

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Permit to Install Program and NPDES Program rules

Rule Number(s): 3745-42-01, 3745-42-03, 3745-42-04, 3745-42-07, 3745-42-13 and
3745-33-08

Date: June 8, 2016

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☐ Rescinded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.

Ohio EPA Division of Surface Water's Permit to Install program permits the design and technical requirements of wastewater collection and treatment systems prior to their construction. This rulemaking involves the five-year rule review of four existing permit to install program rules in Chapter 3745-42 of the Ohio Administrative Code (OAC) and the development of one new rule in this chapter. One National Pollutant Discharge Elimination System (NPDES) permit

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program rule (OAC 3745-33-08) is also being revised for consistency with the draft new permit to install rule OAC 3745-42-07.

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.

A brief description of each rule in the package is provided below:

The Permit to Install program rule OAC 3745-42-01 includes the definitions of terms used in the chapter. Draft amendments to the rule update references, update style, and revise definitions used in rule OAC 3745-42-13 to include liquid industrial waste.

The Permit to Install program rule OAC 3745-42-03 details what must be included in a permit application and on detailed plans. Draft amendments to the rule incorporate additional items Division of Surface Water permit reviewers typically request to be included in the application. By including these items in the rule, the Division's expectations will be clear and the number of revisions to permit applications by the applicant should be reduced.

The Permit to Install program rule OAC 3745-42-04 details the criteria used by Ohio EPA's Director in deciding whether to grant or deny a permit application. Draft amendments to the rule provide additional clarity on the Agency's expectations in regards to internal permit application review – what is considered a complete permit to install application, technical documents the Division may use in application review and how the Division of Surface Water coordinates application review with other Ohio EPA divisions. The rule also contains the process for the director to enter into agreements with political subdivisions or investor-owned utilities for the review of permits.

The new Permit to Install program rule OAC 3745-42-07 established what the Director intends best available technology to mean for facilities under Ohio EPA's regulatory authority. Existing Permit to Install program rule OAC 3745-42-04, requires a permit to install application to "employ the best available technology." Historically, the Division has determined what best available technology means for each permit to install application on a case by case basis. This draft new rule details when the Division will require a project to be connected into sanitary sewers versus when the Division would permit an individual/separate treatment system for applications under the authority of the program. The Division's intent is to remove the ambiguity on when connection into sanitary sewers will be required to provide a clear and more predictable outcome for the permit applicants. The draft rule includes a process for exemptions from the rule requirements to provide flexibility and common sense in rule application. The rule also connects what is considered best available

technology with existing rules in other programs, again providing a clearer and transparent regulation.

The Permit to Install program rule OAC 3745-42-13 covers the permit application and the operating and maintenance requirements for a land application of treated sewage system. Land application of treated sewage is a process that reuses or recycles treated sewage in a manner that minimizes or eliminated the discharge of pollutants to waters of the state, including Ohio's streams, rivers and lakes.

A land application of treated sewage system consists of a sewage treatment plant that typically uses spray irrigation to land apply all or a portion of the treated sewage to sites such as golf courses, recreational fields or farmland.

The rule contains requirements based on the volume of treated sewage to be applied, level of treatment provided by the sewage treatment plant, and land application site characteristics.

Revisions to the rule include: removing definitions that are included in rule OAC 3745-42-01 as noted in the new comment; expanding rule applicability to include liquid industrial waste if similar in nature to sewage and land applied for agronomic benefit; clarifying when treated sewage should not be applied if precipitation is forecasted; moving the requirement for consistency with Section 208 plans to rule OAC 3745-42-04; removing special considerations for impaired waters; removing outdated rule language; removing language already contained in other PTI rules; where possible, replaced tables inserted in the rule as graphics as tables built in the rule authoring software; in table 13-1, including minimal information required for background phosphorus levels and hydrogeologic site investigations for land application areas; clarifying how to perform soil phosphorus sampling; updating references; including potential for less restrictive isolation distances for highly treated and disinfected effluent; clarifying requirements for storage facilities to have level indicators, updating effluent monitoring requirements to be more consistent with Ohio EPA's permit guidance document "National Pollutant Discharge Elimination System (NPDES); Monitoring Frequency Requirements for Sanitary Discharges" revised November 8, 2010; removing ground water monitoring program exemption for storage facilities based on distance from karst features; clarifying approved forms should be used for record keeping; clarifying that the Director can revoke approval of a land application management plan where the system is de-commissioned or never built; and adding total phosphorus to the list of parameters the Director can require to be sampled from tile drain outfalls.

