

3745-33-05 **Authorized discharge levels.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules and federal statutory provisions referenced in this rule, see rule 3745-33-01 of the Administrative Code.]

(A) Final limitations.

- (1) Except as provided by paragraph (G) of this rule, for each point source from which pollutants are discharged, the director shall determine and specify in the permit the maximum levels of pollutants that may be discharged to ensure compliance with:
 - (a) Applicable water quality standards; and
 - (b) Applicable effluent limitations, which shall be the national effluent limitations and guidelines adopted by the administrator pursuant to sections 301 and 302 of the act, and national standards of performance for new sources pursuant to section 306 of the act, and national toxic and pretreatment effluent limitations pursuant to section 307 of the act; and
 - (c) Standards that prohibit significant degradation of the waters of the state, if the point source was installed or should have been installed pursuant to a permit to install under Chapter 3745-42 of the Administrative Code; and
 - (d) Any more stringent requirements necessary to comply with a plan for area-wide waste treatment management, approved pursuant to section 208(b) of the act; and
 - (e) Any more stringent limitations required to comply with any other state or federal law or regulation.
- (2) Prior to promulgation of regulations by the administrator setting forth effluent standards or limitations, or standards of performance pursuant to the act, the director may impose standards, limitations, or conditions in an Ohio NPDES permit necessary to ensure compliance with Chapter 6111. of the Revised Code and the act.
- (3) A discharge shall be deemed to be in compliance with an effluent limitation based upon the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury specified in Chapter 3745-1 of the Administrative Code if:
 - (a) The discharge does not exceed the effluent limitation established in the NPDES permit based upon the 0.012 ug/l thirty-day average criterion; or

(b) The permittee demonstrates to the director's satisfaction that the concentration of methylmercury in the edible portion of consumed species - or weighted average of various species based upon local consumption - exposed to the discharge does not exceed 0.3 mg/kg. Any discharger seeking to make a demonstration pursuant to paragraph (A)(3)(b) of this rule must include a notification of its intent to perform such a study in the monthly operating report that reports any exceedance of a mercury effluent limit based on the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury. Such demonstration shall be based upon results of a fish tissue study, conducted in accordance with a methodology approved by the director. The results of the fish tissue study must be submitted to the director for review and approval within one hundred and twenty days of the discharge, or such additional period of time as specified by the director. Provided that the study is submitted within the time allowed, the determination of whether or not the discharger is in compliance with the applicable effluent limitation will be made when the director approves or disapproves the demonstration. If the geometric mean of all representative samples of any species or weighted average of various locally consumed species exceeds 0.3 mg/kg methylmercury, the director shall disapprove the demonstration and the discharger shall implement a strategy to reduce sources of mercury. This rule does not apply to any mercury effluent limitation other than the thirty-day average effluent limitation based upon the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury specified in Chapter 3745-1 of the Administrative Code.

(B) Interim limitations. Except as provided in paragraph (D) of this rule, the director may establish the maximum levels of pollutants that may be discharged during the period of the compliance program.

(C) Characterization of discharge levels.

(1) Expression of permit limits for continuous discharges. These requirements shall apply unless the director determines that expressing limits in these terms is impracticable.

(a) For discharges from a publicly owned treatment works or other treatment works that treats exclusively domestic sewage, limits for the parameters listed in this paragraph shall be expressed as average weekly and average monthly limits, unless more restrictive limits for other periods are needed to meet water quality standards or other regulatory requirements.

(i) Carbonaceous biochemical oxygen demand (CBOD).

(ii) Total suspended solids.

- (iii) Ammonia-nitrogen.
 - (iv) Nitrate/nitrite-nitrogen.
 - (v) Total nitrogen.
 - (vi) Phosphorus.
 - (vii) All pathogen parameters.
- (b) For all other discharges, limits shall be expressed as daily maximum and monthly average limits, unless limits for other periods are needed to meet water quality standards or other regulatory requirements.
- (2) Expression of permit limits for non-continuous discharges. Discharges that are not continuous, as continuous is defined in 40 C.F.R. 122.2, shall be particularly described and limited, considering the following factors, as appropriate:
- (a) Frequency (for example, a batch discharge shall not occur more than once every three weeks);
 - (b) Total mass (for example, not to exceed one hundred kilograms of zinc and two hundred kilograms of chromium per batch discharge);
 - (c) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute); and
 - (d) Prohibition or limitation of specified pollutants by mass, concentrations, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than two hundred fifty grams (one-fourth kilogram) of zinc in any discharge).
- (3) Concentration and loading limitations. Authorized levels of pollutants that may be discharged shall be stated to the extent possible given the nature of the pollutant in terms of the volume, weight in pounds or kilograms per day (except for those pollutants not expressible by weight), duration, frequency and, where appropriate, concentration (except for those pollutants not expressible by concentration) of each pollutant discharge. The director shall specify average and maximum daily quantitative limitations, where appropriate. Whenever a water quality-based effluent limitation (WQBEL) is developed under Chapter 3745-2 of the Administrative Code, the WQBEL shall be expressed as both a concentration value and a corresponding mass loading limit, except as provided in paragraph (C)(3)(d) of this rule. Limits for chronic whole effluent toxicity may be expressed in terms of an average of multiple toxicity tests.

