

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Sophia Papadimos, Regulatory Policy Advocate

DATE: January 15, 2016

RE: **CSI Review – Total Coliform (OAC 3745-81-01, 3745-81-12, 3745-81-14 3745-81-21, 3745-81-32, 3745-81-41, 3745-81-42, 3745-81-43, 3745-81-44, 3745-81-45, 3745-81-50, 3745-81-51, 3745-81-52, 3745-81-53, 3745-81-54, 3745-81-55, 3745-81-60, 3745-81-61, 3745-81-70, 3745-81-74, and 3745-96-02)**

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 twenty-one rules (fourteen amended and seven new) proposed by the Ohio Environmental Protection Agency (OEPA) pursuant to the five-year review requirement in statute. The rule package was originally submitted to the CSI Office in February 2015 but OEPA withdrew the package to make further changes. The rule package was refiled with the CSI Office on November 18, 2015 and the comment period was held open through December 2, 2015. One comment was received during this time.

The regulations in this rule package pertain to total coliform and E. coli levels, and are a result of amendments made in 2013 to the U.S. EPA's Revised Total Coliform Rule (RTCR) under the Safe Drinking Water Act. The new federal requirements represent a major change from the existing framework for monitoring and assessing contaminated water sources. The requirements apply to every public water system and are intended to improve public health protection by reducing fecal pathogens to minimal levels. Total coliforms are a group of closely related bacteria and E. coli is a more restricted group of coliform bacteria that is a better indicator of fecal contamination than total coliforms. The proposed amendments place less emphasis on total

coliforms as an indicator of public health risk and therefore, the maximum contaminant level for total coliforms is being eliminated. OEPA explained that total coliforms are still useful as an indicator that a water system may be compromised and warrants an assessment or investigation to ensure the system is not susceptible to harmful microorganisms. Additionally, a new maximum contaminant level for E. coli is being enacted. The draft rules will also require public water systems to investigate water conditions more rapidly than in the past to look for potential sources of contamination. There are several instances where OEPA's proposed regulations are more stringent than federal regulations. However, OEPA sufficiently explained why those specific regulations are necessary in the BIA.

The stakeholders included were public water system owners, operators, consultants, and environmental organizations, among others. In 2013 when the federal regulations were finalized, OEPA held presentations explaining the changes at the Ohio-Kentucky-Indiana (OKI) Regional Council of Governments, the Ohio American Water Works Association (AWWA) Southwest District Fall Meeting, and the Ohio Section AWWA Conference. The federal amendments were also presented to the Ohio Campground Owners Association. The proposed rules were sent to stakeholders in February 2015 and no input was provided at that time. The one comment received during the public comment period was not in favor of a sampling method now required, but OEPA explained that the requirement is driven by U.S. EPA.

The BIA submitted by OEPA explains in significant detail the adverse impacts to businesses. OEPA also explained that the costs to many water systems that stay in compliance will not change or may even decrease due to the reduction in the number of required follow-up samples when a system has a total coliform positive routine sample. According to U.S. EPA, the greatest portion of the costs is attributed to corrective actions to fix problems discovered by the assessments.

The proposed rules are intended to decrease the risk of acute waterborne illness. Additionally, the Ohio EPA is required to adopt regulations at least as stringent as the federal regulations in order to retain primary enforcement authority for the Safe Drinking Water Act. After reviewing the BIA and proposed rules, the CSI Office has determined that the purpose of the rules is justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for 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.