

3745-33-04 **Permit actions.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules and federal statutory provisions referenced in this rule, see rule 3745-33-01 of the Administrative Code.]

(A) Criteria for issuing Ohio NPDES permits.

- (1) The director shall issue an Ohio NPDES permit for the discharge if, on the basis of all information available to Ohio EPA, the director determines that:
 - (a) The authorized discharge levels specified in paragraphs (A), (B), (C), and (D) of rule 3745-33-05 of the Administrative Code are not being exceeded by the applicant; and
 - (b) An application form completed in accordance with rule 3745-33-03 of the Administrative Code and any supplemental information requested by the director have been submitted; and
 - (c) Adequate provisions for monitoring to obtain required pollutant discharge information have been made; and
 - (d) If required by Ohio EPA, performance tests, conducted at the applicant's expense after the application was filed and in accordance with methods prescribed by Ohio EPA, demonstrate that the discharge is in compliance with the authorized discharge levels.

- (2) The director shall deny an application for a permit or renewal thereof if:
 - (a) The secretary of the army determines in writing that anchorage or navigation would be substantially impaired thereby;
 - (b) The director determines that the proposed discharge or source would conflict with an area-wide waste treatment management plan adopted in accordance with section 208 of the act;
 - (c) The administrator objects in writing to the issuance or renewal of the permit in accordance with section 402 (d) of the act;
 - (d) The imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
 - (e) The application is for the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste into the waters of the state.

- (3) Possession of an Ohio NPDES permit shall not relieve any person of the responsibility to comply with the authorized discharge levels specified in the permit or other provisions of applicable law.
- (B) Time for issuance. The director shall issue or deny an application for a permit for a new discharge for the installation or modification of a disposal system, or for renewal of a permit, within one hundred eighty days of the date on which the director receives a complete application with all plans, specifications, construction schedules, and other pertinent information required by the director.
- (C) Renewal of permits.
- (1) The director shall notify the permittee that any permittee who wishes to continue to discharge after the expiration date of the permittee's Ohio NPDES permit must file for reissuance of the permit at least one hundred eighty days prior to the expiration of the permit. Ohio NPDES permits shall be renewed in accordance with the provisions for issuance of permits under this chapter.
 - (2) In renewing a permit, the director shall consider the compliance history of the permit holder and may deny the renewal if the director determines that the permit holder has not complied with the terms and conditions of the existing permit. If a permit renewal application is submitted at least one hundred eighty days prior to the expiration date of the existing permit, and the director proposes to deny the renewal of the permit in accordance with rule 3745-49-05 of the Administrative Code, the expired permit shall continue to be in effect in accordance with section 119.06 of the Revised Code until such time as the director issues a final action.
 - (3) For new sources or new dischargers as defined in 40 C.F.R. 122.2, see 40 C.F.R. 122.29(d) for applicability of more stringent new source performance standards or technology-based standards under section 301 (b)(2) of the act.

[Comment: Pursuant to 301 (b)(2) of the act, this provision is not applicable to publicly owned treatment works or water quality standards.]
 - (4) Any more stringent limitation on the thermal component of a discharge shall not be imposed as a condition of a permit or renewal thereof for a discharge during a ten year period in accordance with division (J)(3) of section 6111.03 of the Revised Code.
- (D) Modification of permits. Permits may be modified at the request of the permittee, any interested person, or upon the director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