- (a) Both mass and concentration limits must be based on the same permit averaging periods, except as allowed under paragraph (C)(3)(d) of this rule.
 - (b) The mass loading limits shall be calculated using effluent flow rates that are consistent with those used in establishing the WQBEL that are expressed as concentrations, except as allowed under paragraphs (C)(3)(c) and (C)(3)(d) of this rule.
 - (c) For facilities that, during wet weather conditions, are subject to flows that exceed dry weather treatment facility design conditions, the director may, upon review of supporting information, authorize mass loading limits based on a more appropriate flow rate.
 - (d) For facilities utilizing water conservation or flow reduction practices, the director may specify more appropriate mass and concentration limits based on wasteload allocation results as developed under Chapter 3745-2 of the Administrative Code.
- (4) Metals. All permit effluent limitations, standards, or prohibitions for a metal must be expressed in terms of "total recoverable" metal as defined in 40 C.F.R. 136, Appendix C unless:
- (a) An applicable metal effluent standard or limitation has been established under the act in the dissolved or valent or total form;
 - (b) In establishing permit limitations on a case-by-case basis under 40 C.F.R. 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the act; or
 - (c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).
- (5) Ambient sampling. When a site-specific dissolved metals translator is used in the calculation of effluent limitations, the NPDES permit shall require the permittee to conduct ambient sampling to confirm the continued validity of the site-specific translator.
- (a) The ambient sampling shall be conducted once during the term of the Ohio NPDES permit using procedures specified in paragraph (G) of rule 3745-2-04 of the Administrative Code.
 - (b) If the director determines that adequate site-specific dissolved metals translator data exists, the ambient sampling may not be required.

- (D) Present discharge levels. The director may fix the maximum levels of pollutants specified in an Ohio NPDES permit as either final limitations or interim limitations at the levels indicated by the applicant as its current maximum levels of discharge, even where limitations to such discharge levels are not essential to avoid violation of either applicable water quality standards or effluent standards.
- (E) Treatment system design levels. The director may establish limitations for any discharge based on the level of performance that a proposed treatment system is designed to achieve, as documented in an approved permit to install under Chapter 3745-42 of the Administrative Code. These limitations are limited to those pollutants that the proposed treatment system is designed to remove.
- (F) Antibacksliding.
- (1) Ohio NPDES permits may not be renewed, reissued or modified to contain effluent limitations that are less stringent than the comparable final effluent limitations in the previous permit except when:
- (a) Material and substantial additions or alterations to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;
 - (b) Information is available that was not available at the time of permit issuance (other than revised regulations, guidance or test methods) and that would have justified the application of a less stringent effluent limitation at the time of permit issuance;
 - (c) For technology-based limitations, the director determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;
 - (d) A less stringent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy provided that the revised limitation is a WQBEL limitation or is a limitation based on effluent limitation guidelines that was formerly based on best professional judgement;
 - (e) The permittee has received a modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n) or 316(a) of the act or rule 3745-33-04 of the Administrative Code;
 - (f) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed, reissued, or modified permit may reflect the level of pollution control actually achieved, but shall not be less stringent than required by the

effluent guidelines in effect at the time of permit renewal, reissuance or modification; or

(g) For water quality-based effluent limitations,

(i) If the water quality standard is attained and applicable antidegradation requirements of rule 3745-1-05 of the Administrative Code are met; or

(ii) If the water quality standard is not attained and the cumulative effect of changing wasteload allocations or total maximum daily loads will assure attainment of the water quality standard or the designated use not being attained is removed, and applicable antidegradation requirements of rule 3745-1-05 of the Administrative Code are met.

(2) Any increase in authorized pollutant loadings shall be subject to any applicable antidegradation requirements contained in rule 3745-1-05 of the Administrative Code.

(3) A permit shall not be renewed, reissued or modified to contain limitations that are less stringent than the applicable effluent guidelines at the time the permit is renewed, reissued or modified, or to contain effluent limits that would result in a violation of applicable water quality standards.

(G) Schedules of compliance.

