



Division of Surface Water Response to Comments

Rule: Water Quality Standards Program Rules OAC Chapter 3745-1

Agency Contact for this Package

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Ohio EPA held an interested party comment period from April 6, 2016 to May 6, 2016 regarding the re-organization of Water Quality Standards program rules. This document summarizes the comments and questions received during the comment period.

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 topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General Comments

Comment 1: Rescinding and moving rules

In general, the proposals for rescinding and moving certain rules, such as, specifically, rules 07 and 33-39, seem appropriate and reasonable. At present, some rules that relate to each other are located relatively far apart, and grouping them in a more logical manner, with updates of cross-references, should make them easier to understand and use. It appears that the changes under consideration are limited to reorganizing the rule, placing them in different sections, without changes in content. If that understanding is correct, we are assuming there would not be a negative effect from this reorganization. Therefore, the Conservancy supports these changes as generally outlined. We assume that the content of these rules would not change, or at least would not be substantive. (The Nature Conservancy)

Response 1: The Nature Conservancy is correct that the overall intent of the rulemaking is to reorganize the water quality standards rules. The only exception is the new re-mining provision in OAC 3745-1-05 and any updates to cross-references or rule

language made necessary by the reorganization itself in order to maintain coherence as a result of the reorganization.

Comment 2: Typographic Errors

EPA identified the following typographic errors:

1. 3745-1-02 (B)(9): "shall be met."
2. 3745-1-06 (K)(9)(a): "The both of the following"
3. 3745-1-06 Tables 1 (a) and (b): Wording related to the narrative criteria for ambient temperatures of "59 (15) and above:' was moved to the adjoining cell above.
4. 3745-1-37 Table 37-2: Footnote "a" is included twice.
5. 3745-1-41 Table 41-2: For $K_{ow} = 7.1$, the food chain multiplier for trophic level 4 is listed as 15.468. This appears to be out of line with the multipliers for $K_{ow} = 7.0$ (26.242) and $K_{ow} = 7.2$ (24.322). Should this value be changed to 25.468? EPA notes that this wording is in the existing language of 3745-1-37. This apparent error exists in the current language of 3745-1-37.
6. 3745-1-42 (C)(1)(b): "The risk associated does shall be set at a level corresponding to an incremental cancer risk ... " should be "risk associated dose." This apparent error exists in the current language of 3745-1-37. (U.S. EPA, Region 5)

Response 2: The typos identified in #1, 2, 3, 5, 6 have been addressed in the proposed rules. In response to #4, the footnote "a" is used three times to denote the criterion is based on the protection of taste and odor effects. This is consistent with the current table 7-11 in rule OAC 3745-1-07.

Comment 3: Updating Cross References

In the proposed rules, the following cross references should be updated:

1. 3745-1-06 (L) and (M)(2): "Appropriate restrictions listed in paragraphs (D), (F), (G) and (H)." This should be (E), (F), (G) and (H) to maintain the same reference.
2. 3745-1-06 (O)(2): "In accordance with paragraph (C) of this rule ... " should be "paragraph (E) of this rule" to maintain the same reference.
3. 3745-1-33: References to 3745-2-08 should be updated since that chapter is being rescinded and the mixing zone requirements are being moved to 3745-1-06.
4. 3745-1-34 (A)(I) and (B)(I): References to 3745-2-08 should be updated since that chapter is being rescinded and mixing zone requirements are being moved to 3745-1-06.
5. 3745-1-35 (A): References to 3745-2-08 should be updated since that chapter is being rescinded and mixing zone requirements are being moved to 3745-1-06.
6. 3745-1-35 Table 35-1: References to other tables in this rule still use the table numbering system from 3745-1-07. These references should be updated.
7. 3745-1-37 (A): References to 3745-2-08 should be updated since that chapter is being rescinded and the mixing zone requirements are being moved to 3745-1-06.

8. 3745-1-38 (H): "unless the variance being renewed was approved under paragraph (D)(10) of this rule" should be "paragraph (J) of this rule" to maintain the same reference.

9. 3745-1-38 (H): "the certification required by (J)(2)(e) of this rule" should be "under paragraph (J)(4)(e) of this rule" to maintain the same reference.