The NPDES program rule OAC 3745-33-08 contains the generic permit conditions included in all NPDES permits. In paragraph (B), the rule states that "no NPDES permit shall be issued for a semi-public disposal system whenever the sewage system of a publicly owned treatment works is available and accessible in accordance with section 6117.51 of the

Revised Code.” In paragraph (C), the rule states that regardless of whether an NPDES permit has been issued to a semi-public disposal system, whenever sewers of a publicly owned treatment works become available and accessible, the permittee shall abandon the semi-public disposal system and connect into the public system.

ORC 6117.51 details when a county sewer district may require persons to connect into the sewer system when the county health department has declared an area unsanitary. The connection requirements do not apply to discharges covered under NPDES permits that are not semi-public disposal systems and beyond the 200 feet distance.

A semipublic as defined in ORC 3709.085 as “Semipublic disposal system” means a disposal system that treats the sanitary sewage discharged from publicly or privately owned buildings or places of assemblage, entertainment, recreation, education, correction, hospitalization, housing, or employment, but does not include a disposal system that treats sewage in amounts of more than twenty-five thousand gallons per day; a disposal system for the treatment of sewage that is exempt from the requirements of section 6111.04 of the Revised Code pursuant to division (F)(7) of that section; or a disposal system for the treatment of industrial waste.

The Division is exercising its authority under ORC 6111.44 to expand the types of dischargers that it can require to connect into sewers and the distance to match what the Division is defining as best available technology in draft new rule OAC 3745-42-07. The Division’s intent is to reduce the number of minor dischargers covered under NPDES permit that are in noncompliance with their permit, reduce the number of enforcement cases involving minor dischargers that typically do not have the financial resources to own, operate and maintain a sewage disposal system and therefore reduce impacts on human health and the environment from poorly operating sewage treatment systems. Also, the Division has included flexibility to permit the continued operation of sewage treatment systems at the owner/operator’s request or if the receiving publicly owned treatment works is unable/unwilling to accept the sewage.

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

Please see the table below:

Rule Number	Authorizing Statute
3745-42-01	6111.03
3745-42-03	6111.03
3745-42-04	6111.03

3745-42-07	6111.03
3745-42-13	6111.03, 6111.04, 6111.44, 6111.45, 6111.46
3745-33-08	6111.03

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.

Not applicable for the Permit to Install program rules. There are no federal counterpart regulations for permitting the design and installation of wastewater collection and treatment systems. The NPDES program rule OAC 3745-33-08 contains some requirements based on federal NPDES requirements in 40 C.F.R. Part 122, however the requirement being reviewed in this rulemaking (connection into a publicly owned treatment works) does not have a federal counterpart.

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

The Permit to Install program rules are based on state statute. Please see the response to Item 2 above.

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 over encompassing purpose of the Permit to Install program is to assist in protecting public health and the environment from untreated/poorly managed sewage and industrial waste as well as assisting in supporting the wise use of public funds. Ohio EPA, Division of Surface Water reviews design and construction plans for items like sanitary sewers, onsite sewage treatment systems, sanitary and industrial wastewater treatment plants and land application of treated wastewater systems. The review of plans aims to ensure that drinking water is protected; NPDES permit effluent limits are considered in the design of discharging treatment plants, Ohio's antidegradation rule and Section 208 Plans are considered, and that planning and future projects are considered in sewage management.

In this five-year rule review, the Division's intent is to make permit application content expectations clear, make the internal Division permit review and decision-making process more clear and predictable, and bridge Permit to Install program requirements with NPDES program requirements. By making a determination of existing sewer capacity and accessibility, community and areawide planning can be better performed by communities,

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businesses and commercial operations in general. Currently, a determination is made on a case by case basis and the outcome cannot be predicted by the regulated community. This rulemaking effort will provide the regulated community with tools to predict appropriate infrastructure needs. Additionally, other program initiatives in and out of the Ohio EPA that rely on a determination of BAT (e.g., sewers accessible and available) in program decisions, such as implementation of Ohio's antidegradation rule, regional planning agencies' determinations/evaluations for service, implementation of Ohio Department of Health's subdivision regulations, will be more consistent.

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

Ohio EPA, Division of Surface Water can measure the success of the Permit to Program in the following ways: reduction in number of unsanitary areas throughout the State, increased receipt of complete PTI permit applications, faster PTI application review and processing times, fewer PTI application denials, and fewer wastewater treatment plants in noncompliance with NPDES permit requirements due to design flaws.

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.

For Permit to Install program rules OAC 3745-42-03, 04, 07 and NPDES rule 3745-33-08, Ohio EPA sent electronic and hard copy notification of Early Stakeholder Outreach (ESO) to the Division of Surface Water's rulemaking interested party list on May 9, 2012. The ESO fact sheet was posted on the Division's website at: <http://epa.ohio.gov/dsw/dswrules.aspx>. The comment period ended on June 11, 2012.

