


Division of Drinking and Ground Waters

**Response to Comments
April 20, 2009**

Draft Lead and Copper rules

OAC Rule Number	Rule Title	Action
3745-81-01	Definitions.	Amendment
3745-81-80	Control of lead and copper – general requirements.	Amendment
3745-81-81	Control of lead and copper; applicability of corrosion control treatment requirements.	Amendment
3745-81-82	Control of lead and copper; description of corrosion control treatment requirements.	Amendment
3745-81-83	Control of lead and copper; source water treatment requirements.	Amendment
3745-81-84	Control of lead and copper – lead service line replacement.	Amendment
3745-81-85	Control of lead and copper – public education and supplemental monitoring requirements.	Rescission
3745-81-85	Control of lead and copper – public education, supplemental monitoring requirements and consumer notification of results.	New
3745-81-86	Control of lead and copper – monitoring requirements for lead and copper in tap water.	Amendment
3745-81-87	Control of lead and copper – monitoring requirements for water quality parameters.	Amendment
3745-81-88	Control of lead and copper – monitoring requirements for lead and copper in source water at the entry point to the distribution system.	Amendment
3745-81-89	Analytical methods.	Amendment
3745-81-90	Control of lead and copper – reporting and record keeping requirements.	Amendment
3745-96-01	Applicability and definitions.	Amendment

3745-96-02	Required report content.	Amendment
3745-96-03	Required additional health information.	Amendment

Agency Contact for this Package

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Ohio EPA issued public notice and requested comments on draft amendments to the Ohio Administrative Code (OAC), lead and copper rules for the period of December 9, 2008 through January 12, 2009. This document summarizes the comments and questions received during the interested party comment period.

Ohio EPA reviewed and considered all comments received during the interested party comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

Introduction

This rulemaking package includes revisions to Chapters 3745-81 and 3745-96 of the Administrative Code to incorporate the 2007 Lead and Copper Rule Short-Term Revisions and Clarifications promulgated by U.S. Environmental Protection Agency (EPA). The rulemaking also includes corrections to the lead and copper rules in Chapter 3745-81 of the OAC, previously identified by U.S. EPA. Additionally, some provisions of the federal Stage 2 Disinfectants/Disinfection Byproducts Rules (Stage 2) and the Long Term 2 Enhanced Surface Water Treatment Rules (LT2) which affect rules 3745-81-01, 3745-96-01 and 3745-96-02 are consolidated in this rulemaking package.

Draft Rule 3745-81-01

Comment 1: The Division of Drinking and Ground Waters (DDAGW) received a comment about draft paragraph (EE) and its reference to collecting “dual sample sets in accordance with paragraph (D) of rule 3745-81-24 of the OAC.” The comment was that there is no paragraph (D) in OAC rule 3745-81-24. (Matt Steele, Columbus Department of Public Utilities or CDPU)

- Response 1: The division apologizes for any confusion regarding draft rule changes that are provisions of federal rules that have not yet been adopted by the State of Ohio. This definition refers to a revision to OAC rule 3745-81-24, which is currently in progress as part of the Stage 2 Disinfectants/Disinfection Byproducts Rules (Stage 2) rules package.
- Comment 2: A suggestion was made that the draft definition for “GAC20” in paragraph (PP) of this rule be revised similarly as the definition for “GAC10” in paragraph (OO). (Matt Steele, CDPU)
- Response 2: The carbon reactivation time for GAC20 is a standard established by the U.S. EPA. If the division were to mirror the definition for “GAC10” then Ohio EPA’s standards would be less stringent than its federal counterpart.
- Comment 3: The division received a suggestion to revise the definition for “lake/reservoir” to reflect the American Water Works Association’s (AWWA) definition in their publication Drinking Water Dictionary because the term as drafted is vague. The AWWA publication provides a volume or size of the body of water and defines a reservoir as an impounded body of water or controlled lake in which water can be stored. (Matt Steele, CDPU)
- Response 3: The definition of lake/reservoir in drafted OAC rule 3745-81-01 is established in the federal Long Term 2 Enhanced Surface Water Treatment Rule. The division uses the same language in its counterpart because of the possibility of excluding a body of water that should be defined as such.
- Comment 4: A recommendation was made that the example of reverse osmosis be removed from the drafted definition of “membrane filtration” in paragraph (HHH) because it is not a representative example for membrane filtration as drafted in this rule. (Matt Steele, CDPU)
- Response 4: The division has incorporated reverse osmosis as part of the definition for “membrane filtration” because U.S. EPA establishes it in the federal counterpart, and also speaks to this technology in the U.S. EPA Membrane Guidance Manual. While there currently is no direct integrity test for this technology, it is included in the rule for the future possibility that this test will be developed.