10. 3745-1-42 (C)(3)(a): References to 3745-1-37 should be updated since rules related to BAFs are being moved from that chapter to 3745-1-41. (U.S. EPA Region 5)

Response 3: In response to #1, the cross references have been revised in the proposed rule to (F), (H), (I) and (J). In response to the rest of the items, the cross references have been revised as stated in the comment in the proposed rules.

Comment 4: Cross References in Other Rule Chapters

In addition, EPA identified rules not included in the proposed rulemaking that contain references to rules that are proposed to be moved. These references should be updated to reference the new rule location:

1. References to mixing zones (rules moved from 3745-2-08 to 3745-1-06):

- a. 3745-2-05
 - i. (A)(2)(g)
 - ii. (A)(5)
 - iii. (B)(3)
 - iv. (B)(5)

- b. 3745-33-07
 - i. (B)(5)(a)
 - ii. (B)(5)(c)
 - iii. (B)(6)

2. References to variance rules (moved from 3745-33-07 to 3745-1-38):

- a. 3745-1-01 (F)
- b. 3745-1-05
 - i. (C)(1)
 - ii. (D)(1)(g)
 - iii. (F)(2)(d) (U.S. EPA Region 5)

Response 4: The cross references in rules OAC 3745-1-05 and 3745-33-07 will be revised in separate upcoming rulemakings. The reference in rule OAC 3745-1-01(F) was revised in the draft rule. The references in rule OAC 3745-1-05(C)(1) and 3745-1-05(F)(2)(d) were revised in the draft rule. The reference at OAC 3745-1-05(D)(1)(g) has been revised in the proposed rule.

OAC 3745-1-02

Comment 5: I have one observation in a section of the WQS rules that is not proposed for change. In 3745-1-02, (13) [*proposed to be renumbered as (15)*] the definition of Bioaccumulative Chemical of Concern (BCC) lists a number of example BCC compounds, including hexachlorocyclohexanes and four specific isomers of hexachlorocyclohexane. Each compound listing also presents an incorrect acronym, "BHC", in parentheses. BHC is an acronym for benzene hexachloride,

which is an entirely different compound from hexachlorocyclohexane. Hexachlorocyclohexane is a cyclic aliphatic compound with chemical formula $C_6H_6Cl_6$, whose correct acronym is HCH. Because of its structure, it has multiple isomers, including the four listed in the rule definition (alpha-, beta-, gamma- and delta-). Benzene hexachloride (or alternatively, hexachlorobenzene), is an aromatic compound with chemical formula C_6Cl_6 , and because of its planar structure it has no isomers.

Unfortunately, BHC is a somewhat commonly used – although incorrect – acronym for hexachlorocyclohexane. A number of commercial water laboratories perform analysis of hexachlorocyclohexane and refer to it as “BHC”. I realize this may be something of a quandary for the rule text, since BHC is a commonly used acronym – albeit incorrect. Nevertheless, it does not seem appropriate for Ohio’s rules to use incorrect chemical nomenclature.

Following are several web links that confirm this nomenclature issue for HCH vs. BHC:

<http://www.inchem.org/documents/pims/chemical/pim257.htm> - See 1.1.

https://books.google.com/books?id=s8IQy36k7xkC&pg=PA336&lpg=PA336&dq=incorrect+use+of+benzene+hexachloride+instead+of+hexachlorocyclohexane&source=bl&ots=XvwHBDtjSF&sig=gCqIHBMUDR4MLPFMeutzdODD_M8&hl=en&sa=X&ved=0ahUKEwiaguPox77MAhWJtoMKHexDD0wQ6AEIOTAE#v=onepage&q=incorrect%20use%20of%20benzene%20hexachloride%20instead%20of%20hexachlorocyclohexane&f=false

https://books.google.com/books?id=MvN6CgAAQBAJ&pg=PA1050&lpg=PA1050&dq=incorrect+use+of+benzene+hexachloride+instead+of+hexachlorocyclohexane&source=bl&ots=g_sFIUTMqa&sig=q_BfEXUCmVzc0EWck6O3E1HTtJQ&hl=en&sa=X&ved=0ahUKEwiaguPox77MAhWJtoMKHexDD0wQ6AEIPjAF#v=onepage&q=incorrect%20use%20of%20benzene%20hexachloride%20instead%20of%20hexachlorocyclohexane&f=false

<https://en.wikipedia.org/wiki/Lindane> (Guy Jamesson)

Response 5: The acronym “BHC” is a commonly used term to identify hexachlorocyclohexane and its isomers, as pointed out in the comment. Even though this may not be technically correct, there is precedent and a continuing need to list the commonly used terms. The rule language uses the same terminology as used in the federal Great Lakes Water Quality Guidance to describe these chemicals (see 15393 at <https://www.gpo.gov/fdsys/pkg/FR-1995-03-23/pdf/95-6671.pdf>). Given these considerations, we think retaining the terminology in the existing rule language is understandable.