For Permit to Install program rule OAC 3745-42-13, Ohio EPA sent electronic and hard copy notification of ESO to the Division of Surface Water's rulemaking interested party list on May 7, 2012. The ESO fact sheet was posted on the Division's website at: <http://epa.ohio.gov/dsw/dswrules.aspx>. The comment period ended on June 8, 2012.

For Permit to Install program rule OAC 3745-42-01, Ohio EPA sent electronic and hard copy notification of ESO to the Division of Surface Water's rulemaking interested party list on May 6, 2014. The ESO fact sheet was posted in the Division's website at: <http://epa.ohio.gov/dsw/dswrules.aspx>. The comment period ended on June 6, 2014.

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

During the comment periods, the Agency received input from four parties. A short summary of the comments follows:

Ohio Water Environment Association – overall comments focused on reducing burdensome, redundant and unnecessary requirements. Specific comments included items to consider in defining when “sewers are available and accessible.”

Metropolitan Sewer District of Greater Cincinnati – comments encourage the alignment of signature requirements for industrial permits to install with NPDES permits and request that local review authority for industrial PTI’s remain in the rule.

Stephen Haughey and Frank Reed, Jr. with Frost Todd Brown LLC – comments focus on the proposal to define when “sewers are available and accessible.” Comments question Ohio EPA’s authority to establish a distance in rule that is different than the distance stated in ORC 6117.51 for the Board of County Commissioners to enforce.

John A. Eastman with LJB Inc. – in rule OAC 3745-42-13, suggested at least two different isolation distances for Class V injections wells. For example, retain the 300-foot isolation for Class V wells that allow direct entry of surface waters and use a smaller distance like 50 feet for Class V wells that do not allow direct entry of surface water.

In response to the comments received, the Division reviewed the rules to remove redundancy, revised the determination of best available technology, reviewed legal authority for defining when the Agency considers sanitary sewers to be accessible and available, and confirmed that the ability to reduce isolation distances is already included in the rule.

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?

Although a majority of the rule content is procedural in nature, the Division is incorporating several aspects of the following guidance documents into rule requirements:

-Recommended Standards for Wastewater Facilities (2014). Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.

-Design Standards: Wastewater Treatment Plants & Collection Systems ≤ 100,000 gpd (2013), Ohio EPA.

Rule OAC 3745-42-13 is based on:

- (1) U.S. EPA guidance manual, "Onsite Wastewater Treatment Systems Manual", February 2002.
- (2) U.S. EPA Design Manual, "Onsite Wastewater Treatment and Disposal Systems", October 1980.
- (3) "Recommended Standards for Wastewater Facilities" (Ten States Standards), 2004.
- (4) DSW rescinded policy 0400.014 for "Land Application of Domestic Wastewater".
- (5) DSW rescinded policy No: 4.23, Design Criteria: Wastewater Treatment Lagoons.
- (6) DSW rescinded policy No: 4.14, Effective: 8/1/88, Subject: Design Criteria; Land Application of Domestic Wastewater.
- (7) DSW rescinded policy No: 0400.029, Issued: 12/11/95, Draft: Land Application of Treated Wastewater/Wastewater Reuse.
- (8) OAC 3745-81-21: Coliform Monitoring Requirements.
- (9) OAC 3745-81-14: Maximum Contaminant Levels for Microbial Contaminants.
- (10) Comments from interested parties, including the Northeast Ohio Regional Sewer District, the Delaware County Sanitary Engineer, the Building Industry Association of Central Ohio, the Montgomery County Sanitary Engineer, the Darby Accord, the City of Columbus Department of Public Utilities, the Ohio Environmental Council, consulting engineering firms, and the Franklin County Engineer's Office.
- (11) The Ohio State University bulletin number 860, "Reuse Of Reclaimed Wastewater Through Irrigation For Ohio Communities".
- (12) The Ohio State University bulletin number 912, "On-site Sprinkler Irrigation of Treated Wastewater in Ohio", 2004.
- (13) The Water Resource Council document entitled, "Recommended Setbacks for Human and Animal Waste Management Near Drinking Water Supply Wells and Intakes" (This document was a joint effort among Ohio EPA, the Ohio Department of Health, the Ohio Department of Agriculture and the Ohio Department of Natural Resources Division of Soil and Water Conservation to develop universal setbacks for all agencies involved.)
- (14) The Ohio EPA Division of Drinking and Ground Waters rules under Chapter 3745 of the Ohio Administrative Code.
- (15) Water Supply and Pollution Control, Fifth Edition, Authors: Warren Viessman, Jr. and Mark Hammer.
- (16) Other states' rules, including Wisconsin's, Pennsylvania's and Michigan's.

