



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

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Regulation/Package Title (a general description of the rules' substantive content):

NPDES program rules

Rule Number(s): 3745-33-02, 3745-33-03, 3745-33-04, 3745-33-05, 3745-33-08,
3745-33-09, 3745-33-10

Date of Submission for CSI Review: April 17, 2025

Public Comment Period End Date: May 19, 2025

Rule Type/Number of Rules:

New/ rules

No Change/ 1 rules (FYR? Yes)

Amended/ 6 rules (FYR? Yes)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

This rulemaking addresses the administrative and technical requirements for writing and obtaining individual wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program. The NPDES program was created in 1972 by the Clean Water Act (CWA) to help address water pollution. NPDES permits authorize the discharge of pollutants at levels that ensure water quality standards are being met. The NPDES program regulates any facility that discharges pollutants to waters of the state, including publicly owned treatment works (POTWs), businesses and industries.

Ohio was authorized by U.S. EPA to implement the NPDES Program under the CWA Section 402(b) and 40 C.F.R. Part 123 on March 11, 1974. Authorized states assume permitting authority and are required to administer the program in a manner no less stringent than the CWA and regulations adopted or subsequently amended by U.S. EPA.

Brief summaries for each rule and draft revisions are listed below. All rules also include updates of references and style to conform to the Legislative Service Commission's rule drafting manual.

Rule 3745-33-02, Ohio NPDES permit required: details when a facility is required to obtain an NPDES permit. No major revisions are being considered.

Rule 3745-33-03, Applications: contains the requirements for NPDES permit applications and treatment additive applications. Draft revisions include:

To require all applications be filed electronically.

Updates to paragraph (D)'s comment on common application deficiencies.
Changes to paragraph (F) to be consistent with 40 CFR 122.22. This includes changing "duly authorized employee" to "duly authorized representative" and adding paragraph on "Changes to Authorization" and electronic signature.
The list of parameters exempt from treatment additive approval has been updated.

Rule 3745-33-04, Ohio NPDES permit required: details when a facility is required to obtain an NPDES permit. Draft revisions include:

To require permit modifications, transfers, terminations and revocations to be filed electronically.

Minor modification for incorporating monitoring or effluent limits for treatment additive to include peracetic acid and hydrogen peroxide.

Minor modifications to include changing the name the NPDES permit was issued.

Rule 3745-33-05, Authorized discharge levels: describes how permit limits should be applied and schedule of compliance requirements. Draft revisions include:

Restructured paragraph (C)(3) and made updates to be consistent with 40 CFR 122.45.

Rule 3745-33-08, Generic permit conditions: contains the generic NPDES permit conditions. Draft revisions include:

Added language to require that all reports required under (A) shall be signed pursuant to OAC 3745-33-03 or a duly authorized representative, consistent with 40 CFR 122.22. This section defines a duly authorized representative.

In (A)(8), removed "regardless of the quality of the effluent" consistent with 40 CFR 122.41.

In (A)(12), added a telephone number to be included on permanent signs.

Rule 3745-33-09, Best management practices: contains other NPDES permit conditions including best management practices, pollutant minimization program and toxic organic management plans. Draft revisions include:

In (B)(1)(d), Pollutant Minimization Program, removed the March first date for annual status reports.

In (C)(3), clarify that Toxic Organic Management Plan certification eligibility requirements apply to both indirect and direct dischargers. Minor changes to be consistent with the federal rule.

Rule 3745-33-10, Applicability of rules of procedure. No revisions are being considered.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Statutory authority for all rules is 6111.03; for rule 3745-33-03, also 6111.05

Amplification for all seven rules is 6111.03

- 4. 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 regulations implement federal requirements. The NPDES program is implemented under the federal CWA and U.S. EPA has delegated the program to Ohio EPA for implementation.

OAC Chapter 3745-33 enables the state to maintain approval to administer and enforce the NPDES program, however changes made to the rule package were not driven by a need for the state to maintain approval.

In 1972 the NPDES program was created in Section 402 of the CWA. The NPDES program prohibits discharges of pollutants from any point source (a discrete conveyance such as a pipe or ditch) into the nation's waters unless authorized under an NPDES permit. The program gives U.S. EPA the authority to regulate discharges into the nation's waters by setting limits on the effluent that can be discharged to a body of water.