Comment 6: 3745-1-02(B)(95) “Water bodies” or “waters of the state”
ODOT has made comments regarding the modification of this definition in the past and we offer a similar comment again.

For clarity and consistency, OEPA should define and use only the term "waters of the state". "Water bodies" is too vague to be included in this definition. We suggest that this definition explicitly exclude upland ditches and upland storm water conveyances. It is also unclear what is meant by irrigation systems and drainage systems, as these could be associated with natural drainages or manmade installations (i.e. agricultural drainages associated with manipulated waterways versus residential/commercial sprinkler systems). It is unclear if the use of the term "waters of the state" equates to regulated waters. The implication of this term, in the context of these rules, is the expansion of jurisdiction over resources currently not routinely regulated and currently do not have guidance for how to identify and delineate them therefore increasing regulatory uncertainty, decreasing predictability, and adding confusion to the permitting process. (Ohio Department of Transportation)

Response 6: The comments pertain to content that extends beyond the intended scope of this rulemaking, which pertains to reorganization of rule content. While the Agency is open to making corrections or improving clarity, we believe these comments extend beyond those goals. We will, however, consider these comments as part of the triennial review of these rules scheduled to commence later this year.

OAC 3745-1-05

Comment 7: I'll admit, I'm not the expert, but I don't believe that coal mining should be getting pollutant discharge exemptions. Coal burning, and coal mining is excessively polluting, and we're burying that energy forms true cost to society by allowing it to be exempt from pollution controls. There are other forms of energy production that don't pollute Ohio's air and water, we don't need to continue to carve out exemptions, just to poison our water. People get sick, and can get cancer from heavy metals and carcinogens from coal mining, this is not common sense, this costs billions of dollars a year in increased medical expenses. (Peter Dietz)

Response 7: The intent of the new re-mining provision in OAC 3745-1-05 is to promote re-mining in areas that were formerly mined. Typically, these areas were mined decades ago, prior to the existence of laws now in place that require restoration of the land to its original contour, re-vegetation, and storm water controls. In the course of re-mining areas that were originally mined before these federal laws, restoration work will occur following the mining activity that should actually result in environmental enhancement by reducing or eliminating sources of sedimentation, acid mine drainage and metals loadings to downstream receiving waters. Encouraging these efforts with this provision not only promotes restoration of previously degraded areas, but provides an alternative to mining in undisturbed areas.

The proposed rule change does not grant coal mining activities pollutant discharge exemptions. Any company that wants to mine coal must obtain the appropriate National Pollutant Discharge Elimination System permit.

Comment 8: Regarding the substantive change to the antidegradation rule at 3745-1-05(B)(2)(i), the proposed antidegradation review exemption should be expressly narrowed to apply only to pre-SMCRA re-mining sites that will not impact previously unmined areas. (Ohio Environmental Council)

Response 8: The exemption applies to coal remining operations as defined in 40 CFR 434.70(a). This definition is not limited only to pre-SMCRA sites. The United States Environmental Protection Agency expanded the applicability of 40 CFR 434, Subpart G to sites abandoned after SMCRA was enacted because such sites were not reclaimed and have the same negative environmental impact as pre-SMCRA sites. SMCRA allows coal remining operations to impact a limited amount of unmined land as necessary to conduct coal remining operations. All impacted area covered under a SMCRA permit will have discharge limitations in the NPDES permit according to the discharge category.

Changing the language as suggested would unnecessary exclude coal remining operations that meet the federal requirements for a remining NPDES permit.

Comment 9: Coal re-mining, OAC 3745-1-05

One potentially important and substantive change in this proposal seems to be related to OAC 3745-1-05. This change proposes to add a new exemption from the antidegradation rule requirements for NPDES permits for coal surface re-mining sites.

