

Hearing Summary

Rule Package: Beneficial Use Designations Wave 2

Original filing date: 11/2/21

Public comment start date: 11/2/21

Public comment end date: 12/17/21

Public hearing date: 12/17/21

List of Rules: 3745-1-09, 3745-1-16, 3745-1-17, 3745-1-21

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 virtual attendance report 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 virtual questions recorded during the hearing.
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. These recordings may be sent out for transcription if necessary.

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**Public Notice
Public Hearing Scheduled For
Proposed Rulemaking Governing
Water Quality Standards**

Notice is hereby given that the Director of Environmental Protection, under the authority of Section 6111.041 of the Ohio Revised Code and in accordance with Chapter 119, proposes to original file the following Water Quality Standards Program rules of the Ohio Administrative Code:

Rule #	Rule Title
3745-1-09	Scioto river drainage basin.
3745-1-16	Southeast Ohio river tributaries drainage basin.
3745-1-17	Southwest Ohio river tributaries drainage basin.
3745-1-21	Great Miami river drainage basin.

OAC Chapter 3745-1 contains Ohio's standards for water quality. This rulemaking includes the review and update of four beneficial use designation rules in the chapter to reflect the latest scientific information.

The Agency invites all interested parties to comment on these rules. The public comment period will run until December 17, 2021. A public hearing on this proposed rulemaking will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code.

Ohio EPA will be holding an in-person and virtual public hearing on the rules on December 17, 2021 at 1:00pm. The in-person hearing will be at the same time and date and will be located at Ohio EPA, Suite 700, 50 W. Town Street, Columbus, Ohio 43215. During the hearing, the public may submit written comments on the record about the proposed rules if participating virtually and verbally if participating in person. To facilitate the scheduling of oral presentations, persons intending to give testimony in-person at the hearing should notify the Ohio EPA Public Interest Center, mary.mccarron@epa.ohio.gov or (614) 644-2160.

Citizens who want to participate virtually must register in advance for the meeting at: <https://attendee.gotowebinar.com/register/3296250516864811787>

Written comments may be submitted during the virtual public hearing. In addition, written testimony can be emailed to the attention of Rules Coordinator, Division of Surface Water at dsw_rulecomments@epa.ohio.gov. All comments received at the virtual hearing or via email by close of business on December 17, 2021 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.

Pre-notice of this rulemaking is being given to provide a minimum of 45 days notice of the public hearing. The preliminary proposed rules and a fact sheet explaining the rule revisions are posted on the Ohio EPA website at www.epa.ohio.gov/dsw/dswrules.aspx. Another notice will be provided when these rules are officially filed with the Joint Committee on Agency Rule Review and the rules will be posted on the Ohio EPA website at the above link. Questions regarding this rule package should be directed to Audrey Rush, at the Division of Surface Water, at (614) 644-2035.

Please note: Ohio EPA recommends submitting your comments via email as it is the best way to ensure Ohio EPA receives your comments in the most timely manner.

DSW BUD Wave 2 Rules

December 17, 2020

Hello and welcome to Ohio EPA's virtual public hearing regarding Division of Surface Water proposed rules. My name is Heather Lauer and I'm hosting today's public hearing. With me online from Ohio EPA are Audrey Rush, Amanda Payton and Cathryn Allen. I'd like to note that we are recording this hearing. We will save all comments submitted during the hearing.

Before we get started, I'd like to go over a few items to help you navigate the GoTo platform.

On this slide here you will see an example screenshot of your Attendee interface. You should see something that looks like this on your computer desktop on the right-hand side of your screen. For this public hearing you are listening in using your computer audio. If you are having sound issues or if the slides stop advancing, try refreshing your browser. If that doesn't work, try logging off and logging back in.

Please submit public comments by clicking on the question mark icon and typing them into the Questions pane on your attendee interface. You may send your questions in at any time during the hearing. All comments submitted will be read aloud for the whole audience to hear.

(You can also click on the document icon to view included handouts.)

