

Chapter 3745-47 Procedural Rules

3745-47-01 Applicability.

Chapter 3745-47 of the Administrative Code shall govern procedure for all adjudication hearings, public meetings relating to adjudicatory acts (including public meetings on draft or proposed actions), and other proceedings relating to adjudicatory acts conducted by the agency or by its duly authorized hearing examiners pursuant to Chapters 119., 3704., 3734., 3745., 6109., and 6111., and sections [1505.07](#), 3707.42, 6101.13, 6101.39, 6103.17, 6112.02, 6117.34, 6117.46, and 6119.35 of the Revised Code, or any other statute providing for an adjudication hearing before the agency.

Effective 6/30/1981

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 3704, Chapter 3734, Chapter 3745, Chapter 6109, Chapter 6111, Chapter 1505, Chapter 3707, Chapter 6101, Chapter 6103, Chapter 6112, Chapter 6117, Chapter 6119.

[119.032](#) Review Date: 5-25-03

Amended: 7/5/1973

3745-47-02 Construction of Rules and Regulations.

Chapter 3745-47 of the Administrative Code shall be construed liberally to accomplish the purposes of the chapters and sections of the Revised Code within the jurisdiction of the agency, and to afford maximum procedural fairness consistent with just, speedy, and inexpensive resolution of controversies.

Effective 6/30/1981

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 3734, Chapter 3745, Chapter 6109, Chapter 6111.

Amended: 7/5/1973

[119.032](#) Review Date: 5-25-03

3745-47-03 Definitions.

As used in Chapter 3745-47 of the Administrative Code:

(A) “Action” means the issuance, modification, or revocation of an order, including an order dismissing a verified complaint; the issuance, denial, renewal, modification, or revocation of a license, permit, lease, variance, or certificate; or the approval or disapproval of plans and specifications pursuant to law or regulation.

(B) “Adjudication hearing” means an adversary proceeding at which are determined rights, duties, privileges, benefits or legal relationships of a specified person.

(C) “Agency” means the Ohio environmental protection agency.

(D) “Director” means the director of environmental protection of Ohio.

(E) “Draft action” means a written statement that gives the director’s intention with respect to the issuance, denial, renewal, modification, or revocation of any permit, variance, license, certificate, or lease; approval or disapproval of plans and specifications; or issuance, modification, or revocation of an order, and concerning which persons authorized by law or agency regulations may file comments or request a public meeting, but which will not be the subject of an adjudication hearing before the director. If the draft action indicates an intent to issue a permit, license, variance, order, or certificate, it shall include a draft permit, license, variance, order, or certificate.

(F) “Fact sheet” means the statement of facts provided for in paragraph (A) of rule [3745-47-06](#) of the Administrative Code relative to issuance of an action.

(G) “Final action” means the written decision on any matter that is signed by the director and entered into the journal pursuant to rule [3745-47-27](#) of the Administrative Code.

(H) “Initiation of hearing proceedings” means the occurrence of any event that requires that an adjudication hearing be held, including but not limited to, a timely objection to a proposed action pursuant to section 3745.07 of the Revised Code, service of a verified complaint upon an alleged violator pursuant to section 3745.08 of the Revised Code, and notice of a hearing pursuant to section 6109.14 or 6111.32 of the Revised Code.

(I) “Issue” (“issuance”) means

(1) In the case of a draft or proposed action, to place the action into the United States mail.

(2) In the case of a final action, to enter the action into the director’s journal after it is signed by the director.

(J) “Party” means

(1) The agency;

(2) The person to whom the proposed action is issued, or the alleged violator upon whom a notice of hearing is served pursuant to section 6109.14, 3745.08, or 6111.32 of the Revised Code;

(3) Any person who objects pursuant to section 3745.07 of the Revised Code;

(4) Any person who intervenes pursuant to rule [3745-47-15](#) of the Administrative Code; or

(5) Any person who files a verified complaint under section 3745.08 of the Revised Code, with respect to the alleged violation that is the subject of the hearing, if the person has, prior to the hearing, filed with the director a written notice of intent to participate as a party.

No other person shall be deemed to be a party to an adjudication hearing.

(K) “Permit,” “license,” “certificate,” or “variance” includes any provisions, terms, conditions, specifications, requirements, or limitations with which the permittee or licensee must comply, or which affect exercise of the permit or license, whether such provisions, terms, conditions, specifications, requirements, or limitations are set forth fully on the permit or license document, appended thereto, or incorporated by reference. All requirements of statutes or regulations applicable to the permittee or licensee shall be conditions of such permit, license, or variance, although not set forth on the permit, license, or variance, or appended thereto or incorporated by reference.

