

Rule Summary and Fiscal Analysis (Part A)**Ohio Environmental Protection Agency**

Agency Name

Division of Surface Water (DSW)

Division

Melinda M Harris

Contact

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3745-1-14

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Ashtabula river drainage basin.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **6111.041**
5. Statute(s) the rule, as filed, amplifies or implements: **6111.041**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

To fulfill a federal requirement to review and amend water body use designations when new information is available.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rule amendments update beneficial use designations for water bodies in the Ashtabula River drainage basin based on the latest scientific information the Agency has gathered through water quality, biological, habitat, and other surveys. Specific water quality criteria are associated with each use designation and are the specific target conditions to be maintained in the water bodies. Together the use designations and criteria may be the basis for permit limits in wastewater discharge permits.

Amendments to this rule are listed in Attachments A and B.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule contains references to the Ohio Administrative Code (OAC). While copies of these rules are generally available to the public through libraries and on-line sources, including the Ohio EPA website, Ohio Revised Code (ORC) section 121.76(A) exempts such references from the provisions of ORC sections 121.71 through 121.75.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

This rule was revise filed to include missing RSFA Part A Attachments A and B. The rule was not revised.

This rule was revise filed a second time to remove the red and blue colored text from the rule.

12. Five Year Review (FYR) Date: **5/28/2015**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0

The rule amendments will neither increase nor decrease Ohio EPA revenues or expenditures during the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The rule amendments are not expected to have any impact on the cost of compliance. Costs of compliance with the currently effective rule vary among wastewater dischargers, based upon factors such as the type and quantity of pollutants discharged, the amount of dilution water available to mix with the discharge, and the amounts of pollutants in the dilution water. Rule 3745-33-07 of the Administrative Code allows the director to grant temporary variance from compliance with water quality criteria if attainment of the criteria is not feasible.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
Yes	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

The rule amendments are not expected to have any impact on the cost of compliance. Costs of compliance with the currently effective rule vary among wastewater dischargers, based upon factors such as the type and quantity of pollutants discharged, the amount of dilution water available to mix with the discharge, and the amounts of pollutants in the dilution water. Rule 3745-33-07 of the Administrative Code allows the director to grant temporary variance from compliance with water quality criteria if attainment of the criteria is not feasible.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Please see the response to question #2 above.

(a) Personnel Costs

Please see the response to question #2 above.

(b) New Equipment or Other Capital Costs

Please see the response to question #2 above.

(c) Operating Costs

Please see the response to question #2 above.

(d) Any Indirect Central Service Costs

Please see the response to question #2 above.

(e) Other Costs

Please see the response to question #2 above.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

The new requirements imposed by the proposed rule are not expected to have any impact on the cost of compliance.

7. Please provide a statement on the proposed rule's impact on economic development.

The rule amendments are not expected to have any impact on economic development.

Environmental Rule Adoption/Amendment Form

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
 - (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
 - (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
 - (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
-

(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

Ohio EPA invited interested parties to comment on the rule amendments during the period of March 12, 2015 to April 13, 2015. A list of interested parties is available upon request.

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

40 CFR Part 131. U.S. EPA Water Quality Standards regulation.

Ohio EPA. 2014. Biological and Water Quality Study of the Ashtabula River and

Select Tributaries, 2011. Ashtabula County, Ohio. Ohio EPA Division of Surface Water. Ohio EPA Technical Report Number EAS/2014-01-01. December 19, 2014. 84 pages.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?

Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **No**

Not Applicable

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**

OAC 3745-1 RSFA Attachment A
Summary of Proposed Use Designation Changes
Ohio EPA - Division of Surface Water
May 2015

