

Environmental Update

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Welcome to the Shumaker, Loop & Kendrick, LLP Environmental Update; a monthly publication dedicated to providing content regarding Ohio administrative and regulatory law, as well as up to date information on the Ohio EPA's rulemaking process, including early stakeholder outreach, interested party review and request for comments, proposed rules, and public comment periods. In addition, the update offers information regarding environmental issues affecting businesses and environmental professionals across the state of Ohio. If you have questions regarding the information provided, feel free to contact Marcus Miller at mmiller@shumaker.com or 614.628.4466.

LAWYER SPOTLIGHT

With a strong background in environmental compliance, regulatory compliance, OSHA, and permitting, [Cheri Budzynski](#) represents clients in a broad range of industries, including industrial, manufacturing, and agribusiness.



A management-side attorney for more than 10 years, Cheri counsels clients on day-to-day environmental compliance and other administrative issues at their facilities. Clients draw on the fact she frequently works with Ohio EPA, U.S. EPA, and the Ohio River Valley Water Sanitation Commission regarding environmental regulations, thus, allowing her to effectively and efficiently, advise clients on regulations on both the state and federal level and seek changes to regulations that impact their business by providing input to the regulatory agencies and, if necessary, appealing the regulations.

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OHIO EPA RULEMAKINGS AND ANNOUNCEMENTS



Air

Notice of Adoption of Rules - Amendments to Ohio's "Ambient Air Quality Standards and Emergency Episode Standards" Rules:

Ohio Environmental Protection Agency (Ohio EPA) has adopted the rules below found in Ohio Administrative Code Chapter 3745. The rules in this chapter identify the criteria under which an emergency episode exists, and address procedures to be followed and actions to be taken in the event of an emergency. The rules also establish Ohio's ambient air quality standards. The rules in this chapter have undergone a review to fulfill the requirements of Ohio Revised Code (ORC) 106.03 (5 year review). The amended rules are effective on **March 10, 2020**.

Rule #:	Title:
3745-25-01	Definitions
3745-25-02	Ambient Air Quality Standards

General Permits for Natural Gas and No. 2 Oil-Fired Boilers - Draft Available for Comment: The Division of Air Pollution Control (DAPC) is making available draft revised general permits for natural gas and No. 2 oil-fired boilers. There are eight general permits available for four boiler capacity ranges (>10 to 19.9 MMBtu/hr, 20 to 29.9 MMBtu/hr, 30 to 39.9 MMBtu/hr, and 40 to 50 MMBtu/hr) and area or major sources of hazardous air pollutants (HAPS).

The existing general permits for boilers were updated to account for the following:

- Incorporate OAC rule 3745-31-05(A)(3)(a)(ii), which exempts boilers from Best Available Technology (BAT) requirements for each pollutant that has the potential to emit less than 10 tons per year.
- Incorporate 40 CFR Part 63, Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants (NESHAP) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.
- Incorporate OAC Chapter 3745-110 -- Nitrogen Oxides Reasonably Available Control Technology (RACT). Boilers with a maximum heat input capacity of less than 40 MMBtu/hr are exempt from this rule.
- Removed OAC rules 3745-21-07(B), 3745-21-08(B) and 3745-23-06(B) from the permit because the rules were rescinded.
- Incorporate the use of ultra-low sulfur No. 2 fuel oil, which reduces potential sulfur dioxide (SO₂) emissions.

Additional information regarding the permits is available [here](#). The comment deadline is **March 26, 2020**.

Comment Period Available - Supplement to Ohio's Attainment Demonstration SIP for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard for the Muskingum River, OH Nonattainment Area:

Ohio EPA is providing for public comment a draft supplement to Ohio's attainment demonstration state implementation plan (SIP) for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) for the Muskingum River, OH nonattainment area. This supplement contains an updated Reasonably Available Control Measures (RACM) / Reasonably Available Control Technologies (RACT) analysis and an updated Attainment Demonstration/Control Strategy, which includes SO₂ emission limits for Globe Metallurgical. The Public Notice is available [here](#). The Comment deadline is **April 2, 2020**.

Public Hearing Notice - Amendments to Ohio's "Nitrogen Oxides - Reasonably Available Control Technology" Rules: The Division of Air Pollution Control (DAPC) has proposed amended rules in Ohio Administrative Code (OAC) Chapter 3745-110, "Nitrogen Oxides - Reasonably Available Control Technology Regulations." These rules establish requirements for emissions of nitrogen oxides (NOx) from very large, large, mid-size, and small boilers, stationary combustion turbines, stationary internal combustion engines, or reheat furnace as defined in OAC rule 3745-110-01, or that are located at a facility that emits or has the potential to emit a total of more than 100 tons per year of NOx emissions from all sources at that facility. A public hearing will be held on the amended rules on **April 14, 2020**. The Public Notice is available [here](#). Ohio EPA's response to public comments are available [here](#). The Synopsis of Changes is available [here](#).



Water - Drinking and Groundwater

Public Notice: Proposed Rulemaking Governing Disadvantaged Community Loan Rules of the Ohio Administrative Code:

The DDAGW has drafted minor revisions to Disadvantaged Community Loan rules in Chapter 3745- 88 of the OAC. The draft amendments are a result of the five-year rule review requirements of Section 106.03 of the Revised ORC. Proposed revisions to the rules include the following:

- Revising the definition of "Disadvantaged Assistance" in OAC Rule 3745-88-01 to clarify that maximum term is consistent with what is allowed in the Safe Drinking Water Act
- Changing "Pre-application" to "Nomination" in OAC chapter 3745-88.
- Removing the requirement to submit a complete application separate from the WSRLA loan application for designation as a disadvantaged community in OAC Rule 3745-88-02.
- Clarifying that the poverty rate in the area served by the applicant is determined by the most recent data of the US Census Bureau in OAC Rule 3745-88-02.
- Clarifying the percentage of capitalization grant that may be available to provide subsidies to disadvantaged communities in OAC Rule 3745-88-02. This revision is proposed to make the rule consistent with the federal requirement.

