

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Implementation of Water Quality Standards OAC Chapter 3745-2

Rule Number(s): 3745-2-01, 3745-2-02, 3745-2-05, 3745-2-06, 3745-2-07 and 3745-2-11

Date: May 5, 2017

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Administrative Code (OAC) Chapter 3745-2 contains the technical methods the Division of Surface Water uses to translate water quality standards in OAC Chapter 3745-1 into discharger wasteload allocations and effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits issued under OAC Chapter 3745-33.

This is the five year review of six rules within the chapter. At this time, the Agency is considering the following revisions:

OAC 3745-2-01 Purpose and applicability.

- Grammatical/style updates.
- Adding clarification that wasteload allocations and Total Maximum Daily Loads (TMDLs) for wet weather point sources are determined using stream or basin specific models and, except for paragraph (M) of rule OAC 3745-2-12, not the methods in this chapter.

OAC 3745-2-02 Definitions.

- Removal of acronyms, abbreviations and definitions recently moved to rule OAC 3745-1-02.
- Updates to definitions to bring consistency with rule OAC 3745-1-02.
- Grammatical/style updates and updates to references.
- Adding a new comment under “analytical detection limit” and new definition for “method detection limit” to make a connection with requirements under federal regulations for the NPDES permit program and to make clear the Agency’s preference to begin receiving data not currently identified.
- Clarification to the definition of “new discharge” to bring consistency with rule OAC 3745-1-05.

OAC 3745-2-05 Calculating wasteload allocations.

- Replacing the equation in paragraph (A) with text in the rule authoring software instead of insertion as a graphic.
- Grammatical/style updates.
- Update of rule cross-references.

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- Including the ability for the director to allow the use of alternate statistical techniques to determine background water quality if they are demonstrated to be appropriate. This will address instances where a model requires inputs other than those listed in the current rule language (i.e., average value instead of median).

OAC 3745-2-06 Application of preliminary effluent limitations.

- Grammatical/style updates.
- Update of rule cross-references.

OAC 3745-2-07 Additive effects of pollutants.

- Grammatical/style updates.

OAC 3745-2-11 Dissolved oxygen modeling.

- Update of rule cross-references.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code (ORC) 6111.03 and 6111.12.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

Yes. The rules in OAC Chapter 3745-2 implement federal reasonable potential regulations in 40 C.F.R. 122.44(d).

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The rules do not exceed a federal requirement, rather the rules detail how federal requirements are met by the Agency in other programs.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The regulations provide consistency and clarity to the methods that the Agency utilizes to translate water quality standards into wasteload allocations effluent limitations in NPDES permits.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The measure of success will be based upon the accuracy and protectiveness of permits issued utilizing the procedures contained in OAC Chapter 3745-2.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio EPA sent electronic notification to DSW's rulemaking interested party list and posted the Early Stakeholder Outreach fact sheet on DSW's website on May 25, 2016. The comment period deadline was June 27, 2016.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Agency did not receive comments from interested parties.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

These rules are based on federal water quality standards regulations in 40 C.F.R. Part 131 and 132. Technical documents referenced in the chapter are included in rule OAC 3745-2-02.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The agency is considering this subset of six rules in OAC Chapter 3745-2 for five year review at this time because the necessary revisions are relatively minor. More extensive revisions are being considered for the other rules in the chapter that are up for five year review. The Agency is reviewing these rules on a separate track to provide additional time to review alternatives.

The existing rules under review allow the use of alternative methods at the discretion of the director if they are demonstrative to be appropriate and protective of applicable water quality criteria. For example, in rule OAC 3745-2-05, alternative modeling methods for the calculation of wasteload allocations, including, but not limited to, continuous simulation or probabilistic analyses may be used.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The Implementation of Water Quality Standards rules are procedural in nature. In general, the rules are not performance-based. The rules require specific procedures to be used to translate water quality standards into NPDES permit effluent limitations. It is then up to the NPDES permit holder to determine how these NPDES permit effluent limitations will be met (the performance-based portion of the Agency's regulations).

