

February 2008

Surface Water Quality – Draft Revisions for Water Quality Standards Rule (OAC 3745-1-06), Implementation of Water Quality Standards Rules (OAC 3745-2) and Ohio NPDES Permit Rules (OAC 3745-33)

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.

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 revisited. The Agency has reviewed seventeen rules at this time and has identified changes needed to these rules. Rule OAC 3745-1-06 was impacted by changes to OAC 3745-2-08; therefore revisions are included with this rule review. The eighteen 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.

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 3745-2-06

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.

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.

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.

Rule 3745-33-05

This rule contains several revisions: (1) Paragraph (A)(3)(b) currently contains a fish tissue water quality standard of 1.0 mg/kg that may be used to derive a site-specific mercury limit. The rule would change this fish tissue standard 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



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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.

How are the amendments formatted in the draft rules?

Text being considered for deletion is struck through; new text being considered is underlined.

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 criterion change in rule 3745-33-05 may make site-specific limits more difficult to obtain. The impact of this rule cannot presently be estimated because no dischargers currently have limits based on this provision.

What is the rulemaking schedule?

At this time, the Agency is soliciting initial 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 draft rule 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, a second comment

period, including one or more public hearings, will be scheduled. After the close of the second 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.

Comments should be sent to the attention of Bob Heitzman at Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, Ohio 43216-1049. Comments may also be e-mailed to

bob.heitzman@epa.state.oh.us .

Comments on the draft rule changes must be received no later than 5:00 p.m. on March 26, 2008.

Copies of this fact sheet and the rules that were reviewed are available on the Division of Surface Water Web page at www.epa.state.oh.us/dsw.

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

Rule #	Title	Draft Action
OAC Chapter 3745-1 Water Quality Standards		
3745-1-06	Mixing zones.	Amend
OAC Chapter 3745-2 Implementation of Water Quality Standards		
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
OAC Chapter 3745-33 Ohio NPDES Permits		
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