The Public Notice is available [here](#). The comment deadline is **March 5, 2020**.

Early Stakeholder Outreach - Backflow Prevention and Cross Connection Control:

The Division of Drinking and Ground Waters (DDAGW) has reviewed rules in Chapter 3745-95 of the Ohio Administrative Code (OAC) to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code. The rules describe backflow prevention and cross connection control. Proposed minor revisions to OAC Rules 3745-95-01, 3745-95-02, 3745-95-03, 3745-95-04, 3745-95-05, 3745-95-06, 3745-95-07, 3745-95-08 and 3745-95-09 include the following:

- Modifying and adding supporting language to definitions in 3745-95-01 that clarify the application of these rules to all public water systems.
- Adding clarifying language as to acceptable means for fulfilling residential educational campaigns in rule 3745-95-03.
- Clarifying and updating language in Rules 3745-95-01 through 3745-95-09 for consistency.

The Early Stakeholder Outreach Fact Sheet is available [here](#). The comment deadline is **March 24, 2020**.

Public Notice: Proposed 'No Changes' Rulemaking Governing Primary Drinking Water Standards in Chapter 3745 - 81 of the Ohio Administrative Code:

The DDAGW is proposing 'no changes' to several primary drinking water standard rules in Chapter 3745-81 of the OAC. The proposed rule filing with 'no changes' is a result of the five-year rule review requirements of Section 106.03 of the Revised Code. Listed below are the currently effective rules proposed to be filed with no changes.

Rule #:	Rule Title:
3745-81-26	Radionuclide Monitoring Requirements
3745-81-64	General Requirements of the "Long Term 2 Enhanced Surface Water Treatment (LT2) Rule
3745-81-69	Reporting and Record-keeping Requirements for LT2 Only
3745-81-76	Water Source Designation
3745-81-77	Treatment Techniques for Control of Disinfection Byproduct (DBP) Precursor

The Public Notice is available [here](#). The Business Impact Analysis is available [here](#). The comment deadline is **March 30, 2020**.

Public Notice: Proposed 'No Changes' Rulemaking Governing Underground Injection Control Rules: 3745 - 34 - 62 of the Ohio Administrative Code:

The DDAGW is proposing 'no changes' to rule 3745-34-62 (Financial Responsibility for Closure and Post Closure Care) of the OAC. The proposed rule filing with 'no changes' is a result of the five-year rule review requirements of Section 106.03 of the Revised Code. The Public Notice is available [here](#). The Business Impact Analysis is available [here](#). The comment deadline is **March 30, 2020**.

Early Stakeholder Outreach - Consumer Confidence Reports:

The DDAGW has reviewed rules in Chapter 3745-96 of the OAC to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code. The rules describe and establish the minimum requirements for the content of the annual report that a community water system shall deliver to its customers. DDAGW is considering all of the following rules to be filed with no changes:

- [3745-96-01](#) - Consumer confidence report applicability and definitions
- [3745-96-03](#) - Required Additional Health Information
- [3745-96-04](#) - Report Delivery and Record-keeping

The Early Stakeholder Outreach Fact Sheet is available [here](#). The comment deadline is **March 31, 2020**.

Proposed 'No Change' Rulemaking Governing Underground Injection Control rules: The DDAGW has proposed "no changes" to several Underground Injection Control rules in Chapter 3745-34 of the OAC to Joint Committee on Agency Rule Review (JCARR). The rules were reviewed as a result of the five-year rule review requirements of Section 106.03 of the Revised Code. The proposed rules are below.

- [3745-34-17](#) - Signatories to Permit Applications and Reports
- [3745-34-18](#) - Class V Injection Well Area Permits
- [3745-34-26](#) - Conditions Applicable to All Permits

The Business Impact Analysis is available [here](#).



Water - Surface

Interested Party Review - Beneficial Use Designation Rules (OAC 3745-1): The Division of Surface Water (DSW) is seeking input on draft rules in OAC Chapter 3745-1 for the following Water Quality Standards

Beneficial Use Designation rules:

- 3745-1-11: Maumee River drainage basin
- 3745-1-12: Sandusky River drainage basin
- 3745-1-19: Huron River drainage basin
- 3745-1-23: Portage River drainage basin

Ohio EPA has drafted revisions to these rules, which includes changing the beneficial use designations for some water bodies, adding water bodies that are currently undesignated to the rules, and verifying existing beneficial use designations already listed in the rules. The Fact Sheet is available [here](#). The comment deadline is **March 5, 2020**.

Draft 2020 Integrated Report is Available for Review and Comment: Ohio EPA has released the draft 2020 Integrated Report, which fulfills the State's reporting obligations under Section 305(b) (33 U.S.C. 1315) and Section 303(d) (33 U.S.C. 1313) of the Federal Clean Water Act. The report indicates the general condition of Ohio's waters and lists those waters that are currently impaired and may require Total Maximum Daily Load (TMDL) development in order to meet water quality standards. The draft report is available [here](#). The comment deadline is **March 13, 2020**.

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