

# CSI - Ohio

The Common Sense Initiative

## Business Regulation Impact Analysis

Agency Name: Ohio EPA

Regulation/Package Title: Water Quality Trading

Rule Number(s): 3745-5-01, 3745-5-02, 3745-5-03, 3745-5-04, 3745-5-05, 3745-5-06, 3745-5-07, 3745-5-08, 3745-5-09, 3745-5-10, 3745-5-11, 3745-5-12, 3745-5-13, and 3745-5-14

Date: February 29, 2012

**Rule Type:**

- |   |   |
|---|---|
| <input type="checkbox"/> New                | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded                |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

## **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

This chapter of the Ohio Administrative Code (OAC) provides the administrative requirements for the development and implementation of water quality trading programs in Ohio. Water quality trading is a **voluntary** program that allows a National Pollutant Discharge Elimination System (NPDES) permit holder, such as a municipal wastewater treatment plant, to meet its regulatory obligations by using pollutant reductions generated at a lower cost by another wastewater plant or by installing pollutant reduction projects on agricultural land. Trading is a tool for achieving water quality improvements, and under the right circumstances, has the potential to yield not only environmental benefits, but also lower costs to the state's wastewater dischargers.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

RC 6111.03 and 6111.04

**Does the regulation implement a federal requirement?** No. There is no federal regulation requiring water quality trading. This is a completely voluntary program, to give entities additional opportunities to meet their effluent limits. There is a federal policy that provides guidance to states that choose to allow water quality trading as a regulatory option.

**3. Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program?** No. This is a completely voluntary program, to give entities additional opportunities to meet their effluent limits.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for not incorporating the federal counterpart.**

This does not apply to the proposed rules. There are no specific requirements by the federal government for Ohio to implement a water quality trading program. This is a voluntary program.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?** Ohio EPA believes that trading has the potential to achieve water quality improvements at a lower cost to the state's wastewater dischargers. If Ohio EPA is going to allow dischargers to use trading as an option for meeting limits in their discharge permits, we believe it's important to have a framework in place that provides the administrative requirements for a trading program to ensure consistency across the state. Because it is a statewide program, we believe that implementing it through rule is appropriate. In addition, this is a voluntary program, so no one is required to participate.

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- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** Initially, the success of the rules will be measured in administrative terms. For example: the number of wastewater plants that are participating in water quality trading; the number of farmers that are installing projects; the total pounds of pollutant reduction that are being achieved. Over time, the success of the rules will be measured in environmental and financial terms. For example: the miles of streams that are meeting water quality standards; the cost per pound of pollutant reduction achieved through trading compared to the cost per pound of reducing the pollutant by constructing new treatment facilities or upgrading existing treatment facilities.

### **Development of the Regulation**

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** Ohio EPA notified over 1,020 stakeholders that the Agency was conducting a 5-year review of the trading rules. A complete list of these stakeholders is available upon request. We received comments and suggestions from the following five (5) stakeholders: the City of Columbus, Butler County, the Miami Conservancy District, the School of Environment and Natural Resources at The Ohio State University, and the Association of Ohio Metropolitan Wastewater Agencies.
- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** The five stakeholders suggested revisions to six specific provisions of the rules. We made significant revisions to three of these. We did not believe revisions to the other three were appropriate.
- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule?** Numerous academic papers on water quality trading were reviewed prior to when these rules were first adopted in 2007. The method that the rules specify for estimating pollutant reductions for projects implemented on farmland is based on engineering calculations related to runoff and soil loss. Finally, establishing water quality standards and determining whether a stream is meeting those standards, which is a measurable outcome of water quality trading, are based on aquatic toxicology data, aquatic chemistry data and aquatic biology data.

**How does this data support the regulation being proposed?** Several important aspects of trading are supported by scientific data, engineering principals, and principals of aquatic toxicology and biology. The trading ratios were developed to provide a means of reasonable “exchange” between pollutant reductions via best management practices and pollutant reductions via technology improvements at a wastewater treatment plant.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate?** None.

**If none, why didn't the Agency consider regulatory alternatives?** Water quality trading is, in itself, a regulatory alternative. It is a voluntary regulatory program that provides an alternative compliance option for NPDES permit holders.

**11. Did the Agency specifically consider a performance-based regulation?** No.

**Please explain.** Water quality trading is a voluntary regulatory program that provides an alternative compliance option for NPDES permit holders.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing regulation?** There is no existing federal or state regulation for water quality trading.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.** These rules are for a voluntary program. When we issue a permit that requires a wastewater plant to comply with new or lower limits for phosphorus (this is the pollutant that water quality trading is typically used for), we include a provision in the permit that allows the discharger to pursue the trading option if they desire. One of the main reasons for adopting rules was to provide the framework for consistent and predictable implementation of water quality trading across the state.

### **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

None. Water quality trading is a voluntary program. If they choose to participate, impacted businesses would primarily be municipal and industrial wastewater plants that have NPDES permits.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

None. Water quality trading is a voluntary program that provides a compliance option for NPDES permit holders. As such, we do not believe that impacts from the rules are "adverse." However, if an NPDES permit holder chooses to participate in a trading program, they might have to: prepare a trading plan; submit the trading plan to Ohio EPA for review and approval; prepare and submit a request to modify their NPDES permit. (Note: The preparation and submittal of a trading plan for approval might be done by a person or group other than an NPDES permit holder.)

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**c. Quantify the expected adverse impact from the regulation.**

None. Water quality trading is a voluntary program that provides a compliance option for NPDES permit holders. As such, we do not believe that impacts from the rules are “adverse.” However, if an NPDES permit holder chooses to participate in a trading program: 1) Estimated time to prepare a trading plan = 20 – 80 hours; 2) Fee for plan review = \$100; 3) Application fee for NPDES permit modification = \$200; 4) Issuance fee for NPDES permit modification = may not exceed \$400. (Note 1: The preparation and submittal of a trading plan for approval might be done by a person or group other than an NPDES permit holder. Note 2: If a trading plan is submitted as part of an application to modify or renew an NPDES permit, there is not a separate fee to review the plan.) The estimated time to prepare a trading plan is based on experience with existing trading plans. Fees are from the current Ohio EPA fee schedule.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** Not applicable. Water quality trading is a voluntary program that provides a compliance option for NPDES permit holders. As such, we do not believe that impacts from the rules are “adverse.”

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses?** Yes. These rules provide all businesses with an alternative means of compliance. **Please explain.** Water quality trading is a voluntary program that provides a compliance option for NPDES permit holders.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?** Water quality trading is a voluntary program that provides a compliance option for NPDES permit holders. To the extent that a small business were to have a first time paperwork violation under these rules, Ohio EPA would waive administrative fines or civil penalties on that small business for the violation unless the violation were to fall within the exceptions listed in 119.04(C).

**18. What resources are available to assist small businesses with compliance of the regulation?** Water quality trading is a voluntary program that provides a compliance option for NPDES permit holders. The Division of Surface Water has a web site that provides information about water quality trading. The Division’s contact person for trading is available to answer questions and provide assistance as needed.

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