

Wastewater Pollution Control – Interested Party Review

Draft Revisions for Water Quality Trading Rules

(OAC 3745-5-01 through 3745-5-14)

What does OAC 3745-5 cover?

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 (point source) to meet its regulatory obligations by using pollutant reductions generated by another wastewater point source or non-point source. Water quality trading is a tool for achieving water quality improvements, and under the right circumstances, has the potential to yield both environmental and economic benefits, while promoting increased interaction among watershed stakeholders.

Why are these rules being amended?

The rules under OAC Chapter 3745-5 have been reviewed 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.

State law and the federal Clean Water Act require Ohio EPA to periodically update rules to reflect the latest scientific information. The Agency has reviewed 14 rules due for review at this time and has identified changes needed to 8 of the rules. Therefore, we are planning revisions to 8 rules and no changes to 6 rules in this rulemaking, as listed in the table on the next page.

What changes are being considered?

A majority of the revisions consist of minor updates to references and grammatical edits.

In addition, the following specific changes are being considered:

Rule 01 – Updating references, titles and Web links

Rule 02 – Updating references

Rule 03 – Revising rule to state that use of a water quality credit shall not cause **or contribute to** a violation of water quality standards. Adding provision that nonpoint source load reductions funded through Ohio EPA's Water Resource Restoration Sponsor Program are not eligible to generate water quality credits

Rule 04 – Adding date by which two existing trading

programs must submit water quality trading management plans

Rule 06 – Changing the size of the hydrologic unit codes that must be used when identifying areas where nonpoint source projects might be located

Rule 11 – Identifying additional compliance-related provisions that will be included in NPDES permits when the permittee is participating in a water quality trading program

Rule 12 – Revising the word "his" to "the director's" in the first paragraph to provide for gender neutral language.

Rule 14 – Revising language to include biological and stream habitat parameters in ambient water quality monitoring plans

Who will be regulated by these rules?

Applicability of the rules will not differ from the current version of the rules, which includes NPDES permit holders. However, 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.

What additional information is the Agency seeking?

The Agency wants to hear from interested stakeholders who may be impacted by these draft rule revisions. General comments and specific factual information are welcome.

How are the amendments formatted in the draft rules?

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

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

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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 by late **Fall 2011**. The final rules could be adopted by **Spring 2012**.

How can I provide input on the draft revisions?

Please submit your comments in one of the following ways:

By email: dsw_rulecomments@epa.state.oh.us

By fax: (614) 644-2745

By postal mail:

Rule Coordinator

Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Comments on the draft rules must be received no later than **5:00 p.m. on October 25, 2011**.

How can I get more information?

Copies of this fact sheet and the draft rules are on the Division of Surface Water website at www.epa.ohio.gov/dsw/Home.aspx.

For more information about the draft rules, please contact Gary Stuhlfauth by phone at (614) 644-2026 or via email at: gary.stuhlfauth@epa.state.oh.us

Rules in OAC Chapter 3745-5 with 5-Year Review Dates of 1/1/2012

Rule Number	Rule Title	Draft Action
3745-5-01	Definitions: as used in this chapter.	Amend
3745-5-02	Purpose and applicability.	Amend
3745-5-03	Prohibitions and restrictions.	Amend
3745-5-04	Water quality trading: general requirements.	Amend
3745-5-05	Water quality trading: general requirements for a water quality trading management plan application.	No Change
3745-5-06	Water quality trading: requirements for a water quality trading management plan application.	Amend
3745-5-07	Requirements for water quality credits.	No Change
3745-5-08	Water quality credits and pollutant loading calculations.	No Change
3745-5-09	Determining water quality baselines.	No Change
3745-5-10	Water quality trading: trading ratios.	No Change
3745-5-11	Water quality trading: incorporating trades into individual NPDES permits and general permits.	Amend
3745-5-12	Record keeping, reporting requirements, compliance, enforcement, and oversight.	Amend
3745-5-13	Public participation requirements.	No Change
3745-5-14	Ambient water quality monitoring requirements.	Amend