

Hearing Summary

Rule Package: Laboratory Certification Rules

Original filing date: 7/28/2020

Public comment start date: 7/28/2020

Public comment end date: 9/2/2020

Public hearing date: 9/2/2020

List of Rules: 3745-89-01 through 3745-89-12, 3745-81-27 and 3745-81-28

Were there any participants in this public hearing beyond Ohio EPA staff or JCARR staff?

☒ Yes

☐ No

Were there comments received during the public comment period outside of those presented at this hearing?

☒ Yes

☐ No

This hearing summary has been compiled to meet the requirements of Section 119.03 of the Revised Code.

This hearing summary includes this cover sheet and the following attachments:

1. **Attachment A** - A copy of the public notice for this hearing.
2. **Attachment B** - A copy of the sign-in sheet for this hearing.
3. **Attachment C** - A copy of the script read into the record to begin and end the hearing.
4. **Attachment D** – A copy of the chats Q & A from the recorded session
5. **Attachment E** - A copy of the Response to Comments

Ohio EPA's response to comments document includes the comments received, who commented, the agency response to comments, and a statement of whether or not the rule was changed due to the comments.

Ohio EPA digitally records all public hearings for rules. The digital recordings are available upon request in a WAVE (.wav) file format. These recordings may be sent out for transcription if necessary.



Hearing Summary

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**Public Notice
Proposed Rulemaking Governing
Laboratory Certification Rules**

Notice is hereby given that the Director of Environmental Protection, under the authority of Sections **106.03** and **106.031** of the Ohio Revised Code and in accordance with Chapter 119, proposes to **Original File** the following rules of the Ohio Administrative Code:

3745-81-27, 3745-81-28, 3745-89-01, 3745-89-02, 3745-89-03, 3745-89-04, 3745-89-05, 3745-89-06, 3745-89-07, 3745-89-08, 3745-89-09, 3745-89-10, 3745-89-11 and 3745-89-12.

These rules establish regulations **for acquiring and retaining drinking water laboratory certification.**

The purpose of this rule making is **to include the following changes:**

- **Allowing laboratories to obtain either Ohio EPA laboratory certification, certification by the National Environmental Laboratory Accreditation Program (NELAP) by accepting NELAP certification, or other acceptable certifying authorities.**
- **Updating the Ohio EPA Laboratory Manual for the Microbiological Analyses of Public Drinking Water and the Ohio EPA Laboratory Manual for the Chemical Analyses of Public Drinking Water, both of which are incorporated by reference in the rules.**
- **Updating recordkeeping and reporting requirements.**
- **Clarifying language.**
- **Correcting minor spelling and grammatical errors and outdated references throughout manuals and rules.**

DDAGW is also proposing to rescind current OAC Rule 3745-81-27, and replace it with a new OAC Rule 3745-81-27 that defers to methods approved by U.S. EPA, as specified in 40 CFR for drinking water analysis, rather than listing each approved method.

A public hearing on this proposed rule making will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code.

Ohio EPA will be holding a virtual public hearing on the rules on **September 2, at 10:30 am**. The meeting will be held exclusively online. During the virtual hearing the public can submit written comments that will be read into the record by the hearing host.

The virtual hearing may be accessed through Ohio EPA's website at: <http://epa.ohio.gov/virtual>.

Written comments may be submitted during the virtual public hearing. In addition, written

testimony can be emailed to the attention of **Emma Brown, DDAGW** at the ddagw_rulecomments@epa.ohio.gov. All comments received at the virtual hearing or via email by close of business on **September 2** will be considered by Ohio EPA prior to final action on this rulemaking proposal. Written comments submitted after this date may be considered as time and circumstances permit.

Questions regarding this rule package should be directed to **Emma Brown** of the **Division of Drinking and Ground Waters** at **(614) 728-1219**.

At this time, the proposed rules are only accessible on the **DDAGW** web page at <https://www.epa.ohio.gov/ddagw/rules>.

Please note: Comments for this hearing will only be accepted electronically as Ohio EPA is unable to access physical mail at this time.

