



Response to Comments

Rule: OAC 3745-1-06 (Water Quality Standards)
OAC 3745-2-02, -04, -05, -06, -07, -08, -09, -10, -12 (Implementation of WQS)
OAC 3745-33-01, -02, -03, -04, -05, -07, -08, -09 (Ohio NPDES Permits)

Agency Contact for this Package

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Ohio EPA made available for review and comment draft rules regarding water quality standards, implementation of water quality standards, and Ohio NPDES permits on February 11, 2008. This document summarizes the comments and questions received during the associated comment period, which ended on March 26, 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 topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General Comments

Comment 1: OEC generally supports these amendments. While most of these changes appear to be of the housekeeping variety or to (finally in some cases) adhere to some of the federal Clean Water Act and US EPA standards and science, we see three rules that garner some special attention and comment. (Ohio Environmental Council)

Response 1: We acknowledge the comment.

Comment 2: Ohio EPA's draft revisions should conform to federal regulations and guidance.

According to Ohio EPA's February 2008 Fact Sheet, the draft revisions in OAC Chapters 3745-2 and 3745-33 are, in part, derived from requirements in federal regulations and guidance. However, Ohio EPA neglects in several instances to incorporate all of the flexibility that the federal regulations or guidance provide. This is inappropriate. The draft

revisions should conform to the federal rules and guidance and be no more stringent than them, unless clear rationale exists for such a divergence. (Association of Ohio Metropolitan Wastewater Agencies, Northeast Ohio Regional Sewer District)

Response 2: We acknowledge this general comment, and agree in principle. Responses on specific comments are provided below. Some of these may include reasons why the rules are more restrictive than federal requirements.

Rule 3745-1-06 Mixing zones.

Comment 3: This change would remove language regarding the prohibition of mixing zones but retain the reference to Chapter 3745-2 for mixing zone requirements.

It is our understanding that mixing zones will not interfere with designated or existing uses of a stream. In other words, an Exceptional Warm Water Habitat would not be subject to a mixing zone that would degrade its designated status. How does the agency propose to ensure that that is the case? Also, what changes have sparked the decision to completely prohibit mixing zones from these highly protected areas? i.e. why was it important to prohibit them in the first place, and why are those conclusions wrong now? (Ohio Environmental Council)

Response 3: The requirements of OAC 3745-2-08 prevent mixing zones from interfering with designated uses. Ohio's Antidegradation Rule also prevents degradation of an existing high quality use. As a result, we believe that we can make these changes without changing the protectiveness of the rules.

The mixing zone prohibition rule predates several other rules that protect Ohio Waters, notably the reasonable potential rule requiring WQBELs and the Antidegradation Rule that protects existing uses. The original rule was intended to discourage direct discharges of cooling waters (thermal discharges) to high quality waters that may be impaired by elevated temperatures. We are concerned that the mixing zone prohibition, combined with the highly structured reasonable potential rule, may cause temperature limits to be generated for publicly-owned treatment works, which have no thermal impact, even on sensitive streams. Our TMDL modeling of sensitive waters indicates that the small changes caused by POTWs do not impair these waters.

Specifically, our modeling of some of the headwater streams in the Big Darby Creek watershed show that maintaining the stream's riparian tree canopy is a much bigger factor in maintaining the stream's temperature balance than are small changes due to a POTW discharge. We believe

that this relationship is true for most waters. This indicates that mixing assumptions may be allowable for high quality waters that have high habitat integrity.

In addition, the Antidegradation Rule provisions continue to serve as a discouragement for locating thermal discharges along these waters. This rule requires alternatives that would allow the stream use to continue, such as (1) discharging to another water that is not as sensitive; or (2) cooling the discharge to the point where there would be no impact. Since the original promulgation of the mixing zone prohibition, researchers have also developed thermal tolerance data for a number of the typical EWH fishes, allowing us to develop no-impact criteria to use in antidegradation reviews.

Rule 3745-2-02 Definitions.

