



MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: December 31, 2014

RE: **CSI Review – Primary Drinking Water Standards, No-Change Rules 2015 (OAC §§ 3745-81-10; 3745-81-11; 3745-81-19; 3745-81-23; 3745-81-31; 3745-81-64; 3745-81-67; 3745-81-68; 3745-81-69; and 3745-81-77)**

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

I. ANALYSIS

A. INTRODUCTION AND BACKGROUND

On October 27, 2014, the Ohio Environmental Protection Agency ("Ohio EPA") submitted a rule package containing ten (10) rules. The rules were submitted as a result of the five-year review requirement contained in state statute. The rules generally outline the requirements of certain drinking water systems to test for, monitor, and report to Ohio EPA the presence of certain chemicals and toxins in the water systems. Ohio EPA cites R.C. § 6109.04 as authority to establish these rules. The comment period closed on November 19, 2014, and 965 comments were received.

B. ADVERSE IMPACT ON BUSINESS

According to Ohio EPA in the BIA, the scope of businesses impacted by these rules is comprised of owners of Ohio public water systems (PWS).¹ As explained by Ohio EPA, the rules outline maximum levels of certain toxins, organisms, chemicals, and disinfectants permitted to be present in PWS. The rules also outline various forms of best available technology, the use of which may be required depending on the contaminant, for certain monitoring and maintenance of water quality levels. Along with reporting requirements of certain toxin levels, the rules also outline certain water treatment technique requirements. The rules, combined with the BIA, outline at-length the toxins, toxin levels, maintenance and monitoring requirements, reporting requirements, and costs associated with compliance. Therefore, as these rules require costs for compliance and reporting of information, they pose adverse impacts on business as enumerated in R.C. § 107.52.

According to Ohio EPA, the Agency reached out to stakeholders in on January 6, 2014, and received no feedback on the proposed rules. The only comments received² urged the Ohio EPA to create monitoring requirements on PWS for levels of microcystin, an organism known to be associated with toxic algal blooms. Ohio EPA, in its response to these comments, outlined its desire to better analyze data and treatment methods for microcystin before creating rules related to monitoring levels, along with continuing to seek guidance from the federal EPA on microcystin. Ohio EPA also indicated that it has and will continue to ensure that proper monitoring occurs in any PWS contaminated with microcystin. Ultimately, Ohio EPA's response demonstrates an awareness of the concerns expressed in the comments and a commitment to address them in an appropriate manner.

Finally, Ohio EPA argues that these rules are necessary to implement the federal Safe Water Drinking Act and are based on its guidelines.

CSI is satisfied with the Department's justification for these rules because (1) Ohio EPA sought stakeholder feedback from an early stage of rule review, (2) comments submitted did not concern impacts on business and were responded to appropriately by Ohio EPA, and (3) Ohio EPA has created these rules pursuant federal requirements and guidance. Accordingly, these rules have been sufficiently justified by Ohio EPA.

¹ Throughout the BIA, Ohio EPA appears to refer to (1) public water systems, (2) community water systems, and (3) nontransient noncommunity water systems generally as "public water systems." These terms are defined in OAC § 3745-81-01 and are generally distinguished from each other depending on the number of connections to the system, the population size served, and the amount of time per year that population is served by the water system. In reviewing definitions in the OAC, a water system is a system of pipes or other constructed conveyances that provides water for human consumption. These water systems can be both privately and publicly owned. For purposes of consistency with the BIA, CSI will refer to all water systems as "public water systems" in this recommendation memo.

² All 965 comments were form-based. They were all textually identical, save the name and address of the sender.

II. RECOMMENDATIONS

For the reasons explained above, this office has no recommendations regarding this rule package.

III. CONCLUSION

Based on the above analysis and recommendations, Ohio EPA may proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office