Event Name	Public Hearing: Laboratory Certification Proposed Rules				Event Start Date: Wednesday, September 2, 2020
User Type	FirstName	LastName	Email	Title	Company
Panelist	Mandi	Payton	amanda.payton@epa.ohio.gov		
Panelist	Emma	Brown	emma.brown@epa.ohio.gov		
Attendee	Danielle	Giannantonio	giannantoniod@neorsd.org	Legislative Affairs Manager	
Attendee	Brandon	Turner	brandon.turner@daytonohio.gov		
Attendee	Nakieta	Mitchell	mitchell.nakieta@epa.gov		US EPA
Attendee	Bill	Thompson	wthompson@marathonpetroleum.com	HES Professional	MPLX (MarkWest)
Attendee	Julie	Spangler	julie.spangler@epa.ohio.gov	Laboratory Certification Supervisor	Ohio EPA - Lab Certification
Attendee	Basil	Ramey	bramey@akronohio.gov	Laboratory Analyst III	Akron Water Supply
Attendee	Tya	Darden	tya.darden@epa.ohio.gov	Environmental Supervisor	
Attendee	Maria	lima	aritanalima80@gmail.com	Sambaqui	Sambaqui
Attendee	Cheri	Woody	cheri.woody@gcww.cincinnati-oh.gov	Treatment Supervisor	Greater Cincinnati Water Works
Attendee	charles	lacy	clacy@akronohio.gov	Lab Analyst III	
Attendee	Whitney	Paterson	wpaterson@jcarr.state.oh.us		JCARR
Attendee	James	Agin	jagin@qlaboratories.com	Director of Regulatory Compliance	Q Laboratories
Attendee	Justin	Burke	justin.burke@epa.ohio.gov	Justin Burke	Ohio EPA
Attendee	Sheela	Agrawal	agrawals@neorsd.org		NEORS
Attendee	Jordon	Busch	jbusch@akronohio.gov		Akron Water Supply
Attendee	Stephen	Champa	schampa@eagoninc.com		Eagon & Associates, Inc.
Attendee	Cheryl	Soltis-Muth	soltis-muthc@neorsd.org	Manager of Analytical Services	Northeast Ohio Regional Sewer District
Attendee	Ryan	Yackee	water@villageofswantonohio.us	Superintendent	Village of Swanton Water Treatment Plant
Attendee	Donald	Freisthler	dfreisthler@piquaoh.org	Donald Freisthler	City of Piqua
Attendee	Greg	Fouche	gfouche@jcarr.state.oh.us		JCARR

DDAGW Laboratory Certification Proposed Rules

September 2, 2020

TURN ON PRESENTER RIGHTS UP TOP AND TO THE RIGHT

START RECORDING

Hello and welcome to Ohio EPA's virtual public hearing regarding the Division of Drinking and Ground Water proposed rules. My name is Mary McCarron and I'm hosting today's public hearing. With me online from Ohio EPA are Emma Brown Mandi Payton. I'd like to note that we are recording this hearing. We will save all comments submitted during the hearing.

Before I start, I have a couple of tips about the technical end of today's hearing:

- 1) You should see a floating control panel on your screen in the WebEx app. During the event, the sound may fade in and out due to your internet connection. If you experience problems with the sound during the hearing, either wait a moment or two to see if it is restored or, using the icon on the floating control panel, close or disconnect from the audio portion of the presentation, then reconnect to restore the audio.
- 2) Please use the chat feature to report or receive assistance with technical issues.
- 3) Please also use the chat feature to submit comments during the hearing.

PUBLIC HEARING SPEECH

Thank you for taking time to attend this hearing before Ohio EPA. The purpose of the hearing today is to obtain comments from any interested person regarding Ohio EPA's proposed rules.

Ohio EPA Division of Drinking and Ground Waters is proposing to original file the following rules of the Ohio Administrative Code chapters

3745-81-27 and 28 and
3745-89-01 through 12

These rules establish regulations for acquiring and retaining drinking water laboratory certification.

The purpose of this rule making is to include the following changes:

- Allowing laboratories to obtain either Ohio EPA laboratory certification, certification by the National Environmental Laboratory Accreditation Program (NELAP) by accepting NELAP certification, or other acceptable certifying authorities.
- Updating the Ohio EPA Laboratory Manual for the Microbiological Analyses of Public Drinking Water and the Ohio EPA Laboratory Manual for the Chemical Analyses of Public Drinking Water, both of which are incorporated by reference in the rules.
- Updating recordkeeping and reporting requirements.
- Clarifying language.
- Correcting minor spelling and grammatical errors and outdated references throughout manuals and rules.

Ohio EPA is also proposing to rescind current Ohio Administrative Code Rule 3745-81-27, and replace it with a new Rule 3745-81-27 that defers to methods approved by U.S. EPA, as specified in 40 CFR for drinking water analysis, rather than listing each approved method.

These rules have been filed with the Joint Committee on Agency Rule Review. Copies of the rules are available for public review on our website.