Comment 4: The Agency should delete the definition for "analytical detection limit" from the draft rule and include the definition for "method detection limit" to be consistent with RC. §6111.13 and 40 C.F.R. part 136, appendix B. (Ohio Electric Utility Institute)

Response 4: This change is not appropriate for this chapter of the OAC. We refer to "analytical detection limit" in several parts of this chapter to be the actual detection limit used for analyses; these may higher or lower than the "official" MDL in federal rules. In some cases, data is collected that has a higher MDL than that listed in 40 CFR 136 but is still acceptable because it can quantify whether or not water quality standards are met.

Comment 5: EPA understands that Ohio has not proposed to amend the definition of "nonpoint source" as it appears in Ohio EPA rules. As part of their NPDES submittal, the Ohio Department of Agriculture used the definition from this rule in its rules. In November 2007, EPA commented to ODA that this definition appears to improperly exclude direct wet and dry deposition and overland runoff from the scope of the Ohio NPDES program. We asked ODA to strike the definition from their rules: they agreed. We ask that Ohio EPA also strike this definition from OAC 3745-2-02(B)(48). (USEPA Region V)

Response 5: We have made this change in the revised rule package.

Rule 3745-2-08 Mixing zone demonstration and sizing requirements.

Comment 6: We believe there is a need to include a paragraph, potentially under Subsection (C), that provides for adequate protection of human health. The following language, contained in the Commission's Pollution Control Standards for Discharges to the Ohio River (2006), Section VI.B. Mixing Zone Designation, is offered as an example of such language:

"VI.B. Conditions within the mixing zone shall not be injurious to human health, in the event of a temporary exposure."

In addition, you may wish to investigate other states' water quality standards which include a specific temperature that they believe provides such protections. (Ohio River Valley Water Sanitation Commission)

Response 6: We have added this language to the revised rule package.

Comment 7: The Utilities are concerned that one could interpret the evaluation of "other discharge alternatives" under OAC 3745-2-08(M)(4) as signifying that the antidegradation considerations in OAC 3745-1-05 supersedes the factors a facility must establish for consideration of a 316(a) thermal variance. The Utilities disagree with this interpretation and believe that when the Agency has approved a 316(a) variance for a facility and the facility proposes to expand the thermal discharge, the Agency may not evaluate the antidegradation alternatives analysis independent of the 316(a) variance nor may this analysis take precedence over it.

The United States Environmental Protection Agency has published a guidance document on antidegradation, which provides guidelines regarding the evaluation of antidegradation considerations for facilities with a previously approved CWA §316(a) variance:

29. WHAT IS MEANT BY THE REQUIREMENT THAT, WHERE A THERMAL DISCHARGE IS INCLUDED, THE ANTI-DEGRADATION POLICY SHALL BE CONSISTENT WITH SECTION 316 OF THE ACT?

This requirement is contained in Section 131.12 (a)(4) of the regulation and is intended to coordinate the requirements and procedures of the antidegradation policy with those established in the Act for setting thermal discharge limitations. Regulations implementing Section 316 may be found at 40 CFR 124.66. ***The statutory scheme and legislative history indicate that limitations developed under Section 316 take precedence over other requirements of the Act.*** [U.S. EPA, Questions & Answers on: Antidegradation, EPA/811/1985.5, 11 (August 1985).]

The new provisions that the Agency is proposing require all requests for a thermal mixing zone to be preceded by an evaluation of alternatives, including a cost/benefit analysis of the impact of the thermal mixing zone on the environment. This language suggest that a permit holder that intends to renew a NPDES permit with an approved 316(a) variance,

which includes a thermal mixing zone, would have to conduct this analysis despite the fact that the circumstances surrounding the variance/discharge have not changed. Because the Utilities have concerns that this language could be interpreted to override decisions made within the 316(a) regulatory process, the Utilities request that the Agency revise the proposed provision to include language that plainly and clearly assures that any regulatory decisions that are made within the context of a 316(a) demonstration supersede any requirements contained in this section. The Utilities further request that the Agency explain the reason for the proposed revision and the Agency's future intentions regarding these provisions when it issues its response to comments. (Ohio Electric Utility Institute)

Response 7: We agree with this interpretation of the relationship between antidegradation and 316(a) demonstration requirements. We believe that this is clear in the current and proposed rules; however, we have added a specific condition exempting 316(a) demonstrations from alternatives analysis, to match the language in the antidegradation rule.

