

## **Surface Water Quality – Second Interested Party Review**

### **Draft Revisions for Water Quality Standards Rule (OAC 3745-1-06), Implementation of Water Quality Standards Rules (OAC 3745-2), Pretreatment Rule (OAC 3745-3-07) and Ohio NPDES Permit Rules (OAC 3745-33)**

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*Note: This is the second Interested Party Review for this rule package. The rules were previously made available for review from February 11, 2008 to March 26, 2008. As a result of comments received during the review period and comments received from U.S. EPA Region 5, it was decided to make revised draft rules available for a second interested party review period. This updated fact sheet outlines the revisions that have been made to the draft rules.*

### **What do these chapters of the OAC cover?**

These chapters of the Ohio Administrative Code (OAC) protect lakes, rivers, streams and other surface water bodies from pollution.

Chapter 3745-2 covers the technical process for converting Ohio water quality standards (WQS) to wasteload allocations that can be used as permit limits.

Chapter 3745-33 contains the administrative and technical requirements for writing and obtaining National Pollutant Discharge Elimination System (NPDES) permits.

Rule 3745-1-06 pertains to mixing zone requirements for non-thermal and thermal constituents.

Rule 3745-3-07 pertains to requests for confidentiality in the pretreatment program.

### **Why are the rules under review and what changes are being considered?**

The rules under OAC Chapters 3745-2 and 3745-33 have been reviewed and amended pursuant to section 119.032 of the Ohio Revised Code (ORC). Ohio EPA is required to review its rules every five years to determine if the rules need to be revisited. The Agency has reviewed nineteen rules at this time and has identified changes needed to these rules. The nineteen rules reviewed and being changed are listed on the last page of this fact sheet.

Three broad types of changes are being considered:

citations to documents incorporated by reference are updated; grammatical edits are made; and equations that could not be recreated using the standard rule authoring software are inserted, unchanged, as graphics.

In addition, the following specific changes are being considered. Some of these changes are required by U.S. EPA as a condition of maintaining NPDES permit delegation. Please note the following changes have been updated to include revisions since the first interested party review in 2008. New changes are italicized.

#### **Rule 3745-1-06**

Revisions would remove language regarding the prohibition of mixing zones but retain the reference to Chapter 3745-2 for mixing zone requirements.

#### **Rule 3745-2-02**

*Revisions would remove the definition of "Nonpoint source" in response to U.S. EPA comments.*

#### **Rule 3745-2-06**

Revisions would remove expired language pertaining to the consideration of pollutants in a discharger's intake water in establishing water quality-based effluent limitations (WQBELs).

#### **Rule 3745-2-08**

Revisions would allow thermal mixing zones in state lakes, and in waters designated Exceptional Warmwater Habitat and Coldwater Habitat. The rule adds restrictions to limit the size and effect of any mixing zone granted.

*In response to comments, Ohio EPA is also proposing to add a mixing zone criterion to protect human health in the event of a temporary exposure. Revisions would also clarify that 316(a) demonstrations do not need to go through alternatives analysis because these are built-in to the thermal limits review process.*

#### **Rule 3745-3-07**

*Revisions clarify documents that cannot be claimed confidential consistent with draft language in OAC 3745-33-03.*

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## Rule 3745-33-02

Revisions would remove reference to federally issued NPDES permits, clarify that Ohio NPDES permits are required for discharging land application systems for treated sanitary wastewater, and clarify that Ohio NPDES permits are required for sludge disposal facilities. Ohio EPA uses NPDES permits to administer the federally-delegated sludge permit program.

*Revisions would include clarifying language that Ohio NPDES rules shall be consistent with federal regulations.*

## Rule 3745-33-03

*Revisions would include a requirement that NPDES permit application forms contain federal requirements at a minimum.*

*Revisions would also include confidential business information restrictions from federal NPDES rules, in response to U.S. EPA comments and legal review.*

## Rule 3745-33-04

Revisions would remove the requirement prohibiting the imposition of more stringent standards of performance for 10 years after completion of construction. U.S. EPA is requiring Ohio to remove this language because this exception does not exist for publicly-owned treatment works (POTWs) in either the federal Clean Water Act or NPDES regulations. U.S. EPA considers this provision inconsistent with the Clean Water Act.

*The draft rule also contains several federal rule provisions in response to U.S. EPA legal review. These include when an application is complete, protection of other states' WQS, prohibitions on new source discharges of pollutants to impaired waters, and provisions for permit modifications requested by interested parties.*

*Revisions also include a provision for the modification of concentrated animal feeding operation NPDES permits in accordance with federal regulations for revisions to nutrient management plans.*

## Rule 3745-33-05

This rule contains several revisions: (1) Paragraph (A)(3)(b) currently contains a fish tissue value of 1.0 mg/kg that may be used as an alternative to determine compliance with the mercury water quality standard. The rule would change this fish tissue value to 0.3 mg/kg to conform to current science and U.S. EPA guidance; (2) New paragraphs (C)(1) and (C)(2) include clarifications on when 7-day average and daily maximum effluent limits are used in permits; these requirements are based on federal rules 40 CFR 122.45(d) and (e); (3) New paragraph (E) allows the director to set effluent limits based on the design specifications of a treatment plant; and (4) The compliance schedule language would be revised to allow for a short "break-in" period for new source treatment plants, similar to federal rule 40 CFR 122.29(d)(4).