(L) “Person” means the state of Ohio or any agency thereof, the federal government or any agency thereof, any other state or agency thereof, any interstate agency, any municipal corporation, political subdivision, public or private corporation, individual, partnership, or other entity.

(M) “Proposed action” means a written statement that gives the director’s intention with respect to the issuance, denial, renewal, modification, or revocation of any permit, variance, license, certificate, or lease; or approval or disapproval of plans and specifications; or issuance, modification, or revocation of an order, and concerning which persons authorized by law or agency regulations may file comments or request an adjudication hearing or public meeting. If the proposed action indicates an intent to issue a permit, license, variance, order, or certificate, it shall include a proposed permit, license, variance, order, or certificate.

(N) “Public meeting” means a non-adversary public hearing, where any person may present written or oral statements for the director’s consideration pertaining to the application, draft action, or proposed action that is the subject of the meeting, and includes public hearings held pursuant to division (H) of section 3704.03 of the Revised Code.

(O) “Verified complaint” means a written complaint, verified by the affidavit of the complainant, his agent, or his attorney. The affidavit may be made before any person authorized by law to administer oaths, and shall be signed by the person who makes the affidavit. The person who administers the oath shall certify that the affidavit was sworn to before him and signed in his presence.

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 3745, Chapter 6109, Chapter 6111.

[119.032](#) Review Date: 5-25-03

Amended: 4/26/1976

3745-47-05 Draft or Proposed Action.

(A) Except as provided in paragraph (C) or (E) of this rule, in all actions of the agency, the director shall prepare and issue to the person subject thereto a proposed action. The proposed action may bear a date upon which it will become effective as a final action, or it may be issued with no such date stated. If the proposed action bears such a date, the date shall not be prior to:

(1) The deadline for filing comments set forth in paragraph (F) of this rule; or

(2) The deadline for requesting public meetings set forth in rule [3745-47-12](#) of the Administrative Code; or

(3) The deadline for filing adjudication hearing requests and objections set forth in rule [3745-47-13](#) of the Administrative Code.

(B) (1) Except as paragraph (B)(2) of this rule authorizes or paragraph (B)(3) of this rule requires the contrary, the director shall issue the proposed action as his final action on the effective date stated.

(2) (a) If a proposed action is issued with an effective date, the director may amend the proposed action prior to its effective date, or, if hearing proceedings are initiated, at any time prior to entry of the proposed action upon the director's journal as a final action. A proposed action issued without an effective date may be amended at any time prior to entry upon the director's journal as a final action.

(b) The director may withdraw the proposed action prior to the effective date stated, or, if no date is stated, at any time. However, the director may not withdraw a proposed action after initiation of hearing proceedings, unless all requests for adjudication hearings and objections have been withdrawn or dismissed.

(3) (a) The director shall not issue a final action prior to any of the dates set forth in paragraphs (A)(1) to (A)(3) of this rule.

(b) The director shall not issue a final action

(i) If an objection is received from the United States environmental protection agency and the applicable law prohibits issuance of a final action under such circumstances; or

(ii) Until paragraph (D) of rule [3745-47-12](#) of the Administrative Code is complied with; or

(iii) Until paragraph (C) of rule [3745-47-13](#) of the Administrative Code is complied with; or

(iv) Until paragraph (F) of this rule is complied with.

(C) Notwithstanding the provisions of paragraph (A) of this rule, the director may issue a draft action to the person subject thereto in any instance in which the director would be permitted to issue a final action without a hearing pursuant to paragraph (E) of this rule. The draft action may bear a date upon which it will become effective as a final action, or it may be issued with no such date stated. If the draft action bears such an effective date, the date shall not be prior to

(1) The deadline for filing comments set forth in paragraph (F) of this rule; or

(2) The deadline for requesting public meetings set forth in rule [3745-47-12](#) of the Administrative Code.

(D) (1) Except as paragraph (D)(2) of this rule authorizes or paragraph (D)(3) of this rule requires the contrary, the director shall issue the draft action as his final action on the effective date stated.

(2) (a) If a draft action is issued with an effective date, the director may amend the draft action at any time prior to its stated effective date. A draft action issued without an effective date may be amended at any time prior to entry upon the director's journal as a final action.

