

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Capability Assurance Plans & Requirements for Yard Hydrants, No Changes 2017

Rule Number(s): 3745-87-01, 3745-87-02, 3745-95-09

Date: 10/24/2016

Rule Type:

- | | |
|----------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 3745-87 of the Ohio Administrative Code (OAC) requires certain types of public water systems (PWSs), applying for financial assistance from the federal Water Supply Revolving Loan Account (WSRLA), to provide Ohio EPA with information specific to the system in what is called a capability assurance plan (CAP). PWSs required to meet this

requirement include new community and nontransient noncommunity systems, and existing water systems regardless of their system type. CAPs include all of the following:

- A general plan identifying the scope of the water service to be provided.
- A management plan specifying the financial and personnel commitments needed to provide for effective management and operation of the system.
- A financial plan describing the system's revenues and cash flow for meeting costs of construction and costs of operation and maintenance for at least five years from the anticipated date of initiating operation.

OAC rule 3745-95-09 establishes requirements for yard hydrants with weep holes and conditions for the installation of sanitary yard hydrants.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

The statutes authorizing Ohio EPA to adopt these regulations are section 6109.04 of the Ohio Revised Code (ORC), "Director of environmental protection to administer and enforce," section 6109.13 of the ORC, "Approval of connection to public water system," section 6109.22 of the ORC, "Drinking Water Assistance Fund" and section 6109.24 of the ORC, "New systems to demonstrate technical, managerial and financial capability."

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

OAC Chapter 3745-87 rules are based on 1996 amendments to the Safe Drinking Water Act (SDWA), which included capacity development provisions (referred to as capability assurance in Ohio). The provisions ensure PWSs acquire and maintain the technical, financial and managerial capability necessary to achieve the public health protection objectives of the SDWA.

In addition to the capacity development provisions, the SDWA authorizes the federal EPA to award capitalization grants to states that have established drinking water state revolving fund programs. States may use this money to address infrastructure needs of PWSs through low-interest loans and set aside portions to fund activities which encourage enhanced system management and help prevent contamination through source water protection measures. In order for states to receive all funding available, they must have a capacity development

program and implement it in accordance with federal EPA guidelines. Inability to meet such guidelines would result in a twenty percent reduction of such funding.

OAC rule 3745-95-09 does not implement a federal requirement and is not required for Ohio EPA to retain primary enforcement authority from the Federal Government. However, this rule is used to enable Ohio EPA to administer objectives of the SDWA.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

OAC Chapter 3745-87 requires capability assurance plans from all new community water systems and nontransient noncommunity water systems, as well as applying for the WSRLA funding, and does not exceed the scope of the federal requirements. The rules in this chapter implement U.S. EPA's parameters established in their document, Guidance on Implementing the Capacity Development Provisions of the Safe Drinking Water Act Amendments of 1996.

OAC rule 3745-95-09 does not have a federal counterpart and therefore does not exceed any federal requirements.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose for these regulations is to provide a safe, reliable and adequate water supply. The capability assurance rules help achieve this purpose by ensuring PWSs have the technical, financial and managerial capability to maintain their water supply. The yard hydrant requirements are protective of connections to PWSs where potential contamination to the system may occur, as well as protecting the public by identifying yard hydrants unsafe to be used for human consumption.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

For OAC Chapter 3745-87, each new PWS applicant's final approval of their system is contingent upon whether they have submitted an acceptable capability assurance plan prior to beginning operation. Final approval of a loan from WSRLA is also contingent upon submittal of an acceptable capability assurance plan. Ohio EPA gathers and provides this information in the Drinking Water Assistance Fund (DWAF) Annual Report, which is required by U.S. EPA.

For OAC rule 3745-95-09, Ohio EPA will base success on PWS compliance rates within our drinking water program. PWS compliance rates are typically discovered through reported data and during sanitary surveys of said system.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders include PWS owner and operators, consultants, environmental organizations and in general, the public at large. The only measure someone has to take to be notified of DDAGW's potential rule activity is to request to be added to our electronic or hard-copy mailing list.

Stakeholders were notified of Ohio EPA's plans to potentially file the capability assurance plan rules in OAC Chapter 3745-87 with no changes on Oct. 6, 2016.