Pg #*	Water Body Segment	Existing Designated Uses**	Changes in Proposed Rule
Ashtabula River Drainage Basin, OAC 3745-1-14 (2011 survey)			
2	Hubbard Run	WWH, AWS, IWS, PCR	Designate CWH in lieu of WWH
2	Unnamed tributary at Hubbard Run RM 0.20	None	Designate CWH, AWS, IWS, PCR
2	Unnamed tributary at Ashtabula River RM 16.98	None	Designate WWH, AWS, IWS, PCR
3	Unnamed tributary at West Branch RM 3.50	None	Designate WWH, AWS, IWS, PCR
3	East Branch of East Branch Ashtabula River	None	Designate WWH, AWS, IWS, PCR
3	Unnamed tributary at East Branch RM 1.35	None	Designate WWH, AWS, IWS, PCR
3	Unnamed tributary at RM 0.80 to the unnamed tributary of East Branch at RM 1.35	None	Designate WWH, AWS, IWS, PCR
Little Beaver Creek Drainage Basin, OAC 3745-1-15			
2	Island Run	WWH, AWS, IWS, PCR	Remove – stream is in Pennsylvania
2	Honey Creek	None (previously listed)	Designate WWH, AWS, IWS, PCR (*)
3	Harman Run	None (previously listed)	Designate WWH, AWS, IWS, PCR (*)
Southeast Ohio River Tributaries Drainage Basin, OAC 3745-1-16 (2008 survey)			
17	Unnamed tributary at Kyger Creek RM 8.44	None	Designate MWH-MA, AWS, IWS, PCR
Southeast Ohio River Tributaries Drainage Basin, OAC 3745-1-16 (2010 survey)			
5	Ellisonville Creek	None	Designate WWH, AWS, IWS, PCR
5	Kimble Creek	None	Designate WWH, AWS, IWS, PCR
5	Sawmill Run	None	Designate WWH, AWS, IWS, PCR
5	Chandlers Run	None	Designate WWH, AWS, IWS, PCR
6	Osburn Run	LWH, AWS, IWS, PCR	Designate LRW-AMD in lieu of LWH
6	Little Storms Creek (upper trib at RM 9.23)	None	Designate WWH, AWS, IWS, PCR
East Fork Little Miami River Drainage Basin, OAC 3745-1-18 (2012 survey)			
2	Unnamed tributary at East Fork RM 2.40	None	Designate WWH, AWS, IWS, PCR
3	Unnamed tributary at Stonelick Creek RM 10.61	None	Designate WWH, AWS, IWS, PCR
3	Unnamed tributary at Backbone Creek RM 1.36	None	Designate WWH, AWS, IWS, PCR
4	Unnamed tributary at Cloverlick Creek RM 7.48	None	Designate WWH, AWS, IWS, PCR
5	Dodson Creek	EWH, AWS, IWS, PCR	Designate WWH in lieu of EWH
6	Unnamed tributary at Dodson Creek RM 4.52	None	Designate WWH, AWS, IWS, PCR
6	Unnamed tributary at South Fork Dodson Creek RM 0.37	None	Designate WWH, AWS, IWS, PCR

Pg #*	Water Body Segment	Existing Designated Uses**	Changes in Proposed Rule
6	Unnamed tributary at East Fork RM 78.45	None	Designate WWH, AWS, IWS, PCR
Little Miami River Drainage Basin, OAC 3745-1-18 (2011 survey)			
9	Unnamed tributary at Anderson Fork RM 9.26	None	Designate WWH, AWS, IWS, PCR
10	Glady Run – headwaters to Hedges Road (RM 4.0)	WWH, AWS, IWS, SCR	Designate PCR in lieu of SCR
11	Unnamed tributary at North Fork RM 5.60	None	Designate WWH, AWS, IWS, PCR
11	Unnamed tributary at Little Miami River RM 96.26	None	Designate WWH, AWS, IWS, PCR
11	Gilroy Ditch	WWH, AWS, IWS, SCR	Designate PCR in lieu of SCR
Black River Drainage Basin, OAC 3745-1-27 (2012 survey)			
2	Ridgeway ditch (Black River RM 10.18)	None	Designate WWH, AWS, IWS, PCR
2	Alexander ditch aka Brentwood tributary (East Branch Black River RM 5.89)	None	Designate WWH, AWS, IWS, PCR
2	Unnamed tributary at East Branch Black River RM 22.65	None	Designate WWH, AWS, IWS, PCR
2	Crow Creek	WWH, AWS, IWS, SCR	Designate PCR in lieu of SCR
2	Center Creek (East Branch Black River RM 28.65)	None	Designate WWH, AWS, IWS, PCR
2	Unnamed tributary at East Branch Black River RM 39.06	None	Designate CWH, AWS, IWS, PCR
2	Unnamed tributary at East Branch Black River RM 41.41	None	Designate CWH, AWS, IWS, PCR
3	West Branch Black River – Parsons Road (RM 7.85) to U.S. Route 20 (RM 14.39)	SRW, WWH, AWS, IWS, PCR	Remove SRW; replace with GHQW
3	West Branch Black River – at RM 14.42	SRW, WWH, AWS, IWS, PCR, PWS	Remove SRW, replace with GHQW
3	Kelner Ditch (West Branch Black River at RM 8.61)	None	Designate WWH, AWS, IWS, PCR
3	Wellington Creek – Findley State Forest boundaries (RM 14-.69 – 16.60)	SRW, WWH, AWS, IWS, PCR	Remove SRW; replace with GHQW
3	Unnamed tributary at Charlemont Creek RM 0.51	None	Designate WWH, AWS, IWS, PCR
3	Powdermaker Ditch	None	Designate WWH, AWS, IWS, PCR
4	Heider Ditch	None	Designate WWH, AWS, IWS, PCR
4	Gable Ditch	None	Designate WWH, AWS, IWS, PCR

* Indicates page numbers that the water body appears on within the amended rule.

