

3745-5-01

Definitions: as used in this chapter.

[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 3745-5-02 of the Administrative Code.]

- (A) "Animal feed operation" or "AFO" means animal feeding operation, as defined in 40 C.F.R. 122.23, ~~as amended July 1, 2006.~~
- (B) "Best management practice" or "BMP" means structural, vegetative, or managerial practices that reduce or prevent the discharge of pollutants to waters of the state, typically from a nonpoint source.
- (C) "Bioaccumulative chemical of concern" or "BCC" means bioaccumulative chemical of concern, as defined in paragraph (B) of rule 3745-1-02 of the Administrative Code.
- (D) "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a large CAFO or as a medium CAFO by the terms of 40 C.F.R. 122.23, or that is designated as a CAFO by the director or regional administrator. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.
- (E) "Current discharge level" for a permittee means the pollutant-specific discharge load, including daily, weekly, monthly, seasonal or annual as appropriate, calculated using the median flow and concentration data for the last three calendar years.
- (F) "Director" means the director of Ohio environmental protection agency.
- (G) "Endorsed watershed plan" means a watershed action plan that meets all criteria of Ohio's Guide to Developing Local Watershed Action Plans in Ohio (June 1997), including the Appendix 8 update (February 7, 2003), and the most recent U.S. EPA section 319 planning guidance (federal fiscal year 2006). Endorsed watershed plans are available at the following web page: www.epa.state.oh.us/dsw/nps/NPSMP/WAP/WAPendorse.html
<ftp://ftp.dnr.state.oh.us/soil & water conservation/WatershedActionPlans/EndorsedPlans/>.
- (H) "EPA" means environmental protection agency.
- (I) "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act, 33 U.S.C. section 1251, ~~as amended through July 1, 2006.~~

- (J) "Load allocation" means load allocation, as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.
- (K) "Loading capacity" means loading capacity as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.
- (L) "Load reduction spreadsheet" means the most recent version of the load reduction spreadsheet (Ohio department of natural resources, division of soil and water conservation) available at ~~<http://www.dnr.state.oh.us/soilandwater/resources.htm>~~
<http://www.dnr.state.oh.us/tabid/23456/Default.aspx>.
- (M) "Local impacts" mean a stream segment, where high levels of pollutants being traded contribute to partial attainment or non-attainment of water quality standards.
- (N) "Nonpoint source" means any source of pollutants other than those defined or designated as point sources.
- (O) "NPDES" means national pollutant discharge elimination system.
- (P) "NPDES permit" means a permit issued by the state of Ohio pursuant to section 402 of the Federal Water Pollution Control Act and Chapter 6111. of the Revised Code and rules adopted thereunder.
- (Q) "Person" means person, as defined in division (I) of section 6111.01 of the Revised Code.
- (R) "Permittee" means an NPDES permit holder.
- (S) "Point source", for the purpose of this chapter, means any discernible, confined and discrete conveyance from a wastewater treatment works. This term does not include agricultural storm water discharges or return flows from irrigated agriculture.
- (T) "Point source-point source trade" means a trade in which the person using water quality credits and the person generating water quality credits are both permittees.
- (U) "Point source-nonpoint source trade" means a trade in which the person using water quality credits is a permittee and the person generating water quality credits is a nonpoint source.
- (V) "Pollutant load" means the quantity of a pollutant expressed in units of mass or mass

per unit time.

- (W) "Pollutant specific-cap" means the sum of the wasteload allocations established under a TMDL for permittees participating in a point source-point source trade.
- (X) "Pollution" means pollution as defined in division (A) of section 6111.01 of the Revised Code.
- (Y) "Production area" means an AFO production area, as defined in 40 C.F.R. 122.23.
- (Z) "Qualified soil and water conservation professional" means county soil and water conservation district or "SWCD" staff, staff from the Ohio DNR Division of Soil and Water ~~Conservation~~Resources or other Ohio department of natural resources staff, a natural resource conservation service or "NRCS" certified planner or an NRCS employee, a united states department of agriculture registered technical service provider or "TSP", a certified crop planner, a soil scientist as certified by the association of Ohio pedologists, a professional engineer, or equivalent professional as deemed by the director to have the education, knowledge and experience commensurate with this definition.
- (AA) "Quantified load reduction" means the reduction in a nonpoint source discharge that has been determined using one of the methods specified in this chapter.
- (BB) "Regional administrator" means the regional administrator of the appropriate regional office of the United States environmental protection agency or the authorized representative of the regional administrator.
- ~~(CC)~~ "Technology based effluent limit" means effluent limit based on either the secondary treatment regulations as specified in 40 C.F.R. 133 or the national effluent limitations guidelines and performance standards as specified in 40 C.F.R. 405 through 499.
- ~~(DD)~~(CC) "Total maximum daily load" or "TMDL" means total maximum daily load, as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.
- ~~(EE)~~(DD) "Trading ratio" means the mass of a pollutant that must be reduced to receive a water quality credit.

