

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: November 13, 2017

RE: **CSI Review – Modeling (OAC 3745-2-01, 3745-2-02, 3745-2-05, 3745-2-06, 3745-2-07, and 3745-2-11)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of six amended rules proposed by the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on June 28, 2017 and the public comment period was held open through July 21, 2017. One comment was received during this time and a response was provided to the CSI Office on September 27, 2017.

The rules establish the methods the OEPA Division of Surface Water uses to translate water quality standards in Ohio Administrative Code (OAC) Chapter 3745-1 into discharge wasteload allocations for the National Pollutant Discharge Elimination System permits. OEPA is proposing to amend six rules in the chapter to update cross references, correct grammar and style, and add term clarifications. In addition, OEPA proposes to remove certain acronyms, abbreviations, and definitions that have been moved to other chapters of the OAC. The BIA contends that the public purpose of the regulation is to provide consistency and clarity to the methods that the Agency uses to translate water quality standards into wasteload allocation limitations.

As part of the early stakeholder outreach process, OEPA sent electronic notification to the Division of Surface Water's interest party list in addition to publishing the draft rules and fact sheet to the OEPA website. As a result of the outreach, OEPA did not receive any comments on the draft rules.

Seven rules were received during the CSI public comment period. One commenter expressed concern over remaining acronyms, abbreviations, and definitions. They noted that the remaining acronyms, abbreviations, and definitions were redundant and removal would ensure consistency between those used in OAC 3745-1-02 and OAC 3745-2-02. OEPA replied that the redundant language is needed and more efficient than directing the reader to OAC 3745-1-02 while they are reading OAC 3745-2-02 which would create confusion. Numerous other commenters expressed discontent over certain term definitions in which OEPA replied that all definitions are consistent with federal definitions and are required.

The BIA states that the rules do not directly impact the business community because the rules govern the procedures through which water quality standards are translated into wasteload allocations and limitations. However, the CSI office recognizes that an indirect impact may exist on the business community including cities, villages, and other business entities. The aforementioned entities may incur costs associated with meeting proper levels of wastewater treatment and numeric water quality criteria specified in the rules. While the BIA does not address specific costs of indirect compliance by municipalities, OEPA does note that there will likely be existing costs for permit application and permit renewal every five years, costs of wastewater treatment plant construction and operation, and time for paperwork completion including recordkeeping and monthly reports. Lastly, non-compliance with the rules may result in monetary fines. OEPA emphasizes that the regulatory intent of the rules outweighs any adverse impact because formalizing procedures in the rule benefits the affected communities by ensuring consistency and transparency to the implementation of water quality standards in addition to compliance with federal law.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Environmental Protection Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.