

State of Ohio
Environmental Protection Agency

July 27, 2004

Notice of Proposed Rulemaking and Public Hearing

Notice is hereby given that the Ohio Environmental Protection Agency's Division of Drinking and Ground Waters (DDAGW) proposes to rescind the Ohio Administrative Code (OAC) rules governing the issuance of variances and exemptions, OAC rules 3745-81-40 through 3745-81-46 and 3745-81-50 through 3745-81-55. The division also proposes to amend the OAC rules regulating public notification (3745-81-32) and record maintenance (3745-81-33) to remove requirements related to variances and exemptions.

The variance and exemption rules allow Ohio EPA to issue public water systems variances and exemptions from primary drinking water rules in OAC Chapter 3745-81 provided the systems meets certain conditions. Variances allow public water systems to exceed the maximum contaminant level (MCL) of a contaminant for an undetermined period of time after the system installs what is determined to be best available technology (BAT) for removal of that contaminant. Exemptions allow a public water system to exceed a contaminant's MCL for a specific period of time provided the system requests an exemption in advance of a violation and meets other criteria set forth by the federal rule.

While variances and exemptions are intended to provide flexibility for public water systems, the criteria for systems to demonstrate they qualify for either are very rigorous. As a result, the division has no record of ever issuing a variance or exemption from the requirements in OAC Chapter 3745-81 to a public water system in Ohio. Additionally, recent amendments to the federal rules have increased the demonstration requirements, making this even more difficult. Rather than revising our rules to comply with the federal rule, the division proposes to rescind Ohio's variance and exemption rules. The Agency believes that traditional administrative actions, such as consensual findings and orders, provide a better means to address public water system compliance schedules because they will allow public water systems to use their resources to resolve their inability to comply with the MCL rather than making onerous demonstrations to the State. Administrative findings and orders may also be used prior to a violation, occurring in a manner similar to an exemption.

The division, therefore, proposes the following rule-making actions:

<u>Rule Number</u>	<u>Rule Title</u>	<u>Action</u>
3745-81-32	Public notification	Amendment
3745-81-33	Record maintenance	Amendment
3745-81-40	Requirements for a variance	Rescission
3745-81-41	Variance request	Rescission
3745-81-42	Consideration of a variance request	Rescission
3745-81-43	Disposition of a variance request	Rescission
3745-81-44	Public hearings on variances and schedules	Rescission

3745-81-45	Action after a hearing	Rescission
3745-81-46	Alternative treatment techniques	Rescission
3745-81-50	Requirements for an exemption	Rescission
3745-81-51	Exemption request	Rescission
3745-81-52	Consideration of an exemption request	Rescission
3745-81-53	Disposition of an exemption request	Rescission
3745-81-54	Public hearings on exemption schedules	Rescission
3745-81-55	Final schedule	Rescission

A public hearing pursuant to §119.02 through §119.04 of the Ohio Revised Code will be conducted on August 31, 2004, beginning at 1:30 PM in room 5A at the Ohio EPA, Lazarus Government Center, 122 South Front Street, Columbus, Ohio. A presiding officer will be present until all interested persons have been heard. The hearing for these rules will be held in conjunction with that of another recently proposed drinking water rule.

All interested persons are entitled to attend or be represented and give their written or oral comments on this proposed rule-making. To facilitate scheduling of oral presentations, persons intending to give testimony at the hearing should ensure that Ohio EPA receives notice of such intent by 5:00 p.m. on August 30, 2004. Persons who provide Ohio EPA with prior notice will be heard ahead of persons who register at the hearing. To provide notice of intent to give oral comments at the public hearing, contact Kelly Butler, Ohio EPA, DDAGW, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049.

In order to ensure that written comments are considered as part of the official record of this hearing, written comments must be received by Ohio EPA by the close of business August 31, 2004. Written comments on the proposed rules may be filed with the Kelly Butler at the mail or email address above or with the presiding officer during the hearing.

To obtain a copy of the proposed rules, contact Donna Roberts at Ohio EPA at (614) 644-2755 or email at donna.roberts@epa.state.oh.us. Please request the "proposed variance and exemption rules" and, if a recorded message is left, be sure to include your name, telephone number, and complete mailing address. There is no charge for proposed rules. The proposed rules will be available on the Agency web page until their adoption or withdrawal. The address is: www.epa.state.oh.us/ddagw/oac.html.

Questions concerning this proposed rulemaking, other than obtaining copies of the proposed rules, may be addressed to Kelly Butler at the above address or by phone at (614) 644-2752. Email can be sent to kelly.butler@epa.state.oh.us.