



## Response to Comments – Proposed Rules

**Rules:** OAC Rules 3745-1-10, -12, -19, -21, -23, -24, -25, and -30 (Water Quality Standards Use Designation Rules)

### Agency Contact for this Package

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On January 6, 2011, Ohio EPA made available for review and comment eight proposed amended rules regarding water quality standards use designations for specific waters of the state. This document summarizes the comments and questions received during the associated comment period, which ended on February 10, 2011.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the comments and questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

### General comments

**Comment 1:** On December 6, 2010, the Ohio EPA issued the Proposed Rules for a short, two-week comment period ending right before the holidays on December 20, 2010. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 1:** The draft rules were released on November 19, 2010 for a 31-day comment period. The December 6, 2010 date referred to in the comment is the date of a news release issued by Ohio EPA. Initial notification of the draft rules was by way of:

a. Posting on the Ohio Business Gateway Regulatory Reform E-Notification System, which resulted in an email notification sent to interested parties on November 18, 2010. As of January 6, 2011, the E-

Notification System had 211 interested parties signed up for surface water rule notifications.

b. Posting the draft rules, fact sheet and letter to interested parties on the Ohio EPA website [www.epa.ohio.gov/dsw/rules/draft\\_use\\_desig\\_nov10.aspx](http://www.epa.ohio.gov/dsw/rules/draft_use_desig_nov10.aspx) on November 19, 2010.

c. Mailing or emailing notification on November 19, 2010 by Ohio EPA Division of Surface Water to approximately 900 interested parties, including [bbosworth@ohiocoal.com](mailto:bbosworth@ohiocoal.com), [mcarey@ohiocoal.com](mailto:mcarey@ohiocoal.com) and [sbennett@ohiocoal.com](mailto:sbennett@ohiocoal.com).

**Comment 2:** The agency again released the Proposed Rules on January 28, 2010 with yet additional changes for a 13-day comment period. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 2:** The proposed rules were released on January 6, 2011 for a 35-day comment period. The January 28, 2010 date referred to in the comment is the January 28, 2011 new release issued by Ohio EPA. Initial notification of the proposed rules was by way of:

a. Filing the rules with the Ohio General Assembly Joint Committee on Agency Rule Review, the Ohio Legislative Service Commission, the Ohio Secretary of State and the Ohio Department of Development Office of Small Business on January 6, 2011. The Legislative Service Commission posted the rules on the Register of Ohio website [www.registerofohio.state.oh.us/](http://www.registerofohio.state.oh.us/) on or about January 6, 2011.

b. Posting the proposed rules, public notice, fact sheet and letter to interested parties on the Ohio EPA website [www.epa.ohio.gov/dsw/rules/prop\\_use\\_desig\\_jan11.aspx](http://www.epa.ohio.gov/dsw/rules/prop_use_desig_jan11.aspx) on January 6, 2011.

c. Mailing or emailing notification on January 6, 2011 by Ohio EPA Division of Surface Water to approximately 900 interested parties, including [bbosworth@ohiocoal.com](mailto:bbosworth@ohiocoal.com), [mcarey@ohiocoal.com](mailto:mcarey@ohiocoal.com) and [sbennett@ohiocoal.com](mailto:sbennett@ohiocoal.com).

**Comment 3:** The Proposed Rules have broad implications and contain changes to 140 water bodies and will have a significant impact to pollutant limits contained in NPDES permits. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 3:** Our analysis showed there will be no impact on NPDES permit holders as stated on the Rule Summary and Fiscal Analysis forms filed with the

proposed rules. Those forms are posted on the Register of Ohio website at <http://www.registerofohio.state.oh.us/>. The Agency did not get any comments from NPDES permit holders on the draft rules and got comments only from the Ohio Coal Association on the proposed rules.

**Comment 4:** During this time, the agency also released a comprehensive rule package addressing antidegradation, stream mitigation, 401 certifications, and water quality standards ("Interrelated Rules") amounting over two thousand pages of documentation. Ohio's regulated community is entitled to a comprehensive evaluation of not only new standards but the impact of beneficial use designations in the context of Ohio's overall water regulations. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 4:** The proposed use designation rulemaking is based on existing rules that have been in effect for 21 years. The use designation rulemaking is not affected by the changes in the four interrelated rule packages. This is the Agency's annual use designation rulemaking to incorporate the results of recent biological surveys. The changes in this rule package are not dependent on any of the changes in the other four rule packages. Therefore, this rulemaking is proceeding independently from those other four rule packages.

**Comment 5:** The changes in the Proposed Rule and the Interrelated Rules are wide ranging and of significant consequence to Ohio's regulated community, including the coal industry. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 5:** This statement is true for the interrelated rules. However, the proposed use designation rules are not wide ranging and are not of significant consequence to Ohio's regulated community, as demonstrated by the lack of comments from the regulated community.

**Comment 6:** Ohio Coal requests that Ohio EPA extend the comment period for the Proposed Rules in order to allow Ohio's business community adequate time to review and comment on this significant rule package. Such comment period should, at a minimum, mirror the comment period for the Interrelated Rules given the considerable impact to Ohio's businesses. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 6:** Linking this rulemaking to the interrelated rules is not appropriate. As stated above, the use designation rulemaking is not affected by the changes in the interrelated rules. The interrelated rules are complex and controversial and are in the early stage of the rulemaking process, whereas the use designation rules are simple, non-controversial, based on rules and practices in place for 21 years, and in the final stage of the rulemaking process.

**Comment 7:** Despite Ohio EPA's professed need for the changes in beneficial use designations, Ohio Coal does not agree that federal law specifically requires these changes and objects to the re-designations of water bodies to coldwater habitats in the Proposed Rules. Such re-designations will result in significantly stricter water quality criteria for ammonia, cyanide, dissolved oxygen, pH, phenol, silver, and temperature without any reasonable technical or scientific basis. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 7:** Federal regulations at 40 C.F.R. Part 131 require states to adopt use designations and periodically update state regulations to protect existing uses. Coldwater habitat has been an existing use in Ohio regulations since 1975.

**Comment 8:** Ohio Coal looks forward to working with Ohio EPA on rules which will protect the environment while allowing our industry to remain viable; however, Ohio Coal cannot support the Proposed Rules, and specifically, the agency's proposal to re-designate numerous water bodies to coldwater habitats. (Michael T.W. Carey, President, Ohio Coal Association)

**Response 8:** Ohio EPA staff met with a representative of the Ohio Coal Association on February 25, 2011. At that meeting, Ohio EPA staff provided maps and explanations upon which we based our determination that the proposed rules will not affect the coal industry. A representative of the Ohio Coal Association later wrote to the Agency "While changes to use designations in coal bearing regions of the state will have cost impacts on our coal operators, given the small number of proposed changes in this particular rule package, the location of the proposed stream changes and the short time frame involved, we are not going to question this rulemaking any further."

**End of Response to Comments**