Our understanding from this brief description is that a proposed re-mining site might be deemed to have "no net increase" in a pollutant (per the 2015 Early Stakeholder Outreach). If our understanding is correct that this definition is focusing only on pollutants, it would appear that other critical factors that influence stream ecology and ecosystem functioning such as hydrology/flow regime and habitat quality could still be impacted. These factors would need to be considered as separate from, and in addition to, a pollutant load.

We also assume that even for the pollutant load this would mean "no net increase" for each pollutant of concern versus a no net increase in a cumulative load of different pollutants as would likely be very difficult or impossible to tease out and equate the impacts of various pollutants. Therefore, it seems appropriate that the Agency should determine what specifically is included in "no net increase" as the rule change was described in 2015.

The Ohio EPA "no net increase" in pollution seems to be a less restrictive condition than that used by the U.S. Army Corps of Engineers. That agency stated in its 2012 "Decision Document Nationwide Permit 49," (page 1) "The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic

resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)" (see http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2012/NWP_49_2012.pdf).

On a related point, the U.S. Army Corps addressed, in its "Decision Document Nationwide Permit 49," "how the overall activity will result in net increases in aquatic resource functions is necessary to ensure compliance with the terms and conditions of the NWP. Clarification of how to apply the 40 percent provision to determine how much new area could be mined will provide consistency in implementation" (page 6). Ohio EPA also should provide clarification on how this "40 percent" is determined.

The Agency's proposed language for OAC 3745-1-05 (B)(2)(i) also states:

A national pollutant discharge elimination system permit associated with a coal re mining site where no individual section 401 water quality certification is required for the re mining operation and where the director determines that the proposed discharge meets the criteria for modified effluent limits for a pollution abatement area as that term is defined under 40 C.F.R. 434.70.

40 CFR 434.70 states the definition of "pollution abatement area" as:

(b) The term pollution abatement area means the part of the permit area that is causing or contributing to the baseline pollution load of pre-existing discharges. The pollution abatement area must include, to the extent practicable, areas adjacent to and nearby the re-mining operation that also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.

Our position is that Ohio EPA would need to determine a "no net increase" in order for the director to determine that the proposed discharge meets the criteria for modified effluent limits and be certified as meeting Ohio's water quality standards.

Under Ohio EPA's 401 Water Quality Certification, coal re-mining is eligible for Nationwide Permit 49. If this rule is adopted, would all of the components of Nationwide Permit 49 (Coal Re-mining Activities) established on April 19, 2012, by Director Nally still be in effect for these sites, or would the proposed 3745-1-05 rule mean that the other factors could not be considered by Ohio EPA in its 401 permit requirements? The April 19, 2012, NWP states that "individual state water quality certification is required" under certain conditions (use designations, antidegradation status), and then lists what is authorized. The Conservancy believes the 3745-1-05 rule proposal would be more readily supported if those NWP conditions still remain effective, and the "no net

increase" is an added item. Otherwise there are many factors, such as habitat and hydrology impacts, that would negate the "no net increase" intent of the proposed rule and The Nature Conservancy would oppose the proposed revision. (The Nature Conservancy)

Response 9: A coal surface remining site is not eligible for a remining permit unless it has already been determined that the remining operation will result in no net increase of pollutants.

Remining permits are issued under Section 301(p) of the Clean Water Act. In order to be eligible for a coal surface remining NPDES permit, the operator must demonstrate the remining operation will result in the potential for improved water quality. The effluent limits for a remining operation may not allow discharges to exceed pre-existing "baseline" levels of iron, manganese, and pH. Federal effluent guideline limitations for coal remining operations are promulgated in 40 CFR 434, Subpart G. Pre-existing discharges are defined in 40 CFR 434.70(c). New discharges from active mining areas on coal remining sites are subject to federal effluent guideline limitations in 40 CFR 434 Subparts C, D, or F. Pre-existing discharges commingled with new discharges from active mining areas are subject to 40 CFR 434.61.

40 CFR 434.72(a) requires the coal mine operator to submit a site-specific Pollution Abatement Plan for the pollution abatement area. The Pollution Abatement Plan must be designed to reduce the pollution load from pre-existing discharges. The typical pollutants of concern in pre-existing discharges from coal mines are iron, manganese, and acidity but water quality improvements are not limited to these parameters. As part of the Pollution Abatement Plan, the site-specific pollution characteristics must be identified. As a result, other pollutants may be considered in the loading reduction.