Before I start, I have a couple of tips about the technical end of today's 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 Surface Water is proposing to amend the following rules of the Ohio Administrative Code:

- [3745-1-09](#) Scioto river drainage basin.
- [3745-1-16](#) Southeast Ohio tributaries drainage basin.
- [3745-1-17](#) Southwest Ohio tributaries drainage basin
- [3745-1-21](#) Great Miami river drainage basin.

This rulemaking includes the review and update of four beneficial use designation rules to reflect the latest scientific information.

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, Dec. 17, 2021. These comments may be typed into the chat today or emailed to dsw_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 1:30/2 p.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

Attendee Report: Public Hearing: Beneficial Use Designations Rules (Statewide)

Report Generated:

12/17/2021 03:50 PM EST

Webinar ID	Actual Start Date/Time	Duration	# Registered	# Attended	Opened Invitation
676-643-419	12/17/2021 12:31 PM EST	1 hour 9 minutes	13	8	0

Attendee Details

Attended	Interest Rating	Last Name	First Name	Email Address	Time in Session
Yes	97	Fouche	Greg	gfouche@jcarr.state.oh.us	50 minutes
Yes	92	Mullin	Matt	matt.mullin@cincinnati-oh.gov	17 minutes
Yes	98	Payton	Mandi	amanda.payton@epa.ohio.gov	58 minutes
Yes	93	Richards	Kathy	KRichards@akronohio.gov	21 minutes
Yes	96	Sasson	Anthony	asasson@mwbinst.com	42 minutes
Yes	96	Spencer	Randy	hopew3ll2014@gmail.com	44 minutes
Yes	95	Stierhoff	Elayna	emstierhoff@columbus.gov	38 minutes
Yes	95	Taulbee	Rachel	rachel.taulbee@epa.ohio.gov	34 minutes
No	0	Jones	Richard	rickjonestech@gmail.com	--
No	0	Miller	Michael C	mmmillermc@gmail.com	--
No	0	Rockwell	Richard	rockwellrk@gmail.com	--
No	0	Rush	Audrey	audrey.rush@epa.ohio.gov	--
No	0	Venable	Lorie	rusven@aol.com	--

Q&A Report: Public Hearing: Beneficial Use Designations Rules (Statewide)

Report Generated:

12/17/2021 03:53 PM EST

Webinar ID	Actual Start Date/Time	Duration	# Registered	# Attended	Questions Asked (#)	Questions Answered (#)
676-643-419	12/17/2021 12:31 PM EST	1 hour 9 minutes	13	8	3	2

Q&A

Last Name	First Name	Email Address	Question # (Per Person)	Question Asked Date/Time	Question Asked	Answer Given	Answerer
Sasson	Anthony	asasson@mwbinst.com	1	01:13:53 PM EST	MBI will submit comments. They are too much for chat entry, but we will supply written testimony and more complete comments through email to DSW. Anthony Sasson, on behalf of Chris Yoder, Midwest Biodiversity Institute.	Thanks Anthony.	Amanda Payton
Sasson	Anthony	asasson@mwbinst.com	2	01:29:57 PM EST	You're welcome. The testimony file has now been submitted. Anthony Sasson		
Stierhoff	Elayna	emstierhoff@columbus.gov	1	01:12:43 PM EST	Are you going to go over the proposed changes at this meeting?	No, during the rule public hearings we only gather comments. There is a handout attached with the fact sheet of changes.	Amanda Payton



Division of Surface Water Response to Comments

Rule: Beneficial Use Designations Wave 2
3745-1-09, 3745-1-16, 3745-1-17, 3745-1-21

Agency Contact for this Package

Division Contact: Audrey Rush, audrey.rush@epa.ohio.gov

Ohio EPA held a public comment period from November 2, 2021 to December 17, 2021 with a public hearing held on December 17, 2021 regarding Beneficial Use Designations Wave 2. This document summarizes the comments and questions received during the public hearing and the associated comment period.

