

**OhioEPA**  
Division of Surface Water  
Response to Comments

**Ohio Administrative Code (OAC) Rules:**

<u>Rule Number</u>	<u>Rule Title</u>	<u>Proposed Action</u>
3745-42-01	Definitions.	Rescind
3745-42-01	Definitions.	New
3745-42-06	General permit to install requirements.	Rescind
3745-42-06	General permit to install requirements.	New
3745-42-08	General isolation distance requirements.	Rescind
3745-42-08	Isolation distance requirements.	New
3745-42-09	Requirements for filter sand.	Rescind
3745-42-11	Holding tanks.	Rescind
3745-42-11	Holding tanks.	New

**Agency Contact for this Package**

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This document summarizes the comments and questions received during the interested party review comment period, which ended September 3, 2008.

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 questions are grouped by rule number.

- 1. Comments received on Rule 3745-42-01: No comments were received.**
- 2. Comments received on Rule 3745-42-06: No comments were received.**

### **3. Comments received on Rule 3745-42-08:**

- a. *The Ohio EPA, Division of Surface Water, noticed several draft rules relating to Chapter 3745-42 of the Ohio Administrative Code for comment by the regulated community. The Ohio Aggregates & Industrial Materials Association (the "OAIMA" or the "Association") offers the following comments to the draft rules on behalf of its members who are engaged in the mining of limestone, sand, gravel, salt, clay as well as other non-coal minerals throughout Ohio.*

*Numerous mine operations throughout the state use groundwater to wash the particulate matter from aggregate (limestone or gravel) in order to meet Ohio Department of Transportation, County, Township and other infrastructure and customer specific specifications. Typically, such washed aggregate is incorporated into concrete or asphalt paving mixes, culverts and pipes, residential and public utilities and sewage treatment, to name just a few.*

*Through the mining operation's water management system, this wash water typically ends up in a retention pond in order to allow the particulate material to settle out before reuse or discharge through an NPDES permitted outfall. The particulate material in the retention pond is then marketed as Ohio Department of Agriculture approved liming material used to balance the pH of soils and lessen the reliance on fertilizers and pesticides. Because the retention pond contains only groundwater and the particulate material, with no other material/chemical present, the retention pond does not emit any odor or present any environmental or health issues.*

*In many limestone-mining operations, retention ponds are located on the quarry floor, well below the water table. Locating the retention pond at surface grade is typically not feasible due to space limitations and best mining practices. However, when retention ponds are located at surface grade, they are often located in close proximity to the receiving stream to reduce the cost of pumping the water.*

*It is unclear whether the proposed isolation distance restrictions apply to the surface mining operations described above. If the Division of Surface Water interprets these rules to apply to such mining operations, the OAIMA strongly opposes the draft rules.*

*OAIMA sees no reason why the isolation distances should apply to retention ponds that contain only the particulate matter that is ultimately sold as a product. Such retention ponds do not present any hazard, odor*

*or other adverse impacts to nearby streams and water bodies and to our industry's knowledge, no such problems have ever been brought to light. OAIMA respectfully requests the opportunity to meet with representatives of the Division of Surface Water to resolve our concerns.*

**Ohio EPA Response:** The rule has been revised to clarify that such ponds are exempt from the minimum isolation distance requirements in table A-1.

- b. *The City of Columbus welcomes the opportunity to comment on the above rule which is part of a package of draft rules to be included in OAC Chapter 3745-42. This rule establishes new minimum distances for new and existing components of disposal systems from surface waters of the state.*

*The City has several concerns with the proposed rule. First, the rule imposes minimum distances that may greatly affect current and proposed treatment work facilities at both Southerly and Jackson Pike Wastewater Treatment Works. To accommodate new wet weather management plan improvements, space will be needed at current locations. The City is concerned that the draft rule may greatly impede its plans to complete this work. While minimum distances are understandable when an applicant seeks coverage under a general permit, such requirements are problematic when an individual permit to install is sought for major modifications and additions to existing wastewater treatment facilities.*

*Second, the City notes that there are several laws and rules to control land use adjacent to surface waters of the state including 401/404 considerations, restrictions on disturbing land on flood plain, and storm water requirements. Imposing specific minimum distances on all applicants even in situations where an individual permit is sought is not warranted.*

*Lastly, the City notes that OAC 3745-42-04 provides the Agency broad discretion to develop minimum distance restrictions where necessary. The rule states that the Director may take into consideration the social and economic impact of water pollutants or other adverse environmental impacts that may result from PTI issuance. All disposal system projects must be protective of the environment. Setting uniform minimum distances on various components of a disposal system to surface waters of the state will unnecessarily elongate the permit review process.*

*Thank you for your consideration of these comments.*

**Ohio EPA Response:** The rule has been revised to provide clarification. It was not Ohio EPA's intent to require existing facilities to retroactively have to meet the minimum isolation distances in Table A-1. In addition, any expansion of such facilities will be evaluated on a case-by-case basis.

**4. Comments received on Rule 3745-42-09: None**

**5. Comments received on Rule 3745-42-11:**

- a. *Thank you for the opportunity to comment on the agency's draft rules. I have one comment on the holding tank rules that are being presented in draft form.*

*The existing rule OAC 3745-42-11(A)(3) has provisions for the Director's judgment in instances where financial or technical feasibility may lead to the use of a holding tank when other provisions may not support the decision. I did not find this discretionary provision in the draft rules. My experience indicates that sometimes, usually in the case of a non-profit entity, a parcel of land is acquired either cheaply or at no cost and the need is there for a small wastewater system. The cost of on-site treatment or holding can be less than the cost of purchasing land where publicly available sewers exist.*

*I favor strict requirements for holding tanks and an enforcement program for the protection of waters of the state but would like to see discretionary opportunities for the Director in approving holding tank installations.*

**Ohio EPA Response:** In Ohio EPA's opinion, there are instances where a holding tank should not be installed, and retaining this provision could circumvent the protection of human health and the environment. As such, we did not make this change, as requested.

*End of Response to Comments.*