Division of Surface Water

Response to Comments on Draft Rules
March 2013

Rule: OAC 3745-39-04 Ohio EPA NPDES requirements for industries, and large and medium MS4s.

Agency Contact for this Package

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On February 20, 2013, Ohio EPA made available for review and comment for a second time one rule regarding the storm water program. This document identifies the comments and questions received during the associated comment period, which ended on March 6, 2013.

Ohio EPA reviewed and considered all comments received during the public comment periods. 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.

Specific Comments on Draft Rule

Comment 1: 3745-39-04(A)(2)(b): The proposed omission of the language of rule number 3745-39-04 letter A paragraph number (2) subset (b) is important to the rule. The omission of the language not only upholds the ruling by the Ninth District Court of Appeals decision, but the omitted language provides for better safeguards to the rule as the rule pertains to oil and gas exploration, production, processing and treatment operations etc.

A suggested solution would be to adopt the new omission of the language in this rule. In doing so, further safeguards are ensured with respect to oil and gas operations as a whole in Ohio. (Scott Bushbaum)

Response 1: Thank you for the comment. The Agency is proceeding with the rule revision.

Comment 2: 3745-39-04(A)(6) The proposed change in language in rule number 3745-39-04 letter A paragraph (6) where the word "must" is omitted and the language word "shall" is proposed is unnecessary.

The changes in the language where the word "must" is changed to "shall" seems unnecessary. The word "must" conveys a meaning of better compliance to the rule than the word "shall". (Scott Bushbaum)

Response 2: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to use "shall" in cases where the intent of the rule is to require a person to take action.

Comment 3: 3745-39-04(A)(7)(a)(iii) The proposed change in the language of rule 3745-39-04 letter A, paragraph 7 subset (a) subset (iii), where the word "pollutant(s)" is amended to "pollutant" is unnecessary and technically detrimental to the enforcement offered by the rule.

A solution to changing the wording of this rule with respect to the rule itself is to not change the language "pollutant(s)" to "pollutant". The rule is better represented by the current wording than with changes to the rule with respect to the quantity of pollutants or to narrow the amount to only one pollutant. (Scott Bushbaum)

Response 3: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to be written in the singular. Please note that this revision has no impact on the enforceability of the rule since the singular includes the plural as well.

Comment 4: 3745-39-04(B)(15)(ii) The proposed changes in the language of rule number 3745-39-04 letter B (15) (ii) where the word "pollutant(s)" is changed to "pollutant" is unnecessary and technically detrimental to the enforcement offered by the rule.

A solution to changing the wording of this rule would be to not amend the word "pollutant(s)". In not amending the language, the quantity of pollutant(s) or only one pollutant does not narrow or limit the EPA's ability to enforce the rule. (Scott Bushbaum)

Response 4: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to be written in the singular. Please note that this revision has no impact on the enforceability of the rule since the singular includes the plural as well.

Comment 5: 3745-39-04(C)(1)(a)(v)(e) and (f): The proposed changes to the language in rule 3745 letter C subsets (1), (a), (v), (e) and (f) where the word "event(s)" is amended to "event" is unnecessary and irrelevant with respect to a quantity of event(s) and the water flow characteristics.

A solution I suggest is not to change the language of this rule number and subset. The word "event(s)" provides better enforcement and a more reasonable quantification of a number of actions that are defined in this rule with respect to the water flow measurements and other characteristics defined in the language of this rule. By limiting the quantity, some measure of responsibility to the rule is suspect. (Scott Bushbaum)

Response 5: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to be written in the singular. Please note that this revision has no impact on the enforceability of the rule since the singular includes the plural as well.

Comment 6: 3745-39-04(D)(2)(c)(b): The proposed change in rule number 3745-39-04 letter D paragraph (2) subsets (c) and (b) respectively where the word "event(s)" in plural is amended to "event" is unnecessary. The language where "event(s)" remains provides better enforcement and quantification necessary to the rule.

The solution I suggest is to not amend the word "event(s)". The quantity is important with respect to the rule as written. Restricting the amount or quantity of occurring actions or "event(s)" seems detrimental to the nature of the rule. (Scott Bushbaum)

Response 6: In accordance with the Ohio Legislative Service Commission's *Rule Drafting Manual* (2006), the rule language has been revised to be written in the singular. Please note that this revision has no impact on the enforceability of the rule since the singular includes the plural as well.

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<u>General Comments on Draft Rule</u>

Comment 7: As a result of our review of the above referenced OAC, the changes appear to be administrative and for clarification in nature with no impact to the technical components of this rule. We appreciate the opportunity the OEPA provides for input and reviews of upcoming changes. (Ohio Water Environment Association)

Response 7: Thank you for your comment. No response necessary.

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End of Response to Comments