**As currently indicated in OAC 3745-1-08 through OAC 3745-1-32.

Index of Acronyms Used

RM = River Mile. The river mile is a point location describing the lineal distance from the downstream terminus (i.e., mouth) and moving in an upstream direction.

The following acronyms for designated uses are used in this table. Designated uses are defined in OAC 3745-1-07.

AWS = Agricultural Water Supply

CWH = Coldwater Habitat

EWH = Exceptional Warmwater Habitat

GHWQ = General High Quality Water

IWS = Industrial Water Supply

LRW-AMD = Limited Resource Water – Acid Mine Drainage

LWH = Limited Warmwater Habitat

MWH-MA = Modified Warmwater Habitat – Mine Affected

PCR = Primary Contact Recreation

PWS = Public Water Supply

SCR = Secondary Contact Recreation

SRW = State Resource Water

WWH = Warmwater Habitat

OAC 3745-1 RSFA Attachment B
Summary of Proposed Use Designation Verifications
Ohio EPA – Division of Surface Water
May 2015

Most of the water bodies listed in the Ohio Administrative Code (OAC) Chapter 3745-1 rules were designated Warmwater Habitat, Agricultural Water Supply, Industrial Water Supply and Primary Contact Recreation in 1978 as defaults because little real data were available. Biological and water quality surveys conducted since then have enabled Ohio EPA to either verify those use designations or assign more accurate use designations. This document summarizes existing use designations already in rule that were verified through the results of biological and water quality surveys.

Use designations assigned in 1978 are indicated with asterisks in the rules. Use designations assigned based on the results of biological and water quality surveys are indicated with plus signs in the rules. The symbols for the water bodies and use designations listed below are changed from asterisks to plus signs in the proposed rules. These changes to the symbols do not have any effect on the applicable water quality standards for these water bodies.

The page numbers listed below refer to page numbers in the amended rules.

The use designations in this document are defined in paragraph (B) of rule 3745-1-07. The following acronyms are used within this document:

AWS = Agricultural Water Supply
CWH = Coldwater Habitat
EWH = Exceptional Warmwater Habitat
IWS = Industrial Water Supply
LRW-AMD = Limited Resource Water – Acid Mine Drainage
PCR = Primary Contact Recreation
WWH = Warmwater Habitat

Pg #*	Water Body Segment	Existing Designations Recommended for Verification**
Ashtabula River Drainage Basin, OAC 3745-1-14 (2011 survey)		
2	Strong Brook	IWS, PCR
2	Hubbard Run	AWS, IWS, PCR
2	Ashtabula Creek	WWH, AWS, IWS, PCR
Southeast Ohio River Tributaries Drainage Basin, OAC 3745-1-16 (2010 survey)		
2	Munn Run	AWS, IWS, PCR
2	Dry Run	AWS, IWS, PCR
2	Frederick Creek	AWS, IWS, PCR
2	Long Run	AWS, IWS, PCR
3	Holland Fork	AWS, IWS, PCR
3	Bucklick Creek	AWS, IWS, PCR
4	Sugarcamp Creek	AWS, IWS, PCR
4	Lick Run	WWH, AWS, IWS, PCR
4	Little Pine Creek	WWH, AWS, IWS, PCR
5	Hales Creek	WWH, AWS, IWS, PCR
5	Brushy Fork	WWH, AWS, IWS, PCR
5	Olive Creek	WWH, AWS, IWS, PCR
5	Negro Creek	WWH, AWS, IWS, PCR
5	Painter Creek	WWH, AWS, IWS, PCR
5	Patton Run	WWH, AWS, IWS, PCR
6	Ginat Run (Ginat Creek)	WWH, AWS, IWS, PCR
6	Osburn Run	AWS, IWS, PCR
6	Little Storms Creek (lower trib at RM 1.8)	AWS, IWS, PCR
6	Little Ice Creek	AWS, IWS, PCR
7	Saliday Creek	WWH, AWS, IWS, PCR
16	Little Campaign Creek	WWH, AWS, IWS, PCR
Southeast Ohio River Tributaries Drainage Basin, OAC 3745-1-16 (2008 survey)		
17	Bell Lick Run	AWS, IWS, PCR
Little Miami River Drainage Basin, OAC 3745-1-18 (2011 survey)		
9	Turkey Run	WWH, AWS, IWS, PCR
9	Grog Run	WWH, AWS, IWS, PCR
9	Grassy Run	WWH, AWS, IWS, PCR
Black River Drainage Basin, OAC 3745-1-27 (2012 survey)		
3	West Branch – headwaters to Parsons Road (RM 14.39)	WWH, AWS, IWS, PCR
3	Elk Creek	WWH, AWS, IWS, PCR

* Indicates approximate page number that the water body appears on within the amended rule.

**As currently indicated in OAC 3745-1-08 through OAC 3745-1-32.