Division of Surface Water
Response to Comments

Rule: Reorganization of 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 August 18, 2016 to October 5, 2016 regarding the reorganization of the Water Quality Standards program rules. This document summarizes the comments and questions received during the associated 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

Comment 1: As we stated in our comments of May 5, 2016, in general, the proposals for rescinding and moving certain rules, such as rules 07 and 33-39 seem appropriate and reasonable. At present, some rules that relate to each other are located relatively far apart. Grouping these rules 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 rules and 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. (The Nature Conservancy)

Response 1: The Nature Conservancy's understanding is correct. No substantial revisions are proposed in the reorganization of the Water Quality

Standards rule other than the revisions specified in the Antidegradation rule, 3745-1-05 of the Administrative Code.

Rule OAC 3745-1-05

Comment 2: The Conservancy believes coal remining can be environmentally beneficial. We appreciate the Agency's response to our comments of August 2016 on the draft rules. 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.

We would like to reiterate our concern in previous comments about other consequences related to "improved water quality." It is not clear in the response if hydrology and habitat impacts could still remain. These impacts could be a consequence of remining and still have "no net increase" in pollutants as defined by effluent limits. Our understanding 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.

We believe there are circumstances that might reduce or result in no net increase of pollutants, but cause degradation due to these other types of impacts. The Agency's response of August 2016 stated "Critical factors that influence stream ecology and ecosystem functioning will be considered as part of the 401 water quality certification review." We are not clear as to how that certification is geared toward hydrology/flow regime of a potentially impacted stream. Due to remining, that stream might be receiving no net increase of, or fewer, pollutants, but have impacted hydrology/flow regime, which could result in degradation. These factors would need to be considered as separate from, and in addition to, a pollutant load, and should be specifically addressed.

Finally, while the Agency's Response to Comments refers to the 401 water quality certification. For any sites subject to a Nationwide Permit 49 (Coal Remining Activities), we are not clear how hydrology/flow regime impacts are avoided, such as when achieving "no net increase in pollutants." That permit also does not seem to clarify how another type of impact would be avoided at the same time the site is achieving "no net increase." (The Nature Conservancy)

Response 2: The applicability of this Antidegradation exemption is limited to those sites where no individual Section 401 water quality certification is required, meaning either that no physical impacts are being proposed to the streams in question or that the impacts are covered under a Nationwide Permit 49. For projects covered under Nationwide Permit 49, potential physical impacts themselves are considered as part of the Antidegradation review conducted as part of the adoption of Ohio's certification to the Nationwide Permits. Impacts under Nationwide Permits are considered, by their nature, to have minimal adverse impacts to the environment. This combined with the fact that the Agency expects an overall environmental improvement to be realized with remining efforts, the Agency believes it is appropriate to exempt sites that meet these criteria from additional regulatory reviews under Antidegradation.

End of Response to Comments