The current antidegradation rule exempts from review temperature increases associated with Clean Water Act Section 316(a) demonstrations [OAC 3745-1-05(B)(2)(e)]. This paragraph acknowledges the precedence that Section 316(a) has over antidegradation requirements. The draft rule language refers to "alternatives as required by" the antidegradation rule. Since the antidegradation rule does not apply to limits developed as part of a 316(a) demonstration, the alternatives analysis does not apply. Alternatives analysis under the antidegradation rule would apply to requested temperature increases that are not part of a 316(a) demonstration.

Rule 3745-33-04 Permit actions.

Comment 8: OEC strongly supports the Agency retaining the right to apply more stringent standards than the federal requirements. The federal standard is a basement level, which gives each state the ability to tailor a standard. The Agency needs the flexibility to apply standards that take into account specific conditions here in Ohio. The current OAC regulation deviates from both the letter and spirit of the Clean Water Act, and we are encouraged to see the Agency make this change. (Ohio Environmental Council)

Response 8: These provisions have been included in the revised rule.

Comment 9: We commend the Ohio EPA for proposing to delete OAC 3745-33-04(C)(3). This change will ensure that Ohio's rules are consistent with 40 CFR 122.47. (USEPA Region V)

Response 9: This change has been included in the revised rule.

Comment 10: The Clermont County Water & Sewer District has concerns regarding the proposed revisions to Rule 3745-33-04, which would remove the requirement prohibiting the imposition of more stringent standards for 10 years after completion of POTW construction. As you are well aware, the construction of a new treatment plant by a county, municipality or regional sewer district requires a tremendous investment of funds. Considerable time, effort and resources are devoted to properly designing and constructing the new plant to ensure that its performance meets existing Ohio EPA standards. The imposition of more stringent standards could conceivably require major and costly changes to treatment plant processes, which, so soon after the completion of new construction, would be an undue economic burden for the county, municipality or sewer district. Additionally, it would be exceptionally difficult to justify such an expense to rate payers after the completion of a multi-million dollar treatment plant. Any entity that invests these kinds of resources needs some type of assurance that a change in rules soon after construction won't require large additional capital expenditures, if not directly in Ohio's Water Quality Standards Rule, than by some other means. (Clermont County Water and Sewer District)

Response 10: U.S. EPA is requiring Ohio EPA to change this rule because it may conflict with federal compliance schedule rules that require compliance "as soon as possible" (40 CFR 122.47). Their concern is that the rule allows 10 years to meet certain standards that could feasibly be achieved in significantly less time.

Federal requirements do contain a limited 10-year exemption from new limits; however, this exemption applies only to treatment technology-based limits, such as New Source Performance Standards or Best Available Demonstrated Control Technology Standards. It does not apply to water quality-based limits. Ohio EPA intends to implement the 10-year requirement for treatment technology-based standards under the director's general authority to implement the federal NPDES program.

This change does not necessarily mean that a compliance schedule would be reduced for a water quality-based limit. It simply means that a compliance schedule's length must be assessed on a case-by-case basis, depending on the actions that a discharger needs to take to meet the limit. For example, limits that can be achieved by adjusting local pretreatment limits or by adjusting the operation of a treatment plant would result in relatively shorter schedules; those changes that would require treatment plant modifications would need longer schedules to allow for construction, and pay for the changes.

Rule 3745-33-05 Authorized discharge levels.

Comment 11: OEC strongly supports this proposed rule change, and lowering of the fish tissue criterion threshold from 1.0 to 0.3 mg/kg. Mercury pollution is a toxin that is linked to several adverse health effects on humans, especially infants. These impacts include mental retardation, cerebral palsy, impaired motor skills, and poor language skills. Ohio has a rather poor legacy of mercury pollution and contamination, and having robust mercury concentration levels that is in synch with the US EPA is a step forward in protecting the public health. (Ohio Environmental Council)

Response 11: This provision has been included in the revised rule.