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio EPA is the delegated state agency for the water quality standards program. Only a review of existing Ohio EPA rules was necessary and no duplication was found.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Agency will put the effective date of the adopted rules three months out from the date of adoption, which provides the Agency time to update web pages and programmatic documents.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

- a. The Implementation of Water Quality Standards rules do not directly impact the business community; however, the rules govern the procedures through which water quality standards are translated into wasteload allocations and effluent limitations in NPDES permits. Therefore, in an indirect manner the impacted business community would include those facilities regulated through the NPDES permit program. This includes cities, villages,

counties, townships, industries that discharge wastewater directly into surface waters, and various privately owned wastewater treatment facilities that discharge into surface waters.

b. The nature of the adverse impact for those regulated through the NPDES program is the level of wastewater treatment necessary to meet the narrative and numeric water quality criteria as determined through this chapter.

c. The cost associated with the NPDES permit program varies widely based on factors such as volume of wastewater treated, concentration of pollutants in the wastewater, complexity of treatment system, quality and size of receiving stream, stringency of effluent limitations, effluent monitoring requirements, etc. However, each facility subject to this permit program will incur costs for permit application and permit renewal every five years, costs of wastewater treatment plant construction and operation, effluent monitoring and reporting costs, time for paperwork completion (required record keeping, monthly reports), and potentially fines for noncompliance with the permit.

The amendments under consideration in this five year review of six rules in OAC Chapter 3745-2 should not alter the impact on businesses.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Although there is no direct impact of these six rules in OAC Chapter 3745-2 on the regulated business community, the Agency determined that formalizing procedures in rule benefits the Agency and the business community by bringing consistency and transparency to the implementation of water quality standards.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Yes. Flexibility has been built into certain aspects of the water quality standards program. This flexibility applies to businesses of all sizes. Ohio's system of beneficial uses accounts for environmental and landscape factors in setting the tiered aquatic life use and the associated performance based water quality criteria. In short, the tiered aquatic life uses provide a hierarchy of stream performance measures (biological and chemical water quality criteria) ranging from exceptional quality waters to highly modified waters that cannot fully support the "fishable" goals of the Clean Water Act (CWA). This system ensures that businesses, through the terms of their NPDES discharge permits, are required to meet limits that most closely match the actual water quality requirements that protect the aquatic environment in their immediate location. In other words, Ohio standards do not impose a one-size fits all mandate.

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17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The first time paperwork violation waiver is not applicable to this rule package. The six rules in OAC Chapter 3745-2 contain procedures for translating water quality standards into wasteload allocations and effluent limitations in NPDES permits. No paperwork or permits are required by the procedures themselves.

18. What resources are available to assist small businesses with compliance of the regulation?

- Ohio EPA Division of Environmental and Financial Assistance's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at:
<http://epa.ohio.gov/ocapp/ComplianceAssistanceandPollutionPrevention.aspx>
- Ohio EPA also has a Customer Support Center web page (<https://ohioepa.custhelp.com/app/home/session/L3RpbWUvMTQ0NTg2NTYzNi9zaWQvX1hTRkZWem0%3D>) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Frequently Asked Questions (FAQ), training and subscription to various program listservs.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- Ohio EPA, Division of Environmental and Financial Assistance's Compliance Assistance Unit provides technical support to small (less than 0.5 million gallons per day) wastewater treatment plants. Additional information is available at:
http://epa.ohio.gov/dsw/compl_assist/compasst.aspx
- U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at: <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5888.
- U.S. EPA's Water Quality Standards Handbook, Second Edition available at:
<http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>.
- U.S. EPA's Policy and Guidance: Reference Library contains an index of EPA documents related to water quality standards, including those referenced in the WQS Handbook. You

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can sort the index alphabetically, by publication date, or by topic. Available at:

<http://water.epa.gov/scitech/swguidance/standards/library/index.cfm>.

- The Division of Surface Water's Water Quality Standards program web page contains background information and direct links to sections of the regulations. Additional information is available at: <http://epa.ohio.gov/dsw/wqs/index.aspx>.
- The Division of Surface Water's NPDES Permit program web page contains information on applying for permit coverage and complying with permit terms and conditions. Additional information is available at: <http://epa.ohio.gov/dsw/permits/individuals.aspx>.