[Comment: A trading ratio of one to one or "1:1" means that one pound of a pollutant must be removed to receive a water quality credit for the reduction of one pound of that pollutant. A trading ratio of two to one or "2:1" means that two pounds of a pollutant must be removed to receive a water quality credit for the reduction of one pound of that pollutant.]

~~(FF)~~(EE) "Upstream trade" means a trade in which one source purchases water quality credits for pollutant reductions that are made by another source located upstream.

~~(GG)~~(FF) "Wasteload allocation" means wasteload allocation, as defined in paragraph (B) of rule 3745-2-02 of the Administrative Code.

~~(HH)~~(GG) "Water quality baseline" means the level of pollutant reduction that must be achieved before water quality credits can be generated.

~~(II)~~(HH) "Water quality credit" means the quantity of a pollutant that is available for a trade. Water quality credits are generated by pollutant reductions that are in excess of water quality baseline requirements, that occur within a specified period of time, and that are greater than those required by a regulatory requirement, such as an NPDES permit, or the wasteload allocation established under a TMDL.

~~(JJ)~~(II) "Water quality standards" means the standards set forth in Chapter 3745-1 of the Administrative Code.

~~(KK)~~(JJ) "Water quality trade" means the purchase, sale, conveyance or other transfer of a water quality credit from one person or permittee to another person or permittee.

~~(LL)~~(KK) "Water quality trading" or "trading" means a regulatory program that allows a permittee to meet its regulatory obligations by using pollutant reductions generated by another person.

~~(MM)~~(LL) "Water quality trading activity" means all requirements established and all activities regulated by this chapter.

~~(NN)~~(MM) "Water quality trading area" means the region identified in a water quality trading management plan where trading will occur. Common water quality trading areas include areas delineated by the boundaries of all receiving waters, a TMDL area or a watershed area.

~~(OO)~~(NN) "Water quality trading management plan" means a management plan governing the operation and maintenance of water quality trading activities within a water quality trading area.

~~(PP)~~(OO) "Watershed" means an area of land that drains to a common lake, pond, river, stream, or other waters of the state. A watershed may encompass a large river mainstem and all of its subbasins and tributaries when this is necessary to address regional or national water quality issues.

~~(QQ)~~(PP) "Watershed trading" means water quality trading activities within an area that occur between two or more permittees and one or more nonpoint sources.

~~(RR)~~(QQ) "Waters of the state" means waters of the state, as defined in rule 3745-33-01 of the Administrative Code.

~~[Comment: "C.F.R." refers to the federal "Code of Federal Regulations," which can generally be found in public libraries and electronically online, and can be purchased by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954." The full text is also available in electronic format at <http://www.epa.gov/water/laws.html#laws>. Compilations are also available for inspection and copying at the state library of Ohio and most public libraries.]~~

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3745-5-03

Prohibitions and restrictions.

[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 3745-5-02 of the Administrative Code.]

(A) The use of a water quality credit shall:

- (1) Not cause or contribute to a violation of water quality standards;
- (2) Not cause impairment of existing use or designated uses, as defined in Chapter 3745-1 of the Administrative Code, including adversely affecting water quality at an intake for drinking water supply;
- (3) Not exceed a loading capacity established by a TMDL;
- (4) Not be used to comply with a technology based effluent limit; ~~or based on either the secondary treatment regulations as specified in 40 C.F.R. 133, the national effluent limitations guidelines and performance standards as specified in 40 C.F.R. 405 through 499, or established based on the best professional judgment of the permit writer pursuant to section 402(a)(1) of the Clean Water Act and 40 C.F.R. 122.44(a)(1); or~~
- (5) In accordance with section 6111.03 of the Revised Code, not conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

(B) A water quality credit shall not be developed for a bioaccumulative chemical of concern.

(C) Concentrated animal feeding operations may participate in water quality trading activities subject to the following restrictions:

- (1) Load reductions that result from implementing structural controls or management practices in a CAFO production area are not eligible for the generation of water quality credits;
- (2) A concentrated animal feeding operation may not use water quality credits to comply with the no discharge technology limit that applies to a CAFO production area; and
- (3) Load reductions that are achieved by implementing BMPs or habitat restoration projects are eligible for the generation of water quality credits provided the

practices or projects are not implemented to comply with a nutrient management plan required under an NPDES permit or a permit-to-operate.