All interested persons are entitled to attend or be represented, and to present written comments concerning the proposed rules. All written comments received as part of the official record will be considered by the director of Ohio EPA.

To be included in the official record, written comments must be received by Ohio EPA by the close of business, today, Sept. 2, 2020. These comments may be typed into the chat today or emailed to ddagw_rulecomments@epa.ohio.gov. All

emailed comments submitted for the record receive the same consideration as typed testimony given today.

Written statements submitted after today may be considered as time and circumstances permit but will not be part of the official record of the hearing.

This hearing affords citizens an opportunity to provide input. Therefore, we will not be able to answer questions today.

YOU MAY NOW SUBMIT COMMENTS IN WRITING. I will read aloud any comments we receive in the hearing chat. I will keep the chat open until 11 a.m. to provide time for participants to type in comments.

CLOSING

We will close the hearing. After the hearing closes, we will accept written comments through 5:00 p.m. today. You can send those comments to the email address on the screen.

Thank you for your comments, cooperation and participation in Ohio EPA's decision-making process. The time is now _____ and this hearing is concluded.

CAPTURE CHATS AND Q&A

from Julie Spangler to host (privately): 10:20 AM

Good morning. Are we going to be able to talk during this?

from Mary McCarron to Julie Spangler (privately): 10:28 AM

No. You can submit comments via the chat. I will start at 10:30.

from Julie Spangler to host (privately): 10:29 AM

Okay. Thanks.

from Sheela Agrawal to host (privately): 10:38 AM

Good Morning, can OEPA provide guidance on acceptable sample temperature for receipt? Some US EPA methods and OEPA manuals mention 4 degree C, whereas TNI allows for 0 - 6C for drinking water methods. On the wastewater side, US EPA specifies 0 - 6 for many of the same parameters.

from Sheela Agrawal to host (privately): 10:38 AM

Just wondering which to adhere to once we switch to NELAP accreditation for drinking water. Thank you.

from Basil Ramey to all panelists: 10:43 AM

New chemical manual doesn't have methods for any chloring species by amperometric titration, TOC analysis, orthophosphate, and others. Where would I find the current acceptable methods for these and other analyses not in the new manual?

from Basil Ramey to all panelists: 10:44 AM

"any chlorine species"

from Basil Ramey to all panelists: 10:47 AM

Hach has many methods programmed into their instruments. Will these methods be acceptable for reporting "as-is?" And if not, what will we need to provide in order to use these methods for reporting?



Division of Drinking and Ground Waters Response to Comments – Laboratory Certification Rules

Primary Drinking Water Standards

3745-89-01 (Amend) Laboratory Certification Definitions
3745-89-02 (Amend) Analyses Requiring Laboratory Certificate of Approval
3745-89-03 (Amend) Procedure for Laboratory Certification
3745-89-04 (Amend) Renewal of Laboratory Certification
3745-89-05 (Amend) Maintenance of a Laboratory Certification
3745-89-06 (Amend) Director's Actions for Laboratory Certification
3745-89-07 (Amend) Laboratory Certificate Property of State; Display
3745-89-08 (Amend) Reporting of Analytical Results
3745-89-09 (Amend) Interim Authorization for Plant Control Tests or MMO-MUG (SM 9223) Tests
3745-89-10 (Amend) Interim Authorization for New Contaminants and New Methods
3745-89-11 (Rescind) Certified Laboratories for the "LT 2 Enhanced Surface Water Treatment Rule"
3745-89-11 (New) Certified Laboratories for the "Long Term 2 Enhanced Surface Water Treatment Rule"
3745-89-12 (New) Alternate Acceptance of Laboratory Certification
3745-81-27 (Rescind) Analytical Techniques
3745-81-27 (New) Analytical Techniques
3745-81-28 (Amend) Acceptability of Analytical Results

Agency Contact for this Package

Emma Brown, Division of Drinking and Ground Waters (DDAGW)
(614) 728 - 1219, Emma.Brown@epa.ohio.gov

Ohio EPA issued public notice and requested comments for the public hearing comment period of July 28, 2020 to September 2, 2020 on the proposed rules. This document summarizes the comments and questions received during the comment period.

Ohio EPA reviewed and considered all comments received during the 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: "Good Morning, can OEPA provide guidance on acceptable sample temperature for receipt? Some US EPA methods and OEPA manuals mention 4 degree C, whereas TNI allows for 0 - 6C for drinking water methods. On the wastewater side, US EPA specifies 0 - 6 for many of the same parameters.