Congress amended the CWA in 1977 to expand the NPDES program and shift the focus to controlling toxic discharges as well as conventional pollutants.

Limits in NPDES permits are calculated to ensure WQS are being met. WQS protect different beneficial uses of surface water such as industrial water supply, public water supply, agricultural water supply, aquatic life use, wildlife, recreation and human health.

Ohio was authorized by U.S. EPA to implement the NPDES Program under the CWA Section 402(b) and 40 CFR Part 123 on March 11, 1974. Authorized states assume permitting authority and are required to administer the program in a manner no less stringent than the CWA and regulations adopted or subsequently amended by U.S. EPA.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

In 2006, the Agency adopted requirements for the posting of signs at outfalls that may contain discharges of process wastewater, non-contact cooling water, sewage, discharges from remediation sites, and bypass or combined sewer overflows. This posting of signs at outfalls is not required by federal regulations however, the primary objective of the NPDES program is to reasonably protect public health and the environment, so it makes sense to warn individuals recreating on or near waters of the state about potential hazards in the water.

6. 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 primary objective of the NPDES program is to reasonably protect public health and the environment. These regulations ensure that wastewater is treated and managed appropriately for the protection of public health and Ohio's surface water quality.

Prior to the CWA being passed in 1972, untreated sewage and industrial wastewater were being dumped into surface waters, resulting in fish kills, human illness, the Cuyahoga river catching on fire and approximately two thirds of the nation's lakes, rivers and coastal waters being unsafe for fishing and swimming.

In 2010, Ohio reached an established goal of fully attaining the designated aquatic life use in 80% of Ohio's streams and rivers. Ohio is a water-rich state bounded by Lake Erie on the north and the Ohio River on the south. The suitability of these waters to support society's needs for water supplies, and recreation is critical for Ohio's economy and the standard of living for Ohio's citizens. Surface waters provide the majority of water used for public drinking water; for recreation such as swimming, boating and fishing; and for industrial users including manufacturing, power generation, irrigation and mining. Ohio has made a lot of progress improving water quality, in part due to the NPDES program.

In regard to Ohio's regulations, although they are based on the federal requirements, by adopting state rules, Ohio EPA has made the requirements clearer, easier to read and understand, and contain enough detail to make the permit process more transparent and predictable to the regulated community. As noted in question #4 above, Ohio EPA has also included a few tailored provisions to be protective of water quality in Ohio.

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

In general, Ohio EPA Division of Surface Water measures the success of its programs through biological and chemical sampling and determines whether or not a water body is attaining its designated uses. The status or health of Ohio's streams, rivers and lakes is reported every two years in the Integrated Water Quality Monitoring and Assessment Report, which is available on Ohio EPA's website at: <https://epa.ohio.gov/divisions-and-offices/surface-water/reports-data/ohio-integrated-water-quality-monitoring-and-assessment-report>

The keystone of the NPDES program is self-monitoring data provided by the permittee. The permittee monitors and submits effluent data throughout the duration of the permit. If limits are exceeded, the permittee is required to provide notice to Ohio EPA, state what caused the exceedance, and what will be done to prevent future exceedances. The frequency of sampling and monitoring each pollutant varies depending on the potential of the pollutant to exceed water quality standards.

The Agency monitors the program through regular inspections of facilities. Another measure of success of the NPDES program included a reduction in the number of compliance violations found during these inspections and data reviews.

The Agency also has the ability to perform sampling on the effluent, typically as part of a permit renewal or as part of a larger survey on the receiving stream watershed. A stream survey would also determine any potential biological impacts of the NPDES permit discharge. This sampling information is used to further evaluate the impacts the discharge may be having on the receiving stream and to justify any additional permit limits or conditions needed to eliminate adverse impacts.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. 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 January 11, 2024. The comment period deadline was February 12, 2024. Approximately 2,000 interested parties were contacted via email; a list of recipients is available upon request.

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

During the Early Stakeholder Outreach comment period, the Agency received comments from Hunt Engineering LLC, Midwest Biodiversity Institute (MBI), and the Ohio Oil and Gas Association (OOGA). One comment was concerned with a potential conflict among OAC 3745-33-08, OAC 3745-7-04, and NPDES permit Part II operator staffing provisions. There is no conflict among the three rules. Another comment regarded concerns with the removal of regulatory restrictions.