- (D) The director may consider the generation of water quality credits from habitat restoration projects, provided the pollutant load reductions can be calculated in accordance with this chapter.

[Comment: Examples of habitat restoration projects include dam removal projects, stream bank stabilization and stream channel reconfiguration.]

- (E) Nonpoint source load reductions that result from the implementation of BMPs shall:

- (1) Except as provided in paragraph (E)(2) of this rule, be eligible to generate water quality credits in direct proportion to the per cent local contribution, where the BMPs are funded under a federal grant program; and
- (2) Not be eligible for the generation of water quality credits where the BMPs are partially or in total funded by a grant, under section 319 of the Federal Water Pollution Control Act or through Ohio EPA's water resource restoration sponsor program.

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3745-5-11

Water quality trading: incorporating trades into individual NPDES permits and general permits.

(A) For any permittee participating in trading activities, a special condition will be included in the NPDES permit ~~that: to authorize water quality trading.~~

(1) Authorizes water quality trading;

(2) Requires implementation of actions from the approved water quality trading management plan that are included in the NPDES permit and specifies that failure to implement these actions is a violation of the permit;

(3) Requires submittal of an annual report that identifies the actions implemented by the permittee in the previous twelve-month period; and

(4) Provides that the director may revoke the approved plan and require compliance with water quality based effluent limits based on:

(a) Failure by participants in the trading program to implement actions in the approved plan;

(b) A determination by the director that sufficient pollutant reductions have not been achieved by the participants in the trading program to meet the applicable water quality based effluent limits; or

(c) New information becomes available that changes the director's determination on the approvability of the water quality trading management plan or on the suitability of using water quality trading as a mechanism to achieve water quality improvements in the defined trading area..

(B) The director may incorporate special conditions in an NPDES permit to limit water quality trading activities so that adverse local impacts do not occur, including:

(1) Limiting water quality trading to upstream trades;

(2) Requiring a higher trading ratio; or

(3) Including a cap on the portion of its effluent limit that a permittee can replace with water quality credits.

(C) When deciding whether or not to limit water quality trading activity in an NPDES permit, the director may consider such information as:

(1) The results of Ohio EPA water quality surveys that indicate existing local

impacts;

- (2) The results of modeling and data assessment and the availability of assimilative capacity for the pollutant;
 - (3) The presence of environmental factors such as low flow areas or impoundments that would cause the pollutant to persist longer in the water column; or
 - (4) The potential for any pollutant to cause acute effects.
- (D) When water quality trading occurs between two permittees, the effluent limit in an NPDES permit will be based on the quantity of water quality credit being traded and will:
- (1) For the permittee using the water quality credit, be increased; and
 - (2) For the permittee generating the water quality credit, be decreased.
- (E) When point source-nonpoint source water quality trading occurs, the permittee's NPDES permit will:
- (1) Include the effluent limit that would apply without water quality trading;
 - (2) Include effluent monitoring and reporting requirements;
 - (3) Include any water quality credit being applied to the discharge; and
 - (4) Include special conditions necessary to determine compliance with any NPDES effluent limit.
- (F) In accordance with Chapter 3745-38 of the Administrative Code, the director may issue a watershed general permit to establish pollutant-specific limitations for a group of similar permittees to achieve the pollutant reductions specified by a TMDL or multiple TMDLs for the same watershed.

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Ambient water quality monitoring requirements.

(A) The ambient water quality monitoring plan shall include sufficient information for the director to:

- (1) Determine if there have been negative impacts to water quality; and
- (2) Document the presence or absence of any improvements to water quality.

(B) The ambient water quality monitoring plan shall:

- (1) Include a list of ~~pollutants~~ chemical, biological and stream habitat parameters being monitored;
- (2) Provide the ~~monitoring~~ sampling frequency for each ~~pollutant~~ parameter being monitored;
- (3) Provide the location of each ~~pollutant monitoring~~ sampling site; and
- (4) Identify the methods and procedures used to monitor ~~for~~ each ~~pollutant~~ parameter.

(C) The director may require the applicant to submit additional information if the information submitted pursuant to paragraph (B) of this rule will not enable the director to determine if the trading activities have resulted in positive or negative impacts to water quality.

[Comment: For guidance on study plan design, sample collection, analytical methods, data assessment, and quality assurance and quality control procedures that are appropriate for the ambient water quality monitoring required under this rule, see appendices A, B and C to rule 3745-4-05 of the Administrative Code.]

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