- Comment 5: The division received a comment that the draft definition “normal operating conditions” should list prohibitions of this term elsewhere in rule and not in OAC 3745-81-01. (Matt Steele, CDPU)
- Response 5: The draft definition for normal operating conditions will remain in its entirety in draft amendments to OAC rule 3745-81-01, as opposed to moving the prohibitions to another rule. DDAGW has drafted this rule as such so it is easier to read and understand if the requirements are found in one location. Additionally, the division is not being inconsistent by incorporating the prohibitions here because there are several examples of other definitions in this rule which include performance requirements.
- Comment 6: A comment was made that “source water” is not defined in this rule. In addition, it was stated that the drafted changes from “source water” to “entry point to the distribution system” in rules, such as draft rule 3745-81-81 (B)(3), are confusing and that there should be a clear distinction between them. It was suggested that the division leave this draft language as written and add a definition for “entry point” to this rule. (Matt Steele, CDPU)
- Response 6: U.S. EPA requires the Ohio EPA to use the terminology “source water at the entry point to the distribution system.” However, the terminology has been added to OAC rule 3745-81-01 (Definitions) in attempt to clarify it.

Draft Rule 3745-81-84 (D)

- Comment 7: A suggestion was made that utilities subject to paragraph (D) of this rule document their attempts to contact the customer where samples are to be collected, and that DDAGW would consider this documentation as acceptable in the event that samples are not collected in the 72 hour timeframe. (Jeff Swertfeger, GCWW)
- Response 7: In such circumstances when the customer does not allow samples to be collected within 72 hours, the division recommends the water system collect it as soon as possible if allowed. If collection of sample is refused, then document attempt(s) made (include customer name, location, date attempted, and reason for refusal) and documentation should be kept on file for twelve years in accordance with OAC rule 3745-81-90 paragraph (I).

Comment 8: A question was asked about how water systems should track the postmark date for notices of results, as required in draft rule 3745-81-84 paragraph (D). (Jeff Swertfeger, Greater Cincinnati Water Works or GCWW)

Response 8: Rule 3745-81-90 paragraph (I) of the OAC requires any water system to retain on its premises original records of all sampling data and analysis, reports, surveys, letters, etc. for no fewer than twelve years. Copies of dated notifications of results that were sent would be sufficient documentation for draft rule 3745-81-84 paragraph (D).

Draft Rule 3745-81-85 (D)

Comment 9: The division received a comment that there should be guidelines, including a standard form on the Ohio EPA Web site, for utilities to use for consumer notification. (Lisa Hendricks, Northern Area Water Authority)

Response 9: Consumer notification templates will be made available on the Ohio EPA Web site when the rule revisions are adopted.

Comment 10: The division received a recommendation that water systems be able to demonstrate compliance with the thirty day requirement in OAC draft rule 3745-81-85 paragraph (D)(2) by maintaining a copy of the dated consumer notice sent. (Jeff Swertfeger, GCWW)

Response 10: OAC draft rule 3745-81-90 paragraph (F)(3) speaks to this recommendation. This paragraph requires systems to mail a sample copy of the consumer notification of tap results to the director along with a certification that the notification has been distributed in a manner consistent with the requirements of paragraph (D) of OAC draft rule 3745-81-85.

Comment 11: A comment about paragraph (D)(3) was received and identifies a problem with the cross reference to draft rule 3745-81-01. The term "maximum contaminant level goal" is not defined in OAC draft rule 3745-81-01 as cited in this paragraph. However, the term is defined in OAC draft rule 3745-96-02. (Matt Steele, CDPU)

Response 11: The division will add this term and definition to the definitions rule in OAC 3745-81-01, as it is currently written in draft rule 3745-96-02.

Draft rule 3745-81-86

Comment 12: DDAGW received a comment that requirements for public water systems failing to operate at or above a parameter value for more than nine days, as describe in paragraph (D)(4)(e)(ii), are impractical. It was stated that between entry point sampling and laboratory analysis turnaround time, the system would not know the results in time to make the necessary adjustments and be out of compliance. A recommendation was made that the division extend the nine day time period to fourteen days. (Matt Steele, CDPU)

Response 12: The federal counterpart establishes this nine day period and Ohio EPA is adopting the language as written to maintain stringency with U.S. EPA's Lead and Copper Rule. Additionally, water quality parameters subject to the nine day requirement are not required by OAC draft rule 3745-81-89 paragraph (A) to be performed by a certified lab. Water quality parameters as described in this rule may be performed by the specified analytical method.

Draft rule 3745-96-03

Comment 13: It was suggested the division permit flexibility in regard to the educational statement so systems can be more explanatory in their consumer confidence report. (Maggie Rodgers, Cleveland Division of Water)

Response 13: DDAGW has determined permitting flexibility in regard to the educational statement in paragraph (D) could potentially cause important information to be excluded. However, paragraph (D) does not preclude adding additional information as the water system sees fit as long as it follows the intent of the rule.

Comment 14: It was suggested the division reference its Web site so consumers can locate certified laboratories which conduct lead testing. (Maggie Rodgers, Cleveland Division of Water)

Response 14: The division will add Ohio EPA's Web site to paragraph (D).

End of Response to Comments