11. 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?

Scientific data used to support this rulemaking include: 40 C.F.R. Part 122 EPA Administered Permit Programs: The National Pollutant Discharge Elimination System.

12. 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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

The Agency did not consider alternative regulations, because these regulations are required for Ohio to maintain delegation to implement the NPDES program.

13. 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 NPDES program. Only a review of existing Ohio EPA rules was necessary, and no duplication was found.

14. 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, which include inspections and reporting requirements to ensure the rules are applied consistently throughout the state.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The impacted business community will include any facility that discharges pollutants to waters of the state, including POTWs, businesses and industries.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

No new costs will be incurred through the draft revisions in this rulemaking.

However, in regard to the existing NPDES program as a whole:

The cost associated with the NPDES program varies widely based on factors such as volume of wastewater treated, complexity of treatment system, stringency of effluent limitations, effluent monitoring requirements, etc.

The nature of the adverse impact may include:

- Fees. An NPDES permit application fee of \$200.00; an issuance fee based on design flow, and an annual discharge fee based on average daily discharge flow. These fees are detailed in the Ohio Revised Code.
- Treatment of wastewater. Equipment, cost to maintain and operate the equipment.
- Sampling. NPDES permits require monitoring for pollutants that are reasonably expected to be present in a facility's discharge.
- Time for paperwork completion (required record keeping, monthly reports), and potentially fines for noncompliance with the permit may also be necessary.

The cost of compliance for a facility with these rules is site specific and will vary greatly based on the type of treatment, the amount of sludge generated, amount of water discharged, the types of samples and the amount of sampling required, and the amount of treatment that would be required to satisfy the limitations.

For example, a POTW that discharges 1.0 million gallons per day will be required to sample for metals less frequently than a POTW that discharges 50 million gallons per day. However, as mentioned above, 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.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

Some of the changes are intended to increase the clarity and user-friendliness of the rule language. Additions to allow a minor permit modification for the inclusion of monitoring and/or limits of certain treatment additives (peracetic acid and hydrogen peroxide), and also to allow a minor modification when changing the NPDES permit name. The list of parameters exempted from treatment additive approval has been updated.

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

In regard to the NPDES program, the U.S. Congress made the determination that the intent (fishable, swimmable waters) justifies the adverse impact to the regulated business community when they passed the initial and subsequent amendments to the Federal Water Pollution Control Act (also known as the Clean Water Act).

In regard to the current rulemaking, no new impact to the regulated community will occur.

Regulatory Flexibility

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

Overall, the regulations do not provide exemptions for small businesses. Corresponding federal regulations and the Ohio Revised Code do not provide for exemptions or alternative means of compliance for any permittees. The regulations are applied evenly regardless of the size of the treatment works. Smaller facilities are typically required to sample less frequently, which will cost them less money.

19. 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?

Failure to attain a permit under these chapters is not considered a paperwork violation and would not fall under the scope of ORC 119.14. However, the Agency uses enforcement discretion, and first-time violations of reporting requirements is typically waived.

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

Ohio EPA's staff for compliance and pollution prevention assistance provide information and resources to help small businesses comply with environmental regulations in accordance with Ohio Revised Code section 3745.017. These staff help customers subject to any agency regulations identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services 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.

Ohio EPA also has a permit assistance web page <https://epa.ohio.gov/stay-compliant/get-help/permit-assistance> that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.

Ohio EPA also has a Customer Support Center web page (ohioepa.custhelp.com/) 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 Surface Water provides technical support to small (less than 0.5 million gallons per day) wastewater treatment plants. Additional information is available at: <https://epa.ohio.gov/divisions-and-offices/surface-water/dsw-programs/compliance-assistance-unit>

U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at: epa.gov/smallbusiness/ and a Small Business Ombudsman Hotline 800-368-5888.

U.S. EPA's Water Quality Standards Handbook, Second Edition available at: <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>.

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 can sort the index alphabetically, by publication date, or by topic. Available at: <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>.

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: epa.ohio.gov/divisions-and-offices/surface-water/reports-data/water-quality-standards-program.