Comment 12: Ohio EPA has also incorporated revisions in Draft OAC 3745-33-05(A)(3)(b) which would reduce the methylmercury limitation in fish tissue from 1.0 to 0.3 mg/kg. To evaluate whether this limitation is exceeded, Ohio EPA's rules require dischargers to utilize the arithmetic mean of all representative samples taken of any species. If this arithmetic mean exceeds 0.3 mg/kg, the rule provides that the director shall disapprove the discharger's demonstration and the discharger shall implement a strategy to reduce sources of mercury. The Fact Sheet indicates that the draft changes to this rule are to conform with current science and USEPA guidance. USEPA guidance, however, does not require the use of "the arithmetic mean of all representative species". See USEPA, Draft Guidance for Implementing the January, 2001 Methyl Mercury Water Quality Criteria (Aug. 2006). Instead, the guidance permits another alternative that would allow a discharger the ability to look at fish species based upon local consumption and take a weighted average in which to evaluate whether the mercury limitation is exceeded. This flexibility from the guidance should be incorporated into the draft rule as well. (Association of Ohio Metropolitan Wastewater Agencies)

Section (A)(3)(b) reads "... If the ***arithmetic mean*** of all representative samples of any species exceeds 0.3 mg/kg methylmercury, the director shall disapprove the demonstration and the discharger shall implement a strategy to reduce sources of mercury." To be consistent with the United States Environmental Protection Agency's "Water Quality Criterion for the Protection of Human Health: Methylmercury" [EPA-823-R-01-001 (January 2001)], the term arithmetic mean should be revised to read "***geometric mean.***" (Ohio Electric Utility Institute)

Response 12: To be consistent with the federal guidance, we have changed the averaging method to "geometric mean", unless the director approves a different averaging method consistent with federal water quality criteria guidance.

Comment 13: The Agency is proposing to add new rule provisions in sub-section (C)(2) of the rule which provide:

(2) Expression of permit limits for non-continuous discharges. Discharges that are not continuous, as defined in 40 C.F.R 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency (for example, a batch discharge shall not occur more than once every three weeks);

(b) Total mass (for example, not to exceed one hundred kilograms of zinc and two hundred kilograms of chromium per batch discharge);

(c) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute); and

(d) Prohibition or limitation of specified pollutant by mass, concentrations, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than two hundred fifty grams (one-fourth kilogram) of zinc in any discharge).

While the Utilities understand that the Agency has probably included this proposed revision in the rule in order to satisfy federal regulations under 40 C.F.R. 122.45(e), the Utilities are concerned that the Agency could develop mass limits for non-continuous discharges that would be more stringent than limits in existing permits that have been established using wasteload allocation procedures, for continuous discharges. It is unnecessary to impose limits for non-continuous discharges that are more stringent than existing limits that already ensure compliance with Water Quality Standards. Therefore, the Utilities recommend that the Agency add language to the rule which provides that "In determining the permit limits for non-continuous discharges, the limits may not be more stringent than those limits imposed on continuous discharges." (Ohio Electric Utility Institute)

Response 13: Ohio EPA is making the requested change in this paragraph because it may be interpreted as constraining the authority of the director to implement Clean Water Act regulations. We agree that limits for non-continuous discharges should not be more restrictive than those for continuous discharges without a reason. Usually, limits for non-continuous discharges are less restrictive. However, we believe that a general statement as you have suggested is not appropriate to all circumstances.

Comment 14: Proposed language at 3745-33-05(E), dealing with treatment system design levels, appears to mimic a former Ohio EPA policy of "Existing Effluent Quality", or EEQ. If adopted, the proposed language will not allow treatment system owners to choose to possibly install equipment that is better than required to meet discharge limits. For example, should an owner contemplate installing membrane technology that would create a better-than-required effluent quality, the owner may face a future NPDES permit with effluent limits to match what the membrane technology is creating, rather than what the facility is required to discharge to meet a TMDL goal or other applicable water quality standards. Setting EEQ-like effluent limits was stopped after multiple NPDES appeals were filed in the late 1980's and early 1990's. Therefore, we urge Ohio EPA to remove the proposed language at 3745-33-05(E). (Montgomery County Department of Sanitary Engineering)

Response 14: This rule would be used to set NPDES limits based on design parameters in an approved permit-to-install. These limits would not change based on system performance (that is, once the limits are set in the permit). There is no intent to subsequently revise limits downward, unlike the EEQ limits from the 1980s and early 1990s.

