



MEMORANDUM OF RESPONSE

To: Joseph Baker, Business Advocate

From: Mandi Payton, Rules Coordinator

Date: April 11, 2022

Memorandum of Response to CSI Review – Backflow Prevention and Cross Connection Control
(OAC 3745-95-01, 3745-95-02, 3745-95-03, 3745-95-04, 3745-95-05, 3745-95-06, 3745-95-07, 3745-95-08, and 3745-95-09)

Recommendations

On April 11, 2022, Ohio EPA received the recommendations for the Division of Drinking and Ground Waters' Backflow Prevention and Cross Connection Control (OAC 3745-95-01, 3745-95-02, 3745-95-03, 3745-95-04, 3745-95-05, 3745-95-06, 3745-95-07, 3745-95-08, and 3745-95-09) rules.

The CSI memorandum stated that:

"During early stakeholder outreach, the Division provided the rules to stakeholders electronically. No comments were received in response to the request for feedback. During the CSI public comment period, the Division received comments from the Ohio Department of Health (ODH), Ohio Board of Building Standards (Board), Greater Cincinnati Water Works, Ohio Chemical Technology Council (OCTC), Capital Resin Corporation (CRC), and Belmont County Water. Comments addressed issues including campground operator requirements, yard hydrant weep hole plugging enforcement, coordination of efforts to regulate backflow prevention and cross connection controls, consolidation of relevant provisions for readability, clarifying the scope of various requirements and definitions, and a community water system's responsibility to require a backflow preventer if an actual or potential hazard exists.

CRC and OCTC requested that the Division permit the use of an alternate system to an air gap separation for auxiliary water supplies in certain situations. The Division responded that such exemptions are not permitted when a cross connection represents a severe health hazard, as mechanical devices are prone to failure while air gap separations provide maximum safety. The CSI office inquired as to whether the United States' Environmental Protection Agency (USEPA) established requirements for an air gap separation in such instances and how other states addressed this issue. OEPA reported to CSI that USEPA does not specify a particular backflow preventer that must be used for cross connections, but that neighboring states, including Indiana, Kentucky and West Virginia generally require a similar air gap separation as the Ohio regulation, while Michigan and Pennsylvania allow for an alternate reduced pressure zone device. However, OEPA stated that the air gap requirement in Ohio was necessary to provide maximum protection for the public in instances where a contaminant may cause severe morbidity or death, and that the rules allow for alternate solutions in lower risk situations. OCTC also requested clarification that an approved backflow preventer may be installed within chemical plants in instances where the water meter is located outside the facility, provided that the backflow preventer is not bypassed by any internal water connection. The Division did not adopt the recommended change as it stated it is necessary to ensure that the water supplier has authority over the preventer and that the preventer is positioned in a manner that prevents it from being bypassed on the premises. However, the Division noted that the removal of language referencing that the backflow preventer

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is typically installed at the meter may address some confusion regarding this issue. Belmont County Water asked for clarification regarding the requirement that a reduced pressure principle backflow preventer be used at yard hydrants with weep holes. The Division responded to the comment stating that the requirements have not changed, but that the rule has been reorganized for readability.

The business community impacted by the rules includes public water systems in Ohio and consumers who have installed or are planning to install a water use practice that represents a backflow hazard. The adverse impacts created by the rule include the costs and time associated with public water systems conducting surveys and investigations of consumer premises or to conduct educational campaigns to inform consumers of backflow risks every five years (onsite investigations are estimated to cost approximately \$38-\$41 per hour and approximately twenty minutes per site), consumer expenses and time associated with installing, testing and maintaining an appropriate backflow device (estimated by OEPA at between \$525-19,520 for installation and \$225-300 for annual maintenance and testing)) or related equipment in instances where one is required, time and expenses associated with maintaining required records, lost revenue for the public water supply in the event that service must be discontinued due to a cross connection or backflow prevention issue, and the costs of consumers or public water supplies (depending on ownership of the hydrant) installing yard hydrants that comply with the OEPA standards to prevent potential backflows. OEPA states that the adverse impacts to business are justified to ensure that the public is supplied with safe and reliable sources of drinking water.

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

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

Next Steps

At this time, it is Ohio EPA’s plan to move forward with the original filing of these rules with the Joint Committee on Agency Rule Review.

If you have any questions, please contact Mandi Payton at amanda.payton@epa.ohio.gov.