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/Overall Concerns

Comment 1: Concerning the BUDs for the Scioto River Drainage Basin, OAC 3745-1-09, in our comments of July 7, 2021 (Comment #2 in the November 2021 Ohio EPA Response to Comments), MBI noted and agreed with revisions under consideration at that time, and now proposed for adoption. We appreciate the work and data that was necessary to confirm these designations and especially those that resulted in higher use designations. We appreciate the acceptance of our recommendations based on the MBI 2015 Scioto River and Lower Olentangy River mainstem Level 3 biological and habitat assessment. We also acknowledge and agree with Ohio EPA tributary upgrades, including Bull Run, Camp Run, George's Run, Long Run, Lick Run, etc.) **(MBI)**

Response 1: Ohio EPA appreciates the ongoing input and collaborative work with MBI. The Agency has not made any revisions based on these comments.

Comment 2: Concerning the BUDs for the Southeast Ohio River tributaries drainage basin, OAC 3745-1-16, while we appreciate the Agency response to our comment about the use designation of Little Kyger Creek, we remain committed to our previous statements about Warmwater Habitat (WWH) being the more appropriate designation. Please see MBI's full comments submitted in response to the November 16, 2021, proposed rules posting, where we have offered additional information and context for this position in the detailed comment. We cannot emphasize enough the need for the agency to be consistent with established practice and precedent, such as the improvements and beneficial use designation upgrades on Monday and Sunday Creeks. **(MBI)**

- Response 2:** The Agency continues to believe that the MWH – Mine Affected (MWH-MA) designation is suitable for Little Kyger Creek based on the extensive sedimentation and sand bedload present from legacy mining as documented in the 2015 survey (Biological and Water Quality Study of Selected Southeastern Ohio River Tributaries, 2015). Page 64 of Ohio’s report explains the rationale for MWH-MA rather than WWH.
- The Agency also emphasizes that water bodies assigned a modified warmwater habitat or limited resource water use are subject to periodic review. If conditions improve beyond expectations, the designations currently proposed for these water bodies will be reassigned in the future. Monday and Sunday Creeks went through a similar process, with changes to use designations happening in 2007 (LRW to WWH) as new data supported these changes.
- Comment 3:** Concerning the BUDs for the Great Miami River Drainage Basin, OAC 3745-1-21, MBI appreciates the upgrade from WWH to EWH (Exceptional Warmwater Habitat) for the Great Miami River-Steele Dam (RM 82.0) to the Dayton WWTP outfall (RM 76.2) and the data collection and pollution control efforts that went into this improvement. For the Whitewater River watershed, we appreciate where streams that MBI surveyed, submitted data and a report were included as part of the proposed rules. MBI appreciates the upgrades from WWH to EWH for Dry Fork, Howard Creek, and Kiata Creek. **(MBI)**
- Response 3:** Ohio EPA appreciates the ongoing input and collaborative work with MBI. The Agency has not made any revisions based on these comments.
- Comment 4:** As the agency is already well aware, MBI is concerned about the status of a Primary Headwater Habitat (PHW) use designation. We have offered a proposed solution to this impasse by integrating these types of streams into the WWH suite of uses. Until this is resolved in a meaningful way we will continue to make comments especially where MBI has conducted such assessments as part of Level 3 bioassessments. We appreciate the concurrence in the November 2021 Response to Comments of the need for PHW data to be documented. We understand the difficulties that the agency has had in managing headwater streams from a policy perspective, but we see no harm in maintaining a publicly available database. **(MBI)**
- Response 4:** We refer back to Ohio EPA’s November 2021 Response to Comments Response 4, highlighting that the Agency recognizes the usefulness of a publicly available database, but it does not have the capacity to develop one at this time:
“Resolving this issue [PHW use designation] remains a challenge to be solved, but that goes beyond the scope and goal of this particular rulemaking. Regarding the recommendation that these [PHW] data be documented in a publicly available database, we agree. Again, this remains a challenge because EA3 is the main repository of biological and habitat data used by the Agency and it does not currently have the capacity to accept only PHW macroinvertebrate data. Although discussions about expanding EA3 to accept PHW have periodically occurred, other competing priorities have hampered efforts to develop that capacity.”

End of Response to Comments