We do not agree that this rule may discourage treatment system owners from installing systems that are significantly better than needed to meet the permit limits. The limits are set based on technology already proposed by the applicant in an approved PTI. Nothing in this rule requires an applicant to submit a specific technology in an application. We believe that treatment technology limits should match the treatment technologies installed to ensure that systems are operated as well as they can be.

Comment 15: Ohio EPA has not articulated its authority and rationale for Draft OAC 3745-33-05(E) Treatment System Design Levels.

In Draft OAC 3745-33-05(E), Ohio EPA is proposing to add the following new language: "The director may establish limitations for any discharge based on the level of performance that a proposed treatment system is designed to achieve, as documented in an approved permit to install under Chapter 3745-42 of the Administrative Code." Ohio EPA's rationale and authority for inclusion of this provision is not detailed in the February 2008 Fact Sheet. Moreover, this language appears to violate the prohibition on the use of existing effluent quality as a method for calculating anti-degradation limits in R.C. § 6111.12 where there is no federal law mandating its use. Accordingly, it is unclear why and under what authority Ohio EPA is proceeding to include this provision. Ohio EPA should provide the basis of its authority and the rationale for this

requirement so that the regulated community can effectively evaluate this condition.

To the extent that there is a valid basis, AOMWA believes that there should be a maximum time frame in the rule for which Ohio EPA can establish NPDES permit limits based upon a treatment plant's design specifications such as the 10 year protection from more stringent performance standards that appears in section 306(d) of the Clean Water Act. For example, we would suggest the addition of the following language to Draft OAC 3745-33-05 (E):

Treatment system design levels: The director may establish limitations for any discharge based on the level of performance that a proposed treatment system is designed to achieve, as documented in ~~an approved~~ any permit to install under Chapter 3745-42 of the Administrative Code approved by the agency after January 1, 2009, for a period no longer than 10 years beyond permit-to-install approval. (Association of Ohio Metropolitan Wastewater Agencies)

Response 15: The authority to develop treatment technology limits are part of federal Clean Water Act regulations, and as such, the director may set these limits in a permit based on the general authority to implement the Act in ORC 6111.03(J), and the specific requirements in ORC 6111.042.

We recognize that any treatment technology standards are subject to the 10-year protection period granted in Section 306 of the Clean Water Act. The director has the authority to implement this provision in ORC 6111.03(J). Your recommended rule language could be interpreted to include water quality based performance standards. Ohio EPA believes that the clearest requirement is to have no specific rule, and acknowledge the director's requirement to implement Section 306 and its related federal regulations.

As stated above, these limits would be based on treatment design at the time the PTI is submitted; they are not based on EEQ.

Comment 16: The Agency proposes to add sub-section (E) to the rule. This provision provides that "[t]he director may establish limitations for any discharge based on the level of performance that a proposed treatment system is designed to achieve as documented in an approved permit to install under Chapter 3745-42 of the Administrative Code." The Utilities would like the Agency to clarify whether this section applies to **all** pollutants that a facility identifies in a permit to install ("PTI") application. A PTI applicant must list effluent loads and concentrations on several basic parameters (i.e., CBODs, Suspended Solids, Ammonia-Nitrogen, Fecal Coliform, Dissolved Oxygen, and Residual Chlorine) as well as

pollutants falling under any categorical effluent guidelines. However, an applicant may also list additional pollutants even though the treatment facility may not be designed to achieve a specific level of removal efficiency for these pollutants. The Utilities are very concerned that the rule revisions could be construed to give the Director authority to impose limitations on these pollutants based on the maximum performance of the system without regard for the design or purpose of the treatment facility. Because it is in the interest of the Agency to have facilities list these pollutants in its PTI application, even if the treatment facility is not designed for maximum reduction of **all** pollutants, the Utilities recommend that the Agency clarify which pollutants are intended to be covered under this section. (Ohio Electric Utility Institute)

Response 16: We agree to add language limiting these limits to those pollutants that the discharge is designed to remove. Ohio EPA did not intend to cover pollutants that were not specifically removed by the treatment system (ammonia levels reported in a PTI for a precipitation process, for example).