(b) The director may withdraw the draft action prior to the effective date stated, or, if no date is stated, at any time.

(3) (a) The director shall not issue a final action prior to either of the dates set forth in paragraphs (C)(1) and (C)(2) of this rule.

(b) The director shall not issue a final action

(i) If an objection is received from the United States environmental protection agency and the applicable law prohibits issuance of a final action under such circumstances, or

(ii) Until paragraph (D) of rule [3745-47-12](#) of the Administrative Code is complied with; or

(iii) Until paragraph (F) of this rule is complied with.

(E) Notwithstanding the provisions of paragraph (A) of this rule, the director may issue a final action without first issuing a proposed action where the statutes pertaining to the agency specifically give a right to appeal to the environmental board of review and also give the appellant a right to a hearing on such appeal in accordance with Chapter 119. of the Revised Code, and where no statutory provision or regulation prohibits such action from being effective before persons permitted by statute or rule to participate in an adjudication hearing have been afforded an opportunity for a hearing.

(F) Any person may submit written comments relating to a proposed action or a draft action. All comments received by the agency within thirty days after public notice, or such longer period as the public notice may specify, shall be considered prior to issuance of a final action. This paragraph does not apply to amended draft or amended proposed actions unless the agency gives public notice of the amended draft or amended proposed action under rule [3745-47-07](#) of the Administrative Code.

Effective: 6/30/1981

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 3734.

[119.032](#) Review Date: 5/25/2003

Amended: 7/5/1973

3745-47-07 Notice.

(A) (1) The agency shall give public notice of all actions, except amended draft and amended proposed actions; adjudication hearings; public meetings; verified complaints received; and complaints filed under section 6111.32 of the Revised Code. The agency shall also give public notice whenever it begins consideration of issuance of certification under section 401 of the Federal Water Pollution Control Act. The agency may also give public notice of amended draft and amended proposed actions.

(2) All notices required or authorized by paragraph (A)(1) shall be published once in a newspaper having general circulation in the county in which the source or facility is located. Publication shall be done within fifteen days after issuance of an action, initiation of consideration, or receipt of a complaint, and at least thirty days prior to a public meeting or an adjudication hearing, except that, if the adjudication hearing concerns the director's action on an industrial water pollution control certificate under Chapter 6111. of the Revised Code, publication shall be done between fifteen and thirty days prior to the hearing. This paragraph does not apply to a final action preceded by a proposed action, unless the final action differs from the proposed action in a manner that affects the rights or duties of any person, or unless the final action concerns an industrial water pollution control certificate under Chapter 6111. of the Revised Code. Public notice is complete upon publication.

(3) All notices required or authorized by paragraph (A)(1) shall be mailed by first class mail to all persons on the mailing list of subscribers maintained pursuant to section 3745.07 of the Revised Code. Mailing shall be done within seven days after issuance of an action, receipt of a complaint, or initiation of consideration and at least fourteen days prior to a public meeting or an adjudication hearing.

(B) If any person has requested in writing to be kept informed of agency actions relating to a particular source or facility, or has requested a copy of the application, action, or fact sheet therefore, and if the agency later issues an action or receives a complaint relating to the source or facility, the agency shall send the notice required by paragraph (A)(1) of this rule to that person within fifteen days after issuance or receipt.

(C) If any action but a final action would issue or renew a permit to discharge sewage, industrial wastes, or other wastes to waters of the state under division (J) of section 6111.03 of the Revised Code, the agency shall, on or before the date of newspaper publication, provide the information specified in rule [3745-47-09](#) of the Administrative Code to any state, interstate, federal, or local government agency having jurisdiction over waters that may be affected by the discharge.

(D)(1) The agency shall send notice by certified mail of the time and place of an adjudication hearing to all parties thereto at least thirty days prior thereto, except that, if the hearing relates to an industrial water pollution control certificate under Chapter 6111. of the Revised Code, the agency shall mail the notice between fifteen and thirty days prior to the hearing to the tax commissioner, the county auditor of the county or counties in which the structure or items described in the application are located, and to the person to whom a final action will be issued.

(2) The agency shall send notice by certified mail of the time and place of a public meeting on an action to all parties to any adjudication hearing arising from the action, at least twenty days prior to the meeting.