(1) If construction of a point source commenced after March 23, 1997 for which an initial Ohio NPDES permit containing a water quality-based effluent limitation is issued on or after March 23, 1997, the permittee shall comply with such a discharge limitation upon commencement of the discharge, except as allowed in this paragraph:

A point source that commenced discharge after March 23, 1997, or a recommencing discharger, shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed ninety days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 40 C.F.R. 122.47(a)(2).

(2) The director may grant a point source an Ohio NPDES permit with a satisfactory schedule of compliance leading to compliance with section 6111. of the Revised Code, the act and its regulations. Any schedules of compliance issued under this paragraph shall require compliance as soon as possible, but not later than the applicable statutory deadline under the act. This schedule shall become a

condition of the NPDES permit, if the director determines that any of the following conditions apply:

- (a) The permit is reissued or modified to contain a new or more restrictive WQBEL and the discharger cannot meet the WQBEL, or there is not enough information to determine whether the discharger can meet the WQBEL; or
 - (b) A schedule is necessary under paragraph (C) of rule 3745-33-07 of the Administrative Code; or
 - (c) Authorized discharge levels specified in paragraphs (A)(1)(d) and (A)(1)(e) of this rule cannot be met; or
 - (d) A schedule is necessary in order for the submission of other information, reports, or documents, or to perform activities, relative to special conditions in the permit consistent with provisions of the act or federal rules promulgated thereunder, or Chapter 6111. of the Revised Code or rules adopted thereunder.
- (3) A satisfactory schedule of compliance shall include the following elements:
- (a) An enforceable schedule of steps and dates for their achievement, no two of which shall be separated by more than twelve months, to be taken by the applicant that will bring the discharge into compliance with authorized discharge levels at the earliest possible date but no later than those dates necessary to achieve the objectives set forth in the act;
 - (b) Such additional steps as the director shall specify, including interim measures, to eliminate any danger or serious threat of danger to human health and to minimize any deleterious effect on the environment. Such measures may include interim treatment techniques, reduced levels of operations, or the imposition of a connection ban;
 - (c) When the compliance schedule goes beyond the term of the permit, an interim effluent limit or other appropriate requirements and schedules effective upon the expiration date; these shall also be addressed in the permit fact sheet. The administrative record for the permit shall reflect the final limit, or requirements for developing limits and other appropriate requirements and schedules, and its compliance date; and
 - (d) A reasonable period of time, up to five years from the date of permit renewal or modification, for the permittee to comply with a WQBEL for whole effluent toxicity or a WQBEL for a pollutant excluding those listed in table 33-1 of rule 3745-1-33 of the Administrative Code. When the permit is renewed or modified to contain a new or more restrictive WQBEL, the

WQBEL must be based on a whole effluent toxicity level contained in rule 3745-2-09 of the Administrative Code or on a criterion or tier II value adopted in, or derived pursuant to, Chapter 3745-1 of the Administrative Code to qualify for a compliance schedule under this rule except as provided for in this paragraph.

- (i) If construction of a point source commenced on or before March 23, 1997 and a renewed or modified permit includes a limit based upon a tier II value, the permit may provide a reasonable period of time, up to two years, in which to provide additional studies necessary to develop a tier I criterion or to modify the tier II value. In such cases, the permit must require compliance with the tier II limitation within a reasonable period of time, no later than five years after permit renewal or modification, and contain a reopener clause.
 - (ii) The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third-party during the time allowed to conduct the specified studies that demonstrate, to the director's satisfaction, that a revised limit is appropriate. Such a revised limit may be incorporated through a permit modification and a reasonable time period, up to five years, may be allowed for compliance. If incorporated prior to the compliance date of the original tier II limitation, any such revised limit shall not be considered less stringent for purposes of the antibacksliding provisions of paragraph (F) of this rule.
 - (iii) If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the director may provide a reasonable additional period of time, up to five years, for the permittee to achieve compliance with the original effluent limitation.
 - (iv) Where a permit is modified to include new or more stringent limitations on a date within five years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with paragraph (G)(3)(c) of this rule.
- (4) Where necessary to achieve compliance with standards for whole effluent toxicity, the compliance schedule may include specific requirements to conduct a toxicity reduction evaluation (TRE). If a properly conducted TRE fails to identify the source, cause or treatability of the toxicant, the director may modify the permit and extend the schedule not to exceed five years in total, to include requirements for additional investigation or special control measures.
- (5) No later than fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with interim or final requirements.

Effective: 6/7/2011

R.C. 119.032 review dates: 11/30/2010 and 6/7/2016

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 6111.03

Rule Amplifies: R.C. 6111.03

Prior Effective Dates: 12/30/1973, 2/28/1990, 12/29/1995, 10/31/1997,
12/30/2002