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(17) U.S. EPA website: Region 9: Water Programs: Water Recycling and Reuse: The Environmental Benefits.

(18) U.S. EPA Manual: Nitrogen Control, Sept 1993.

(19)(a) Land Treatment of Municipal Wastewater Effluents, Design Factors-I, Jan 1976; (b) Land Treatment of Municipal Wastewater Effluents, Design Factors-II, Jan 1976; (c) Land Treatment of Municipal Wastewater Effluents, Case Histories, Jan 1976.

(20) U.S. EPA Project Summary: Optimization of Nitrogen by Rapid Infiltration, April 1985.

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?

These rules were released for interested party notice previously in 2009 and for Early Stakeholder Outreach in 2012 and 2014. As a result of the comments received, revisions were made to the draft rules. Please see the response to question 8 above.

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 Permit to Install program rules are performance-based. The rules specify what must be considered in the design of a wastewater treatment facility but do not require specific treatment technologies to be used, that is left to the applicant and design engineer to select.

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

Ohio EPA is the only Agency with the statutory authority to review and issue permits to installs for wastewater collection and treatment systems for any facility except a one, two or three family dwelling. 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 continue to implement the rules through current practices. The draft rule amendments should provide for more consistent and predictable permit application review through further clarifying application contents and establishing when sanitary sewers are considered accessible and available.

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 Permit to Install program regulates the design and installation of wastewater conveyance and treatment systems. The impacted business community includes any business that owns and operates a wastewater treatment system and any business that installs sanitary sewers. This may include: residential and commercial developers, businesses located in non-sewered areas and industries with their own treatment systems.

b. For this rulemaking, the nature of the adverse impact may include the time in permit application preparation, permit application fee, time and cost of any Division requested application revisions, and the cost of any required compliance of a management plan.

c. Overall, the expected adverse impact from the Permit to Install program includes: the cost and time involved in development of a Permit to Install application (this cost varies widely based on type of project and volume of sanitary or industrial waste to be treated), a total permit to install application fee of: \$100 application fee + \$100 plan review fee + construction/installation cost multiplies by 0.0065 (not to exceed a total cost of \$15,100.00), and cost and time involved in responding to Agency comments/requested revisions on the permit application. If a management plan is required, the adverse impact may include cost of compliance with the plan and time of any required record keeping and reporting.

The Division is considering requiring additional information in the permit application which is typically requested by Division permit reviewers after the application is received by the Agency. By including this information in rule OAC 3745-42-03, the time to prepare an application may increase, but the time spent responding to Division comments, revising the application, and Division review and processing will decrease.

The Division is considering defining in new rule OAC 3745-42-07 when the Division will require a regulated entity to connect into sanitary sewers versus when the Division will approve the construction of an individual disposal system. In general, this rule would not increase the cost of a project anticipated by the regulated community. The rule would only apply when a commercial, residential or business activity is contemplating installing either sewers or a wastewater treatment plant; therefore, financial resources are already being contemplated by the applicant. The rule would indicate which may be the best environmental and cost effective solution and may indicate that spending the resources on sewers are better value than building and operating a wastewater treatment plant.

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

The Division's regulatory intent is to protect human health and the environment. By clarifying application requirements and detailing when the Agency will consider approving a new individual sewage treatment system should reduce uncertainty and lead to faster and more consistent permitting.

By making a discreet and predictable definition of sewer accessibility and availability, the rule itself will aid in the protection of human health and the environment by reducing package treatment plants and/or unsanitary conditions that may persist otherwise.

Centralizing wastewater treatment at larger, engineered wastewater treatment plants provides this benefit due to staffing, financial and magnitude of resources.

Regulatory Flexibility

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

For small systems that can be supported by onlot soil absorption based treatment systems, the business, commercial or residential project may be regulated by local health department and applicable rules streamlining the process. Also, the rule provides a petition or variance process where the Ohio EPA can consider concerns of small business based upon physical, legal and financial concerns in providing a waiver of requirement to connect into sanitary sewers.

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 failure to get a permit under this Chapter is not considered a paperwork violation and would not fall under the scope of ORC 119.14. However, the Agency uses enforcement

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discretion and first-time violations of reporting requirements, if included in the permit to install, are typically waived.

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

The following resources are available:

- 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/L3RpbWUvMTQ0NTg2NTYzNi9aWQvX1hTRkZWem0%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'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://www.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.
- Ohio EPA's Permit to Install Program Supervisor, Mark Stump, is available to answer questions by calling 614-644-2028 and email at mark.stump@epa.ohio.gov.
- Ohio EPA's Permit to Install Program web page (<http://www.epa.ohio.gov/dsw/pti/index.aspx>) contains guidance documents, fact sheets, forms, and answers to frequently asked questions regarding the program.