



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Mandi Payton, Ohio Environmental Protection Agency

FROM: Michael Bender, Business Advocate

DATE: August 6, 2024

RE: **CSI Review – Operator Certification (OAC 3745-7-01, 3745-7-02, 3745-7-03, 3745-7-04, 3745-7-05, 3745-7-06, 3745-7-07, 3745-7-09, 3745-7-10, 3745-7-11, 3745-7-12, 3745-7-13, 3745-7-15, 3745-7-17, 3745-7-18, 3745-7-19, 3745-7-20, and 3745-7-21)**

On behalf of Lt. Governor Jon Husted, 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 eighteen amended rules proposed by the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on March 1, 2024, and the public comment period was held open through April 1, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 1, 2024.

Ohio Administrative Code (OAC) 3745-7-01 contains definitions related to the certification of operators of public water systems (PWSs), treatment works, and sewerage systems. The rule is amended to update language, remove unnecessary language, add terms, and remove outdated implementation provisions. OAC 3745-7-02 requires each owner or operator of a PWS, treatment works, or sewerage system to designate a professional operator of record to oversee the technical operations of the facility. The rule is amended to update language and citations, require contract operating companies to submit operator of record notification forms, remove a provision concerning

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

unclassified facilities, and remove a redundant provision regarding individuals who pass the Class I water supply examination but lack the necessary experience to be an operator of record. OAC 3745-7-03 establishes the classification system and staffing requirements for PWSs, water treatment plants, and water distribution systems. The rule is amended to update language, add clarifying language, remove unnecessary language, add citations, correct a typo, clarify when continuous monitors for fluoride and chlorine are needed when requesting staffing reductions, exclude facilities without a designated operator of record from the backup professional operator exemption, include loss of operator as a justification for replacement of an operator of record with one of lower classification, extend backup professional operator flexibility to Class I water distribution systems, allow staffing flexibility during holidays, allow offsite meeting flexibility, update a referenced material effective date, and update contact information.

OAC 3745-7-04 establishes the classification system and staffing requirements for treatment works, sewerage systems, and wastewater treatment facilities within a treatment works. The rule is amended to update language, add clarifying language, remove unnecessary language, add citations, remove outdated implementation provisions, clarify the classification of Class I and II sewerage systems, provide for the classification of satellite collection systems, allow the classification of treatment works to be included in an indirect discharge permit, allow the owner of a Class I or II satellite collection system to have a representative perform visits in lieu of the operator of record, exclude facilities without a designated operator of record from the backup professional operator exemption, include loss of operator as a justification for replacement of an operator of record with one of lower classification, extend backup professional operator flexibility to Class I sewerage systems, allow staffing flexibility during holidays, and allow offsite meeting flexibility. OAC 3745-7-05 lists the classifications for which professional operators may be certified. The rule is amended to update operator classification titles, add titles for facility specific operators, prohibit facility specific operators from operating other facilities or transferring their certificate, clarify that when certain certificates are obtained then an operator may not hold additional certificates below such levels, and explain that a facility specific certificate does not supersede any professional operator certificate. OAC 3745-7-06 provides for the certification of operators of record. The rule is amended to update language, add clarifying language, update the rule title, add citations, incorporate facility specific certificates, clarify certification requirements, reduce the amount of operating experience required for Class II, III, and IV certificates by one year each, and allow applicants to request a review of post-secondary education degrees and transcripts related to the field of water treatment or water reclamation, and list the criteria for facility specific certification.

OAC 3745-7-07 authorizes the Director of the OEPA (Director) to allow an applicant for Class A, I, II, or III certification to defer completion of onsite operating experience requirements until after successfully passing the certification examination. The rule is amended to update language and increase the number of years an applicant can be an operator in training from four to five. OAC 3745-

7-09 specifies recordkeeping and other miscellaneous requirements for certified professional operators of record. The rule is amended to update language, grammar, and the rule title, incorporate facility specific operators, clarify that the recordkeeping requirements are for classified systems, require records to be maintained at the facility regardless of professional operator of record or owner changes, and clarify which information should be documented in the facility log book. OAC 3745-7-10 establishes the Professional Operator Certification Advisory Council (Council). The rule is amended to remove unnecessary language, update certification titles, and allow operators who have retired in the previous five years to serve as members of the Council. OAC 3745-7-11 sets forth the duties of the Council. The rule is amended to update language. OAC 3745-7-12 authorizes the Director to suspend or revoke an operator's certificate under certain circumstances. The rule is amended to incorporate facility specific operators and allow for electronic delivery of requests, notices, and certificates. OAC 3745-7-13 authorizes the Director to grant certification by reciprocity to an applicant holding a valid certification or license issued by another certifying authority. The rule is amended to update language and grammar, offer any operator applying for reciprocity a Class A certificate at minimum, provide flexibility to the Director when determining an appropriate classification for reciprocity, and remove a restriction on reciprocity related to Ohio residents obtaining certification by examination in another state through an association.

OAC 3745-7-15 provides for the expiration and renewal of operator certificates. The rule is amended to update language, grammar, citations, and certification titles, add clarifying language, incorporate facility specific operators, allow for renewal notices to be sent to a physical or email address, incorporate video-in-group courses, require completion certificates to include agency course approval numbers, remove a provision regarding Greenleaf training provider course attendance submissions, and remove a provision regarding renewal auditing. OAC 3745-7-17 requires applicants and operators to pay fees for examination, certification, reciprocity, renewal, and replacement. The rule is amended to update language, incorporate facility specific operators, and remove the year-long limit on renewal fees received after the expiration date for determining late fees. OAC 3745-7-18 describes the conduct that is prohibited during the application or examination process. The rule is amended to remove unnecessary language, prohibit falsifying or submitting incorrect information on certification applications, and prohibit using computer-based authoring programs to write or edit substantive work. OAC 3745-7-19 provides for the approval of examination providers by the Director. The rule is amended to update language and grammar as well as incorporate water reclamation. OAC 3745-7-20 provides for the certification of an applicant as an operator upon passage of an examination from an approved examination provider and proper completion of an application for certification. The rule is amended to incorporate facility specific operators. OAC 3745-7-21 establishes requirements for contract operations companies and contracted professional operators. The rule is amended to update language and remove an outdated implementation provision.