Comment 17: The Agency proposes to add the word "applicable" and delete the phrase "contained in Chapter 3745-1 of the Administrative Code" from sub-section (F)(3) of the rule. This rule language is contained in the "antibacksliding" section of the rule and it is unclear why the Agency is proposing these changes. The Utilities would like to know why the Agency is proposing these changes and seek an explanation of the Agency's intentions. (Ohio Electric Utility Institute)

Response 17: If the draft rule contained changes from the existing rule, it was inadvertent. The current rule contains the word "applicable" and the phrase "contained in Chapter 3745-1 of the Administrative Code". The latest draft rule contains the same wording as the current rule.

Comment 18: The draft language at Draft OAC 3745-33-05(G) provides that an owner or operator of a point source must meet all permit conditions "[w]ithin the shortest feasible time (not to exceed ninety days)". The rule's federal analogue, however, provides that this 90-day timeframe does not apply if an alternative compliance schedule is incorporated into the permit itself. See 40 C.F.R. § 122.29(d)(4). By not including this provision, Ohio EPA is eliminating the flexibility that the federal rule provides. Ohio EPA should revise the draft rule to provide that a compliance schedule in an NPDES permit will supplant the 90-day timeframe in the draft rule. (Association of Ohio Metropolitan Wastewater Agencies)

Response 18: We have added this provision to the draft rule.

Comment 19: The Agency proposed to revise sub-section (G)(1) to include the following provision:

If construction of a point source commenced after March 23, 1997 for which an initial Ohio NPDES permit containing a water quality-based effluent limitation is issued on or after March 23, 1997, the permittee shall comply with such a discharge limitation upon commencement of the discharge, except as allowed in this paragraph:

A point source that commenced discharge after March 23, 1997, or a recommencing discharger, shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed ninety days), the owner or operator must meet all permit conditions.

The Utilities are not clear regarding the Agency's intentions in this subsection and have several questions regarding this provision. First, the second paragraph refers to point sources commencing "discharge" after March 23, 1997 *or* "recommencing discharge" (presumably, after March 23, 1997). Based on this discrepancy, does this requirement apply to both new and existing sources? Second, what constitutes a point source commencing "discharge" after March 23, 1997? For example, many power plants have recently installed or will be installing flue gas desulfurization ("FGD") systems in order to comply with provisions of the Clean Air Act. These treatment systems often result in new wastewater streams that will be released through preexisting discharges. Does the Agency consider the addition of a new wastestream from an existing facility to be a point source that commenced "discharge" after March 23, 1997? Last, the Utilities seek clarification as to whether the Agency intended for this requirement to establish a deadline for when new treatment works have to be operating as designed. The Utilities believe that further clarification of this section will aid the regulated community in complying with these provisions. Given the uncertainty surrounding these proposed revisions, the Utilities would appreciate the opportunity to discuss this proposed revision with the Agency in greater detail so that they may obtain a better understanding of the purpose of the revision to the rule and the Agency's intentions. This information may allow the Utilities to provide the Agency with more useful comments. (Ohio Electric Utility Institute)

Response 19: The intent of this rule is to clarify that newly-built treatment systems for new sources may be allowed a short compliance schedule for treatment system optimization and meeting design limits. Discharges from new scrubber systems would be allowed this "shakedown" period because these are new discharges of wastewater at the location of discharge.

Rule 3745-33-07 Establishing permit conditions.

Comment 20: After reviewing the proposed language at 3745-33-07(B)(11) and comparing it to the language at 40 CFR 122.21(j)(5), it appears the proposed language will align Ohio rules with federal language. However, to require annual whole effluent toxicity (WET) testing for the explicit purpose of obtaining data for a future NPDES renewal application is not an efficient use of employee time or sewer rate payer money. Until now, if a POTW had not been required to perform annual WET testing, the POTW would perform a single WET testing procedure within 6 months ahead of submitting the NPDES renewal application package. In Montgomery County's case, it is estimated this new requirement will create an additional \$1,000 per year of cost not currently budgeted, or \$5,000 over the time period of our existing NPDES permits (includes personnel time and laboratory fees). At a minimum, Montgomery County urges Ohio EPA to add language that would not require annual WET testing if it is known that an affected POTW will no longer be discharging by the end of its current NPDES permit timeframe (the POTW will be discharging to another POTW, for example). If the annual WET testing will not be needed for a renewal application that will not be filed, why should the testing be required? (Montgomery County Department of Sanitary Engineering)