Just wondering which to adhere to once we swith to NELAP accreditation for drinking water. Thank you." (Sheela Agrawal, Public Hearing)

Response 1: If the laboratory applies for and receives Ohio EPA Laboratory Certification Acceptance based on certification by a NELAC accrediting body, the acceptance is based on their NELAC certification and proficiency testing. Their accrediting body requirements would be the requirements they would need to meet. (Ohio EPA)

Comment 2: "New chemical manual doesn't have methods for any chlorine species by amperometric titration, TOC analysis, orthophosphate, and others. Where would I find the current acceptable methods for these and other analyses not in the new manual?" (Basil Ramey, Public Hearing)

Response 2: Our manuals have never included every method that is approved by U.S. EPA, but we will still certify for them. U.S. EPA drinking water approved methods are located at <https://www.epa.gov/dwanalyticalmethods/approved-drinking-water-analytical-methods>.

Pages 36 - 42 of the 2020 Chem Manual is "Chlorine Analysis by Amperometric (POA) Titration Method" and requirements.

Pages 126 - 133 of the 2020 Chem Manual covers the "Phosphorous (Total) Analysis by Ascorbic Acid/Spectrophotometric Method" and requirements. On page 129, there is a note which covers how to perform analyses of "other forms of phosphorous" which includes Orthophosphate. Other approved methods for this analysis would be listed on the website listed above. (Ohio EPA)

Comment 3: "Hach has many methods programmed into their instruments. Will these methods be acceptable for reporting "as-is?" And if not, what will

we need to provide in order to use these methods for reporting?” (Basil Ramey, Public Hearing)

Response 3: Hach has many methods that are not approved by U.S. EPA for drinking water analysis. If the method is approved for drinking water, we will certify for it; if not, we won't. (Ohio EPA)

Comment 4: “...regarding manganese monitoring using colorimetric methods such as Hach 8149 in accordance to rule 3745-83-01(F)(6)(c). DDAGW infers that this method should be the colorimetric method for operational monitoring and reporting in the MOR because of the lower detection level. Monthly monitoring at a certified lab is required as a performance check, but the MDL are inconsistent (6 µg/L vs 10 µg/L, or 3 µg/L depending upon the method) between the methods that are reported by the certified lab. This method is not an USEPA approved analytical method in rule 3745-81-27 or 40 CFR 143.4 for compliance monitoring. The current rule 3745-81-27 incorporates SM 3500-MN D (should be B?, Manganese in Water by Persulfate and Spectrophotometry) that has a MDL approximately 42 µg/L which is not in the 40 CFR 143.4. Will the proposed rule 3745-81-27 allow a colorimetric method?” (Ralph Baker, written submittal)

Response 4: Any methodology that is not approved by USEPA, will also not be certified by Ohio EPA under these rules. The way the Ohio EPA rules are written provides flexibility for when/if USEPA approves additional methods. (Ohio EPA)

Rule 3745-89-12

Comment 5: Rule 3745-89-12 (A)(1), “or by another environmental laboratory accreditation program acceptable to the director to perform required analyses for those Fields of Accreditation...”

The highlighted language is very broad and should be clarified. Only NELAP accreditation has been deemed equivalent to drinking water certification. (US EPA, written submittal)

Response 5: Though only NELAP accreditation has currently been deemed equivalent, Ohio EPA feels that the flexibility allowed by director approval remains un-exclusionary, while also maintaining control and

judgement over the possibility of other potential accreditation programs. (Ohio EPA)

Comment 6:

Rule 3745-89-12 (C) states “Maintenance of acceptance of certification. To maintain an acceptance of certification a laboratory shall comply with the requirements of paragraphs (A)(11), (A)(12) and (A)(14) of rule 3745-89-05 and rule 3745-89-08 of the Administrative Code.”

Laboratories that hold certification acceptance in lieu of certification are not required to comply with many of the requirements in rule 3745-89-05 that contribute to the effective oversight of labs in the program. How does OEPA intend to ensure consistency and uniformity in its program implementation and that all labs are held to the same standard? (US37 EPA)

Response 6:

Lab oversight will be maintained by compliance with the listed citations in paragraph C as well as the verification that laboratories are meeting laboratory procedures as outlined in OAC Chapter 3745-89, including but not limited to being current on State certification, using approved analytical methods, analyzing results correctly and reporting results in a timely manner, all of which contribute to the accuracy of drinking water analysis used to determine compliance with primary/secondary drinking water standards. (Ohio EPA)

End of Response to Comments