During early stakeholder outreach, the OEPA's Division of Drinking and Ground Waters (DDAGW)

notified stakeholders through its electronic mailing list of its plans to revise the rules. The DDAGW encouraged the stakeholders to provide feedback during a thirty-day comment period beginning December 29, 2022, and later extended through April 14, 2023. The stakeholders contacted included PWS/wastewater works owners and operators, consultants, contract operators, training providers, environmental organizations, businesses, the U.S. EPA, other state agencies, and members of the public. Additionally, the DDAGW held multiple stakeholder outreach meetings in 2023 and 2024 related to rule development. Although the OEPA originally intended to make only minor changes to the rules, stakeholder input resulted in all major changes that were proposed in the rules. During the CSI public comment period, the OEPA received comments from the Association of Ohio Drinking Water Agencies (AODWA), the Association of Ohio Metropolitan Wastewater Agencies (AOMWA), the City of Columbus Department of Public Utilities (CDPU), Greater Cincinnati Water Works (GCWW), the County Sanitary Engineers Association of Ohio (CSEAO), Fairfield County, the Muskingum Water Conservancy District (MWCD), the City of Aurora, the Ohio Society of Professional Engineers (OSPE), Barclay Water Management (BWM), the City of Sydney Wastewater Treatment Plant (WWTP), and U.S. EPA Region V.

AOMWA, AODWA, CDPU, and GCWW supported the proposed rule revisions, asserting that they would break down barriers to entry as certified operators while ensuring the safety and proper treatment of drinking and waste waters. Fairfield County and CSEAO advocated for allowing high school students to take the operator exam before graduation. The OEPA replied that current rules recognize a high school diploma “or equivalent,” stressing that it continues to work with various programs to determine appropriate equivalents, such as accepting a letter from a principal or school official documenting a student’s eligibility to graduate before scheduling for an exam. The MWCD asked for clarification regarding what qualifies as operator experience. The OEPA reached out and provided answers to the commenter. Aurora asked for clarification on what qualified as “time spent working on equipment within treatment works” as it relates to minimum staffing requirements and offered alternative language. The OEPA explained that the provision in questions referred to the amount of time an operator of record must be physically present at a facility and did not believe any changes were necessary. The OSPE appreciated the reductions in required operating experience time for Class II, III, and IV certificates and encouraged the OEPA to allow the Director to waive the experience requirement for professional engineers seeking a Class IV operator certificate, arguing that this would expand the number of eligible applicants and the number of qualified operators in Ohio. The OEPA pointed out that it already recognizes experience reductions for relevant engineering degrees and did not believe any additional reductions were necessary, emphasizing that holding a professional engineering registration does not guarantee that the professional engineer has had any experience overseeing a Class III or IV facility.

BWM requested the addition of a provision allowing treatment facilities for secondary disinfection to reduce minimum staffing time by demonstrating automation and continuous monitoring. The

OEPA declined to make this change after consideration, saying that the provisions in the proposed rules were appropriate and protective of public health. The Sidney WWTP urged the OEPA to give local governments the autonomy to develop their own holiday schedules with respect to staffing reduction, noting that there could be conflicts between what the State of Ohio observes and what local governments observe. The OEPA explained that its proposal to allow a staffing reduction on federal holidays is intended to allow utilities more flexibility in staffing based on an approved nationwide standard. U.S. EPA Region V recommended changes clarifying that backup operators can only serve if they hold a certificate no more than one classification lower than the facility, that operators who hold both a professional operator certificate and a facility specific certificate must obtain hours for whichever certificate is higher, and that facility specific operators are excluded from acting as a backup operator of record for facilities without a designated operator of record with an appropriate classification. The OEPA incorporated all these suggestions into the rules. After internal discussion, the OEPA altered the minimum staffing table to make staffing consistent for both Class A operators and service providers. Lastly, the OEPA revised the rules to make technical corrections.

The business community impacted by the rules includes PWS owners, treatment works owners, sewerage system owners, professional operators, individuals applying for certification as professional operators, training providers, examination providers, entities applying to become examination providers, contract operations companies, and contracted professional operators. The adverse impacts created by the rules include the costs associated with obtaining certification, employing professional operators, staffing, fees, recordkeeping, training, proper conduct, and suspension or revocation of a certificate. Fees are established in rule and statute for examination, certification, reciprocity, renewal, replacement of a certificate, and becoming/remaining an examination provider, ranging from \$25-\$145. The OEPA points out that the changes to the rules reduce the burden on businesses by increasing flexibility for reductions in experience requirements based on post-secondary education, reducing the operating experience requirements for Class II, III, and IV certifications, adding staffing requirement reductions for holidays and offsite meetings, adding operator in training status to Class III certificates, offering a Class A and potentially Class I, II, or III certificates for reciprocity applicants, expanding opportunities for reciprocity, increasing the amount of time an operator can be in operator in training status, and providing an alternative facility specific certificate to allow operators who do not meet operating experience requirements to operate as backup operators at a facility. The OEPA states that the adverse impacts to business are justified to implement statutory requirements, comply with federal requirements, and ensure the public is both supplied with a safe and reliable source of drinking water and protected from untreated or poorly managed sewage.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Agency should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.