Issuance of the NPDES permit is separate from the issuance of a 401 water quality certification. Critical factors that influence stream ecology and ecosystem functioning will be considered as part of the 401 water quality certification review. The proposed antidegradation rule language does not exempt a coal surface remining site from the requirement to obtain a 401 water quality certification or a permit from the U.S. Army Corps.

Comment 10: 3745-1-05(C)(4)(d)
Activities resulting in short-term impacts on outstanding national resource waters will be subject to a review of non-degradation alternatives, minimal degradation alternatives, mitigative technique alternatives, economic and social benefits, public participation and intergovernmental coordination. For section 401 water quality certifications for outstanding national resource waters, demonstration of avoidance, minimization and mitigation of impacts shall serve as the applicant's non-degradation, minimal degradation and mitigative technique alternatives analysis, respectively, as required in paragraph (B) of rule 3745-32-03 of the Administrative Code.

Does this statement imply that avoidance measures equate to a non-degradation alternative and minimization efforts equate to a minimal degradation alternative? If so, would avoidance mean the complete avoidance of all impacts or avoidance to some but not all impacts associated with a project? In other words, if efforts were taken to completely avoid a Category 3 wetland, but other Category 1 wetlands were impacted, does this account for avoidance or minimization only? (Ohio Department of Transportation)

Response 10: The intent of this change is to ensure that there is no conflict with the alternatives analysis for 401 water quality certifications required in 3745-1-05 and the alternatives analysis required in the newly proposed 401 rules (3745-32-03). The proposed change in the 401 rules would more closely align the alternatives analysis with the one required by the Corps in accordance with 40 C.F.R. Part 230. The intent of this change was not to equate avoidance with non-degradation, minimization with minimal degradation, and mitigation with mitigative technique. Therefore, the “respectively” has been removed from the proposed language. Applicants for 401 water quality certifications will be required to demonstrate avoidance, minimization, and mitigation in accordance with OAC 3745-1-54 and 40 C.F.R. Part 230.

Comment 11: 3745-1-05(C)(5)
(5) Other waters.
For waters other than outstanding national resource waters and limited quality waters, the director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule, except that for section 401 water quality certifications and state isolated wetland permits pursuant to section 6111.024 of the Revised Code for high quality waters that are wetlands, the director shall impose the requirements specified in rules 3745-1-50 to 3745-1-54 of the Administrative Code in lieu of paragraphs (C)(5) and (C)(8) of this rule. In addition, the director may apply the items in paragraphs (C)(5)(a) to (C)(5)(f) and (C)(5)(k) to (C)(5)(m) of this rule, may consider cumulative impacts as defined in paragraph (I) of rule 3745-1-50 of the Administrative Code, and shall consider whether the wetland is scarce regionally or statewide and the feasibility of replacing that wetland type, in making a decision whether to allow the lowering of water quality. For section 401 water quality certifications for high quality waters, other than wetlands, demonstration of avoidance, minimization and mitigation of impacts shall serve as the applicant's non-degradation, minimal degradation and mitigative technique alternatives analysis respectively, as required in paragraph (B) of rule 3745-32-03 of the Administrative Code.

Similar to the comment above, does this statement imply that avoidance measures equate to a nondegradation alternative and minimization efforts equate to a minimal degradation alternative? (Ohio Department of Transportation)

Response 11: See response 10 above.

Comment 12: Tables 5-2 (Declining fish species) and 5-3 (Threatened species) in OAC 3745-1-05

While Ohio EPA did not propose a draft rule change for these tables, we wanted to point out that the species listed in these tables do not match ODNR's lists in "Ohio Listed Species," Publication 5356

(<https://wildlife.ohiodnr.gov/portals/wildlife/pdfs/publications/information/pub356.pdf>). Some updating appears to be appropriate. For example, Table 5-3 has 8 fish species listed as "Threatened species," while ODNR Publication 5356 includes 13 fish species as "Threatened." We understand that "Threatened" is defined in OAC 3745-05 (A)(26), but it is confusing if some species are listed by ODNR and not included in these tables by Ohio EPA, and vice versa. The bluebreast darter (*Etheostoma camurum*) is one example. The Mollusks listed in Table 5-3 also do not match ODNR's list.

