.html](http://www.epa.state.oh.us/dsw/rules/draft_antidegradation_oct08.html)). Those two rule packages are part of four interrelated rule packages (water quality standards, 401 water quality certification, antidegradation, and stream mitigation).

Because of delays in completing the draft stream mitigation rule package, Ohio EPA has decided to peel a few time-sensitive items out of the water quality standards/antidegradation rule packages and proceed with targeted changes in a separate stand alone rulemaking. This separate stand alone rulemaking will proceed through the rulemaking process ahead of the remainder of the rule changes, which will continue to proceed but be linked to the stream mitigation rules as previously planned.

**Note 2:** The draft version of this stand alone rulemaking, made available for public comment in March 2009, also included revisions to rule 3745-1-31 (Lake Erie standards) that would restrict disposal of dredge material in Lake Erie. The Agency has decided to delay proposal of the rule 3745-1-31 revisions to allow more time to discuss them with stakeholders.

### What are water quality standards?

Water quality standards are state regulations or rules that protect lakes, rivers, streams and other surface water bodies from pollution. The rules are in Chapter 3745-1 of the Ohio Administrative Code (OAC). These rules contain: beneficial use designations such as warmwater aquatic life habitat, public water supply and primary contact recreation; numeric levels and narrative statements (water quality criteria) protective of the use designations; and an antidegradation rule. The antidegradation rule establishes a procedure to determine that a discharge is necessary before authorizing it. It contains provisions that must be followed before authorizing any increased activity on a water body that may result in a lowering of water quality, including an increase in the discharge of a

regulated pollutant, or activities that may significantly alter the physical habitat.

Water quality standards serve as: the water quality goals for water uses and cleanliness; the benchmarks to measure and report on meeting Clean Water Act goals; the water quality targets to meet when setting wastewater permit limits and total maximum daily loads.

### Which water quality standards rules are under review at this time?

This rule package addresses rules 3745-1-05 (Antidegradation) and 3745-1-07 (Water use designations and statewide criteria).

The revisions to these rules are a small subset of the larger draft rule packages made available for interested party review in August 2008

and October 2008.

The Agency is moving forward in the rulemaking process with these revisions because they are time-sensitive. Because of the complexity and size of the larger rule packages, they are likely to take at least another year to complete. The Agency would like to complete this smaller rule package by the end of the year.

### What changes are proposed?

#### Rule 3745-1-05: Antidegradation

Rule changes consist of:

- Making submittal, public notice and public hearing requirements for Section 401 water quality certification projects consistent with Ohio Revised Code section 6111.30 (Application for federal water quality certification – hearing, effective 09-29-2005); and
- Making small grammatical changes that don't substantively change the



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rule.

### **Rule 3745-1-07: Water use designations and statewide criteria**

Rule changes consist of:

- Revising the definitions of the recreation use designations; and
- Removing fecal coliform water quality criteria and revising E. coli water quality criteria.

### **What makes these changes time-sensitive?**

Changes in rule 05 will eliminate mandatory public hearings for Lake Erie Section 401 projects when there is no public interest in the projects. This is being done to avoid wasting resources holding hearings when there is no public interest. The sooner the rule is effective, the sooner cost savings will accrue.

Ohio EPA must prepare and submit to U.S. EPA a biennial water quality report and a listing of impaired waters pursuant to Section 303(d) of the Clean Water Act by April 2010. The assessment of recreation use impairment is an important component of that report. The changes in rule 07 need to be in place in advance of submitting the report.

### **Why are these rules under review?**

Section 119.032 of the Ohio Revised Code (ORC) requires Ohio EPA to review its rules every five years to determine whether they should be changed. The Agency has reviewed these rules and has identified needed changes.

### **Are there changes from the March draft rules?**

Yes. Changes to the rules were made in response to public

comments. The changes are listed below. See the Response to Comments for explanations for making the changes.

- In paragraph (C)(2) of rule 3745-1-05, the new phrase “or other applicable laws and rules” was removed.
- In paragraph (B)(4) of rule 3745-1-07, text was added to clarify under what conditions the director may require effluent disinfection during the months outside the recreation season.
- In table 7-13 of rule 3745-1-07, application of the single sample maximum E. coli criteria was changed.

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

Local governments and businesses that operate wastewater treatment facilities could see changes in discharge permit limits for bacteria as a result of these rules.

Specific water quality criteria are associated with each beneficial use designation and are the specific target conditions to be maintained in the water bodies. Together the uses and criteria may be the basis for permit limits in wastewater discharge permits.

### **What additional information is the Agency seeking?**

The Agency wants to hear from interested stakeholders (public, local officials, and National Pollutant Discharge Elimination System [NPDES] permit holders) who may be impacted by these rule revisions. General comments and specific factual information are welcome.

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

Text being considered for deletion is struck through; new text being considered is underlined.

### **What is the rulemaking schedule?**

A public hearing is scheduled at **2:00 p.m. on September 10, 2009 in conference room B** of the Ohio EPA Central Office, located in the Lazarus Government Center at 50 West Town Street, Suite 700, in Columbus, Ohio. 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 response to comments document will be prepared and sent to everyone who comments on the proposed rules. Final rules could be adopted by this Fall.

### **How can I comment on the proposed revisions?**

Make oral comments or submit written comments at the public hearing on **September 10, 2009** or send comments to Bob Heitzman at Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, Ohio 43216-1049. Comments may also be faxed to Mr. Heitzman at 614-644-2745 or e-mailed to [bob.heitzman@epa.state.oh.us](mailto:bob.heitzman@epa.state.oh.us).

Comments on the proposed rules must be received **no later than 5:00 p.m. on September 10, 2009**.

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## How can I get a copy of the proposed rules or more information?

Go to the Division of Surface Water's Web site at [www.epa.state.oh.us/dsw](http://www.epa.state.oh.us/dsw) or contact Bob Heitzman by e-mail at [bob.heizman@epa.state.oh.us](mailto:bob.heizman@epa.state.oh.us) or by phone at (614) 644-3075.

## Summary of Proposed Rule Revisions

### Rule 3745-1-05: Antidegradation.

Paragraph (B)(4) – Applications for Section 401 water quality certifications will be exempt from the submittal requirements in the antidegradation rule. Required submissions will be determined in accordance with section 6111.30 of the Revised Code, Chapter 3745-32 of the Administrative Code and rules 3745-1-50 to 3745-1-54 of the Administrative Code.

Paragraph (C)(3)(a) – Public notices for Section 401 water quality certification applications will be published pursuant to the requirements in section 6111.30 of the Revised Code.

Paragraph (C)(3)(e) – Section 401 water quality certifications impacting Lake Erie or its shoreline will be exempt from the requirement to have mandatory public hearings for projects impacting superior high quality waters. Public hearings for Section 401 water quality certifications impacting Lake Erie or its shoreline will be held if there is significant public interest and according to the timelines contained in section 6111.30 of the Revised Code.

### Rule 3745-1-07: Water use designations and statewide criteria.

Paragraph (B)(4) – The recreation use designations (bathing waters, primary contact recreation and secondary contact recreation) will be revised.

Table 7-13 – The existing table, containing criteria for fecal coliform and E. coli bacteria will be replaced with a new table containing only revised criteria for E. coli.

Table 7-16 – This new table contains the water bodies that will be designated class A primary contact recreation pursuant to paragraph (B)(4)(b)(i).

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