We also feel that Rule 3745-33-07(B)(11)(c and d) should allow more flexibility to consider the actual potential impact a wastewater discharge has on the receiving water. The rule as currently written references 3745-2-09 and locks dilution for lake discharges to a ratio less than the 20:1 specified in these paragraphs. Therefore, any lake discharging POTW with a design flow greater than or equal to one million gallons per day; or any POTW with an approved pretreatment program (or the requirement to develop one) would be required to conduct chronic toxicity testing regardless of the environmental impact of the discharge. We feel the requirement to conduct chronic toxicity testing should consider local environmental conditions. (Northeast Ohio Regional Sewer District)

We would also like to express concern regarding the proposed requirement to conduct annual whole effluent toxicity testing. This is a very costly analysis for sewer districts to conduct, with a one-time cost for acute testing for two species ranging from \$500-750, and chronic testing for two species ranging from \$1,500 to \$2,000. Costs of this magnitude for a single analytical test are difficult for operators of wastewater treatment plants to absorb, particularly for regional sewer districts that operate multiple plants. We encourage Ohio EPA to either eliminate this change from the proposed revisions to Rule 3745-33-07, or develop a means for reducing the burden on POTWs that will be

required to conduct annual WET testing. (Clermont County Water and Sewer District)

Response 20: U.S. EPA has recently pointed out that Ohio's NPDES application requirements related to whole effluent toxicity do not require data comparable to the federal application requirements. Federal rules require submittal of four toxicity tests with an application, and require chronic toxicity tests when chronic toxicity could be a limiting factor on the receiving water. Ohio EPA currently requires one acute screening test result with applications, and U.S. EPA is requiring Ohio EPA to match federal application requirements.

Ohio EPA has chosen to implement this requirement as an annual toxicity test requirement in permits for two reasons: (1) initial application submittals often do not include toxicity tests under the current Ohio EPA requirements, and "make-up" testing to fulfill the federal requirements would be done within a short time period, and may not be representative of all plant discharge conditions; and (2) annual testing allows the costs of testing to be spread out over an entire permit cycle.

We have added language exempting dischargers whose permits contain a schedule to cease discharge during the life of the permit.

Ohio EPA reviewed the testing requirements for lake discharges, and have left the provisions of the draft rule as they are. Other Region V states are requiring chronic toxicity testing for major POTWs.

Because this is a condition of maintaining the federal NPDES program, we have left the main part unchanged in the revised rule package.

Comment 21: Section D allows the Director to issue to a facility a variance for a Water Quality Standard in the facility's NPDES permit. However, this section does not apply to the discharge of pollutants from buildings, structures, facilities, and installations constructed after March 23, 1997 unless the discharge falls under one of the listed exceptions. Under sub-section (D)(1)(a)(v), the Agency may still grant a variance when "[t]he discharge occurs as a result of an overall reduction in emissions of a pollutant to all media from a facility existing as of March 23, 1997." While the Utilities support this provision, the Agency should provide further clarification regarding what constitutes "an overall reduction in emissions." For example, under the Clean Air Interstate Rule, many electrical generating facilities have installed or will be installing FGD systems that remove pollutants from the air, which are eventually sequestered in landfills. These FGD systems have a multi-media effect because they significantly reduce pollutants from the air, but also reduce the amount of pollutants deposited in waterbodies by atmospheric deposition, in those instances where deposition on a local to regional scale may be likely. The Utilities

believe that the operation of these FGD systems result in "an overall reduction in emissions," but the Agency's language is too ambiguous as currently written. Thus, the Utilities recommend that the Agency clarify section (D)(l)(a)(v) so that the regulated community will have a better understanding of the type of multi-media reductions this section is intended to encompass. (Ohio Electric Utility Institute)

Response 21: Ohio EPA has revised the draft rule to specify that "overall reductions" include air and water emissions, and discharges to any other media that would result in exposure of people, wildlife or aquatic life.

End of Response to Comments