## Rule 3745-33-07

Revisions would add language pertaining to minimum monitoring requirements for whole effluent toxicity testing. U.S. EPA noted that Ohio's application rules and practices require less whole effluent toxicity testing for POTWs than do federal rules. Federal rules require that 4 test results be submitted with the application, or that permits require annual testing. To meet this requirement, Ohio EPA is proposing a minimum annual test requirement in public permits for facilities with design flows of 1.0 million gallons per day or greater.

*The draft rule also sets the practical quantification level (PQL) for polychlorinated biphenyl compounds (PCBs) as the minimum levels for each congener in U.S. EPA's draft Method 1668B. Ohio EPA has determined that the draft method for PCBs has become a national consensus standard as required in ORC 6111.13. This level of sensitivity is much closer to Ohio and other states' WQS; the draft method has passed its interlaboratory validation test; and at least a dozen laboratories nationwide run the test. Many of these labs participated in the federal interlaboratory study.*

## How are the amendments formatted in the draft rules?

Text being considered for deletion is struck through; new text being considered is underlined. Changes made since the last interested party review in 2008 are shown in bold text.

## How will the revisions affect the regulated community?

The draft rule changes are mostly housekeeping in nature or clarification of current practices. Draft changes to rule 3745-33-07 will increase monitoring costs by \$1300-\$1600 per year for POTWs required to do chronic toxicity testing, or by \$500-\$750 for POTWs required to do acute toxicity testing. These extra costs would fall only on those POTWs under the rule that are not already testing toxicity.

Draft changes to rule 3745-33-04 will not change overall costs, but may decrease the time in which they need to be paid.

The fish tissue value change in rule 3745-33-05 will make it more difficult for dischargers to use this alternative method for determining compliance with the mercury water quality standard. The impact of this rule change cannot presently be estimated because no discharger has ever used this provision.

## What is the rulemaking schedule?

At this time, the Agency is soliciting a second interested

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party input on these draft rule revisions. Ohio EPA is required by Section 121.39(D) of the Ohio Revised Code to contact potentially affected parties prior to adopting rule changes.

At the close of the second interested party comment period, the Agency will review the comments and make necessary changes to the rules. The Agency will then file the proposed rules with the Joint Commission on Agency Rule Review (JCARR), the Legislative Service Commission and the Secretary of the State.

At that point, another comment period, including one or more public hearings, will be scheduled. After the close of that public comment period, the Agency will review the comments, make any necessary changes and then adopt the final rules.

Ohio EPA expects to file the proposed rules this summer. The final rules could be adopted by this fall.

## How can I provide input on the draft revisions?

Questions on the draft rulemaking should be directed to Eric Nygaard at 614-644-2024 or [eric.nygaard@epa.state.oh.us](mailto:eric.nygaard@epa.state.oh.us).

Comments should be sent to the attention of Melinda Harris at Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, Ohio 43216-1049. Comments may also be e-mailed to [melinda.harris@epa.state.oh.us](mailto:melinda.harris@epa.state.oh.us). **Comments on the draft rule changes must be received no later than 5:00 p.m. on April 26, 2010.**

Copies of this fact sheet and the rules that were reviewed are available on the Division of Surface Water Web page at [www.epa.ohio.gov/dsw/](http://www.epa.ohio.gov/dsw/).

### Rules in OAC Chapters 3745-1, 3745-2, 3745-3 and 3745-33 with Draft Revisions

| Rule #  | Title   | Draft Action |
|---|---|--------------|
| <b>OAC Chapter 3745-1 Water Quality Standards</b>                   |   |              |
| 3745-1-06   | Mixing zones.   | Amend        |
| <b>OAC Chapter 3745-2 Implementation of Water Quality Standards</b> |   |              |
| 3745-2-02   | Definitions.  | Amend        |
| 3745-2-04   | Determinations preliminary to development of water quality-based effluent limitations.            | Amend        |
| 3745-2-05   | Calculating wasteload allocations.  | Amend        |
| 3745-2-06   | Application of preliminary effluent limitations.  | Amend        |
| 3745-2-07   | Additive effects of pollutants.   | Amend        |
| 3745-2-08   | Mixing zone demonstrations and sizing requirements.   | Amend        |
| 3745-2-09   | Whole effluent toxicity provisions and water quality based effluent limit calculation procedures. | Amend        |
| 3745-2-10   | Wasteload allocation for ammonia-nitrogen toxicity.   | Amend        |
| 3745-2-12   | Total maximum daily loads.  | Amend        |
| <b>OAC Chapter 3745-3 Pretreatment Rules</b>                        |   |              |
| 3745-3-07   | Trade secrets; request for confidentiality.   | Amend        |
| <b>OAC Chapter 3745-33 Ohio NPDES Permits</b>                       |   |              |
| 3745-33-01  | Definitions.  | Amend        |
| 3745-33-02  | Ohio NPDES permit required.   | Amend        |
| 3745-33-03  | Permit applications.  | Amend        |
| 3745-33-04  | Permit actions.   | Amend        |
| 3745-33-05  | Authorized discharge levels.  | Amend        |
| 3745-33-07  | Establishing permit conditions.   | Amend        |
| 3745-33-08  | Generic permit conditions.  | Amend        |
| 3745-33-09  | Pollutant minimization programs.  | Amend        |

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