(E) (1) All actions but final actions shall be mailed by certified mail, return receipt requested, to the person subject thereto. All proposed actions shall be accompanied by a notice that shall state the time and method by which the person may request an adjudication hearing. All draft actions shall be accompanied by a statement as to when a final action will be issued. If an amended proposed action only corrects typographical or administrative errors in a previous action and does not affect the rights or duties of any person, no opportunity to request an adjudication hearing need be afforded.

(2) (a) If a draft or proposed action is issued with an effective date, any amendments thereto are issued in accordance with paragraph (E)(1) of this rule, and the action is later entered upon the director's journal without being changed further, the agency need not, at the time of entry, provide notice or a copy of the action as entered to the person subject thereto.

(b) If a draft or proposed action is issued without an effective date, any amendments thereto are issued in accordance with paragraph (E)(1) of this rule, and the agency later assigns an effective date and enters the action upon the director's journal without changing the action further, the agency shall mail notice to the person subject thereto informing him of the effective date.

(c) In all other instances, the agency shall mail a copy of the final action

(i) To the person subject thereto; and

(ii) If the final action follows initiation of hearing proceedings upon a prior proposed action, to any other parties; and

(iii) If the final action follows initiation of hearing proceedings upon a prior proposed action, to any attorneys of record; and

(iv) If the final action dismisses a verified complaint, to the person complained against.

(d) If the final action follows initiation of hearing proceedings upon a prior proposed action, the agency shall certify that the copy of the final action mailed is a true and accurate copy of the final action as entered upon the director's journal.

(e) All mailings required by paragraphs (E)(2)(b) and (E)(2)(c), except those required by paragraphs (E)(2)(c)(iii) and (E)(2)(c)(iv), shall be done by certified mail, return receipt requested. Notice shall be complete upon receipt or upon refusal to accept certified mail. Mailings required by paragraphs (E)(2)(iii) and (E)(2)(c)(iv) shall be done by first class mail. All mailings required by paragraphs (E)(2)(b) and (E)(2)(c) shall be done within five days of entry of the action upon the director's journal.

(f) If the applicable law grants a right to appeal the final action to a higher authority, mailings required by this paragraph shall be accompanied by a notice stating the time and method by which the appeal must be filed.

(3) If an action relates to an industrial water pollution control certificate under Chapter 6111. of the Revised Code, it shall be sent to the county auditor of the county or counties in which the structure or items described in the application are located, and to the tax commissioner, within five days of issuance. A proposed action shall be sent by first class mail and shall be accompanied by a notice stating how an application for reconsideration may be filed. A final action shall be sent by certified mail, return receipt requested.

(F)(1) Failure to give notice of a proposed action as required by this rule to any person other than the person subject thereto will invalidate the resulting final action only if the failure is raised by, and was relied upon to the detriment of, any person entitled to be a party at an adjudication hearing before the agency. Failure to mail notice as required by paragraph (A)(3) of this rule will not invalidate any action of the director under any circumstances.

(2) Failure to give notice of a draft action as required by this rule will invalidate the following final action only where such invalidation is expressly required by applicable law.

Effective: 6/30/1981

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 3745.

[119.032](#) Review Date: 5/25/2003

Amended: 5/7/1976

3745-47-08 Contents of Public Notices.

(D) All other public notices shall include to the extent known to the agency:

(1) The name of the agency and the address and telephone number where further information may be obtained and agency files and records pertaining to the proceedings may be inspected and copied.

(2) The name and address of the person responsible for the source.

(3) The location of the source, including for discharges to waters of the state the waterway to which the discharge is made.

(4) If the notice is for a draft or proposed action a statement that any person within thirty days of appearance of public notice in a newspaper in the affected county, or such longer period as the agency may specify, may submit a written statement to the director concerning the draft or proposed action.

(5) A statement that any person may request notice concerning further actions or proceedings.

(6) If the notice is for a proposed or final action, the date of issuance.

(7) If the notice is for a proposed action, a statement of rights to object and be afforded an adjudication hearing.

(8) If the notice is for a final action, a statement of rights to appeal to the environmental board of review, if applicable.

(9) If the notice is for a draft or proposed action, a statement as to when the action will become effective as a final action.

(10) If the notice is for a draft or proposed action, a statement that any person may, within thirty days of appearance of public notice in a newspaper in the affected county, request a public meeting.

Effective: 6/30/1981

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 3745.

[119.032](#) Review Date: 5/25/2003

Amended: 7/5/1973