



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Mandi Payton, Ohio Environmental Protection Agency

FROM: Caleb White, Business Advocate

DATE: October 15, 2024

RE: CSI Review – Asset Management (OAC 3745-87-01, 3745-87-02, 3745-87-03, 3745-87-04, and 3745-87-05)

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 five 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 July 11, 2024, and the public comment period was held open through August 12, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 11, 2024.

Ohio Administrative Code (OAC) 3745-87-01 establishes the definitions related to asset management. This rule is amended to update the definitions for “asset management program,” “capital improvement plan” “criticality,” “operating ratio,” and “useful life,” add definitions for “asset management screening,” “break,” “continuity plan,” “horizontal/linear asset,” and “leak,” remove the definition for “capability screening,” adopt referenced materials, and streamline language. OAC 3745-87-02 establishes general requirements for public water systems. This rule is amended to only require community and non-transient non-community public water systems to develop an asset management plan and submit a written description of the plan to the OEPA, add a requirement for copies of asset related materials to be submitted to the OEPA within five days of a

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request by the OEPA, and to update language. OAC 3745-87-03 establishes the requirements for what an asset management program is to include. This rule is amended to make the requirements of the rule applicable to community and non-transient non-community public water systems, require these public water systems to use the most current asset management program template, add clarifying language surrounding certain requirements, as well as to update, reformat, and streamline language, and update referenced materials. OAC 3745-87-04 establishes the process, conditional requirements, and requirements related to the OEPA's evaluation of an asset management program. This rule is amended to update language. OAC 3745-87-05 establishes requirements related to the long-term implementation of an assessment management program including the requirement to annually review and update the program and the metrics that are required to be kept by the public water system. This rule is amended to only require non-transient non-community public water systems to keep certain metrics, change the metric for breaks in the distribution of pipe from breaks per ten miles of distribution to breaks per one-hundred miles of distribution, remove a metric for community public water systems, and to update and streamline language.

During early stakeholder outreach, the OEPA sent electronic notification to its Division of Drinking and Ground Water's (DDAGW) rulemaking interested party list on May 10, 2024, and accepted comments through June 9, 2024. During this period, the OEPA received several comments regarding the addition or modification of definitions and the removal of language related to written policies that are not applicable to asset management in OAC 3745-87-01, comments asking for clarification and the addition of flexibility regarding certain timelines in OAC 3745-87-03, a comment asking for the metric regarding breaks per 10 miles of distribution pipe be increased to per 100 miles of distribution pipe in OAC 3745-87-08, and comments asking for the updating or removal of certain terms. These suggestions were all incorporated into the rules.

During the CSI public comment period the OEPA received two comments from the Alliance for the Great Lakes (AGL) and the Ohio Section of the American Water Works Association (OAWWA). The AGL requested the rules be amended to subject public water systems to monitoring and treatment requirements related to harmful algal bloom and for the costs of protocols to be tracked and published. The OEPA responded that this would require several new requirements and that they would not be making the change at this time but would consider this change in the future. The OAWWA had several requests. The first request was to amend the definitions in OAC 3745-87-01 for "break" and "leak" to apply to those that disrupt services to a customer. The OEPA elected not to make this change as while a few small breaks do not impact customers, they could be an early indicator that the entire line needs to be replaced. The next request was for the definition of "succession planning" in OAC 3745-87-01 to be expanded to include system equipment at a later time. The OEPA responded that they will consider this change in the future. Another comment from the OAWWA asked for a reference material be added to OAC 3745-87-01. The OEPA responded by agreeing to add this material to the rule. Next the OAWWA requested a provision in OAC 3745-87-03 related to the

emergency preparedness and contingency planning program to be removed as it is unclear if they are necessary. In response to this comment OEPA added clarifying language to this provision and committed to considering further changes in the future. Next, the OAWWA asked for clarification on the required operational metrics related to time spent on maintenance tasks per year on vertical assets. The OEPA responded by adding clarifying language. Lastly, the OAWWA asked for the source protection plan review cycle to be extended from three years to five-years if the plan does not include a review schedule. The OEPA elected not to make this change as these plans are based on what potential sources exist in a source water protection area which may change and because the protective strategies developed within the three-year cycle may need updated to keep up with the dynamic nature of the source.

The business community impacted by the rules includes community and non-transient, non-community PWSs in Ohio. The adverse impacts created by the rules are the costs associated with developing maintaining and submitting an asset management program. The OEPA estimates the cost for a new or existing public water system with a knowledgeable staff would be approximately \$2,500 and that the average cost for a public water system that contracts for assistance in completing an asset management program could be approximately \$15,000. The OEPA further states that the cost of an asset management program put in place by a system could exceed \$100,000 depending on certain factors such as larger asset inventory, the use of a software management system, or electronic mapping. The OEPA also notes that there is no required format and public water systems can choose a format that works best for them. The OEPA also highlighted the fact that the rules contain a change that reduces the adverse impact on business by amending the rules to only require community and non-transient non-community public water systems to develop and maintain an asset management plan. The OEPA states that the adverse impacts to business are justified to ensure the public is supplied with a safe and reliable source of drinking water.

Recommendations

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

Conclusion

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