It seems logical to match ODNR's list for "Threatened species," and also include their endangered species as those that would establish Superior High Quality Waters (OAC 3745-1-05(A)(10)(b)) or Outstanding State Waters (3745-1-05(A)(10)(c)). Declining species in Table 5-2 could include any species endangered, threatened or otherwise listed by ODNR, as well as through determinations of a declining trend by Ohio EPA, as established under OAC 3745-1-05(A)(5). (The Nature Conservancy)

Response 12: As previously mentioned, the revisions in this rule package are focused on reorganization of content, with the exception of the single additional provision added to the antidegradation rule related to re-mining. The Agency anticipates conducting a full review of the antidegradation rule, OAC 3745-1-05, as part of the upcoming triennial review. The Agency expects to begin the review this summer. The topics addressed by the comment will likely be a part of that review.

OAC 3745-1-07

Comment 13: Removal of the Nuisance Prevention Use

Under the proposed rules, the nuisance prevention use in 3745-1-07 would be removed. This was a designated use that the state has been intending to phase out. EPA reviewed the designated uses for Ohio surface waters and it appears that there are currently no remaining stream segments with the nuisance prevention use designation. Is this correct? (U.S. EPA, Region 5)

Response 13: Yes.

OAC 3745-1-34

Comment 14: Update of the Term "Drinking Criteria"

In chapter 3745-1-34, the proposed rules would replace the term "nondrinking criteria" with the term "fish consumption criteria." EPA suggests that the state also replace the term "drinking criteria" with the term "public water supply

criteria” at 3745-1-33(A) to be more consistent with the designated use terminology in 3745-1-07. (U.S. EPA, Region 5)

Response 14: We agree that this suggestion would better clarify the designated use to which the criteria apply by making the terminology consistent and therefore have made the recommended changes in the rule.

OAC 3745-1-35

Comment 15: Applicability of Wildlife Criteria in 3745-1-35

Under the proposed rules, aquatic life and wildlife criteria would be moved from chapters 3745-1-07 and 3745-1-33 respectively and placed into 3745-1-35. Proposed language in paragraph (B) of 3745-1-35 describes how the criteria in that chapter shall be applied. The wording in paragraph (B) appears to be taken from 3745-1-07. As such, it only refers to the aquatic life criteria. Paragraph (B) should be updated to refer to the wildlife criteria or a similar paragraph should be added to describe how the wildlife criteria should be applied. (U.S. EPA, Region 5)

Response 15: We agree with this inadvertent omission described in the comment and have moved the applicability language from existing OAC 3745-1-33(C)(2) to new OAC 3745-1-35(B)(3), which reads “Criteria for protection of wildlife, or site-specific modifications thereof, are "Outside Mixing Zone Average" water quality criteria and shall apply to all water bodies located in the lake Erie drainage basin.”

OAC 3745-1-38

Comment 16: Movement of Variance Rules

The proposed rules move unchanged Ohio’s procedures for variances from water quality standards from 3745-33-07 to 3745-1-38. Since variances from water quality standards are themselves water quality standards, EPA strongly supports Ohio’s movement of these rules out of Ohio’s permitting rules and into the water quality standards. From the notice, it appears that there are no proposed changes to 3745-33-07 contemplated at this time. As a result, it seems that identical water quality standards variance provisions will exist at two places in Ohio’s rules. Will the variance rules in 3745-33-07 be rescinded in a future rulemaking, or will these rules be retained in both 3745-1 and 3745-33? (U.S. EPA, Region 5)

Response 16: Our plan is to rescind the duplicate variance provisions in OAC 3745-33-07 in a separate rulemaking.

OAC 3745-1-40

Comment 17: Unclear Language

The proposed rules would make a grammatical/style change to 3745-1-40(A)(1). As proposed, however, the wording is unclear. The proposed rule reads: “The procedures in paragraphs (A)(1) to (A)(3) of this rule shall be used to calculate

the tier 1 AAC when LC₅₀ or EC₅₀ data for at least one species of freshwater animal in at least the eight different families identified as follows:" A phrase such as "are available" should be added after the word "data." (U.S. EPA, Region 5)

Response 17: We agree that this wording would clarify the existing content and will make the suggested edit to the proposed rule.

End of Response to Comments