- (1) Applications for modifications of permits shall be made only on forms approved by Ohio EPA and shall contain such information that Ohio EPA deems necessary. Such application or request shall contain:
 - (a) A specific description of the relevant provisions of the existing permit;
 - (b) The precise changes requested. Approvable causes for permit modifications can be found in 40 C.F.R. 122.62;
 - (c) The reasons for the changes requested; and
 - (d) An explanation demonstrating that the permit as modified will comply with applicable state and federal statutes and regulations.
- (2) If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision. A modification at the request of a permittee shall not be approved unless the director determines:
 - (a) That the permit as modified will comply with all applicable state and federal statutes and regulations; and
 - (b) That either:
 - (i) The permit would have been issued with the provisions contained in the proposed modifications if all information presently available had been available at that time; or
 - (ii) Valid cause for such revision exists over which the permittee had little or no control; or
 - (iii) A good faith modification in the nature of the operation was made; and
 - (c) That the regional administrator does not object in writing to such modification within thirty days following receipt of notice from the director.
- (3) Minor modifications. With the consent of the permittee, the director may modify a permit to make corrections or allow for changes in the permitted activity listed in this paragraph, without meeting the requirements of paragraphs (D)(1) and (D)(2) of this rule and without following the procedures of rule 3745-33-10 of the Administrative Code and 40 C.F.R. Part 124. Minor modifications may only:
 - (a) Correct typographical errors;
 - (b) Require more frequent monitoring by the permittee;

- (c) Revise the months for which monitoring is required, if the monitoring frequency and number of samples per year remain the same;
 - (d) Change a reporting code for a monitoring parameter, if the associated concentration units are not less sensitive;
 - (e) Change the expiration of the permit to a date that is not later than five years after the effective date of the permit. The effective date is the date that the permit or most recent renewal became effective;
 - (f) Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty days after the date specified in the existing permit and does not interfere with the attainment of the final compliance date requirement;
 - (g) Change the construction schedule for a discharger that is a new source. No change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge;
 - (h) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;
 - (i) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in rule 3745-3-03 of the Administrative Code (or a modification thereto that has been approved in accordance with the procedures in rule 3745-3-03 of the Administrative Code) as enforceable conditions of the POTW's program; or
 - (j) Incorporate storm water pollution prevention requirements.
- (4) Changes to nutrient management plans for concentrated animal feeding operations. Until the date that USEPA approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, permits shall be modified in accordance with 40 C.F.R. 122.42(e) when a concentrated animal feeding operation proposes to change a nutrient management plan.
- (E) Transfer of permits.
- (1) An Ohio NPDES permit is transferable. The permittee shall notify the succeeding owner or successor of the existence of the Ohio NPDES permit by letter, a copy of which shall be forwarded to Ohio EPA. The copy of the letter shall be received by Ohio EPA at least sixty days prior to any proposed transfer of an Ohio NPDES permit and shall serve as the permittee's notice to the director of the proposed transfer.

- (2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the permittee and successor, including acknowledgment that the existing permittee is liable for violations up to the transfer date and the successor is liable for violations from that date forth, shall be received by Ohio EPA at least thirty days prior to the proposed transfer.
 - (3) At any time during the sixty-day period between notification of the proposed transfer and the effective date of the transfer, the director may deny the transfer if the director concludes that such transfer will jeopardize compliance with the terms and conditions of the permit. The director shall notify both the original permittee transferor and the transferee in writing of the director's decision.
- (F) Termination of permits. Each Ohio NPDES permit shall expire as of the date indicated on the permit. No permit shall be issued that will run for a period of more than five years. Permits may be terminated at the request of the permittee, any interested person, or upon the director's initiative for causes listed in 40 C.F.R. 122.64. All requests shall be in writing and shall contain facts or reasons supporting the request. If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision.
- (G) Revocation of permits.
- (1) Permits may be revoked at the request of the permittee, any interested person, or upon the director's initiative for causes listed in 40 C.F.R. 122.64. All requests shall be in writing and shall contain facts or reasons supporting the request. The director may revoke a permit at any time if the director determines that any applicable laws, rules, regulations or permit terms or conditions have been violated.
 - (2) The permittee shall be notified of the proposed revocation and reasons for such proposed revocation. The director shall afford a prompt hearing to any permittee whose permit the director proposes to revoke and who requests such a hearing, in accordance with the provisions of the rules of procedure, Chapters 3745-47 and 3745-49 of the Administrative Code.
 - (3) If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision.

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