

January 2007

Rules For Water Quality Trading Ohio Administrative Code Chapter 3745-5

What do these rules cover?

The water quality trading rules (OAC Chapter 3745-5) became effective on January 1, 2007. They include the requirements for establishing a water quality trading program in Ohio. Water quality trading is a voluntary program that would allow a National Pollutant Discharge Elimination System (NPDES) permit holder (point source) to meet its regulatory obligations by using pollutant reductions generated by another wastewater point source or nonpoint source. The definitions for point source and nonpoint source are as follows:

"Point source", for the purpose of this chapter, means any discernible, confined and discrete conveyance from a wastewater treatment works. This term does not include agriculture storm water discharges or return flows from irrigated agriculture.

"Nonpoint source" means any source of pollutants, other than those defined as point sources.

Why did Ohio EPA adopt these rules?

U.S. EPA's Office of Water issued its *Water Quality Trading Policy* in January 2003. The purpose of the policy was to encourage states to develop and implement water quality trading programs for nutrients, sediments and other pollutants where opportunities exist to achieve water quality improvements at reduced costs. Ohio EPA has adopted rules for water quality trading to support a program that we believe will: (1) Achieve water quality improvements more quickly than would otherwise be possible; (2) Lead to a more cost

effective way to achieve water quality standards in Ohio's waters; (3) Provide economic incentives for reductions in nonpoint source pollution, which is a major cause of water quality impairment in Ohio; and (4) Provide other environmental benefits like restoring natural flow patterns, improving aquatic habitat, increasing the ability of streams to process certain pollutants, and creating stream buffers, shading and other benefits that go beyond just reducing pollutants.

What are the rules?

Rule 3745-5-01

Rule 01 includes the definitions for the water quality trading program.

Rule 3745-5-02

Rule 02 states the purpose of the water quality trading program.

Rule 3745-5-03

Rule 03 addresses the water quality trading prohibitions and restrictions, including prohibiting trading for bioaccumulative chemicals of concern, restrictions on CAFOs, and prohibiting the use of federal or 319 grant dollars to generate water quality credits.

Rule 3745-5-04

Rule 04 is general requirements for trading and includes requiring an approved trading plan that can be effective for up to 5 years, the grandfathering of existing trading activities, establishing the areas in which trading may occur, and providing a role for qualified soil and water conservation professionals in approved trading plans.

Rule 3745-5-05

Rule 05 is general requirements for water quality trading management plan applications. It addresses when

applications must be submitted and requires an evaluation of the environmental and financial effectiveness of the trading activities when trading plans are renewed.

Rule 3745-5-06

Rule 06 addresses requirements for water quality trading management plan applications. The requirements are tiered depending on the complexity of the trading program, with trades between point sources being the simplest, and watershed-scale programs involving multiple point sources and multiple nonpoint sources being the most complex. Public participation is required in developing, implementing and revising a trading plan.

Rule 3745-5-07

Rule 07 is the requirements for water quality credits.

Rule 3745-5-08

Rule 08 addresses quantifying pollutant loads for determining water quality credits.

Rule 3745-5-09

Rule 09 states the requirements for determining water quality baselines.

Rule 3745-5-10

Rule 10 sets trading ratios for trading between point sources and for trading between point sources and nonpoint sources. It allows the director to consider and impose alternate trading ratios.

Rule 3745-5-11

Rule 11 addresses how trading provisions will be incorporated into a point source's NPDES permit. This rule allows the Agency to put restrictions on trading if deemed necessary to meet water quality goals. It also addresses establishing

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permit limits and monitoring requirements, as well as allowing the use of a watershed general permit .

Rule 3745-5-12

Rule 12 addresses access to trading records, compliance, enforcement and oversight. If proper notification procedures are followed, it provides for up to a 90 day period for a point source to return to compliance with its permit limits upon discovery that it has insufficient credits.

Rule 3745-5-13

Rule 13 identifies the minimum public participation requirements as part of water quality trading activities.

Rule 3745-5-14

Rule 14 identifies the ambient water quality monitoring requirements as part of water quality trading activities.

How do the rules affect the regulated community?

The water quality trading rules are voluntary, so an NPDES permit holder will be affected by the rules only if they decide to participate in a water quality trading program. Participating in a water quality trading program will give the permit holder an alternate means of complying with its permit limits that could result in cost savings when compared to installing additional treatment capabilities at the wastewater treatment plant. Water quality trading rules provide an opportunity for point sources and nonpoint sources to work together in mitigating water quality impacts within their watershed.

If an NPDES permit holder submits a water quality trading management plan as part of a permit application, only the NPDES permit application fee of \$200.00 will apply. For any trading plan that is not submitted as part of an NPDES permit application, a plan review fee of \$200.00 will be required.

How can I get more information on the rules?

Go to the Water Quality Trading Program link on the Division of Surface Water Website at www.epa.state.oh.us/dsw/ or contact Gary Stuhlfauth by email at gary.stuhlfauth@epa.state.oh.us or by phone at (614) 644-2026.