Stakeholders were notified of the Agency's plans to potentially revise OAC rule 3745-95-09 and include lead free provisions on Aug. 5, 2015. However, Ohio EPA is not prepared to revise this rule without further consideration on implementing this provision as it pertains to yard hydrants at campgrounds in Ohio.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No comments were received during each Early Stakeholder Outreach period. Upon the close of the interested party review period, Ohio EPA will consider comments and prepare a summary detailing the Agency's response to comments.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The measurable outcomes of these rules are to achieve the public health objectives of the SDWA by 1) ensuring PWSs acquire and maintain the technical, financial and managerial capability necessary, and 2) ensure the public and PWSs are protected from contamination that can occur from the use of yard hydrants.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Ohio EPA does not have the option of an alternative regulation for OAC Chapter 3745-87 because the development of the capability assurance program to meet U.S. EPA's guidelines was necessary for the Agency to receive federal funding to be redistributed to Ohio PWSs.

The regulations in OAC rule 3745-95-09 maintain consistency with existing agency-wide standards.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Ohio EPA considers these rules to be performance based regulations. OAC Chapter 3745-87 rules help PWSs and the Agency identify if there are deficiencies in any of the technical, managerial and financial aspects of the system. The outcome is to help the PWS develop both short and long-term planning to address deficiencies. OAC rule 3745-95-09 protects the public from yard hydrants used for purposes other than human consumption and requires protection when these hydrants are connected to PWSs.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Agency reviewed current regulations to determine there are not duplications.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio EPA implementation of these rules include the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing rule revisions.
- Developing internal procedures and guidance for staff to use in implementing rules.
- Regularly notifying staff of rule changes.
- Giving presentation on rule updates.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The impacted business community includes all new community and nontransient noncommunity PWSs, existing PWSs applying for WSRLA funding, and businesses with yard hydrants installed or that will be connected to a PWS (e.g., a campground).

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

OAC Chapter 3745-87: There are both financial impacts to new PWSs and systems applying for WSRLA funding. The cost to comply with the requirements of OAC Chapter 3745-87 includes the amount of time it takes to complete a capability assurance plan multiplied by the cost of man hours. This cost can range depending on whether the PWS is a new or an existing system, and the experience of the personnel.

A new PWS would likely not have the personnel to complete and submit the plan, and may choose to contract for services, which accounts for a higher cost. However, if they do have experienced personnel to complete and submit the plan, the cost would be significantly lower. Existing PWSs would not necessarily need to do as much information-gathering and the overall cost would be significantly lower if they have knowledgeable staff that can assist in developing or updating the plan.

Ohio receives approximately 18 plan approval applications for new PWSs annually. Each new community and nontransient noncommunity system must complete a capability assurance plan. During WSRLA funding program year 2015 (July 1, 2014 – June 30, 2015), 29 existing community and nontransient noncommunity PWSs applied for WSRLA funding and completed their capability assurance plan.

OAC rule 3745-95-09: The financial adverse impact is to businesses installing new or replacing unacceptable yard hydrants. Unacceptable yard hydrants would be those with weep holes that do not meet the specifications of rule.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a

“representative business.” Please include the source for your information/estimated impact.

OAC Chapter 3745-87: The average cost as provided by the Ohio Rural Community Assistance Program (RCAP) for a new or existing PWS with knowledgeable staff to complete the plan could be approximately \$2,500 (average time spent is 50 hours at a pay rate of \$50 per hour). The average cost for a PWS that contracts for assistance with completing the plan may be about \$15,000 (average time spent 120 hours at a pay rate of \$125 per hour). For PWSs with a population of 10,000 or fewer, Ohio RCAP would absorb some of the cost dependent upon the needs of the system (technical assistance, exploring cost efficiency, etc.).

OAC rule 3745-95-09: The cost of replacing yard hydrants with weep holes that do not meet the requirements of the rule is approximately \$673 (to replace it with a sanitary yard hydrant). Another cost may be for an approved backflow prevention device. An appropriate device would amount to a one-time cost of \$140 to \$580, depending on the diameter of the device needed. The device could be installed in couple of hours by the PWS or if needed, a licensed plumber.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Agency considers the overall cost for complying with these regulations to be minor in comparison with ensuring the PWSs are able to obtain financial assistance to address degrading infrastructure and prepare for managerial replacements, and ensuring the public is supplied with a safe and reliable source of drinking water.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Ohio EPA does not find compliance with the capability assurance plan rules to be burdensome for small entities and businesses, and therefore does not exempt them from completing a plan. Also, there is assistance available to them through the Ohio Rural Community Assistance Program (RCAP). Ohio RCAP will provide help to small entities seeking financial assistance.

Ohio EPA does not provide any exemption for yard hydrants with weep holes, but does permit these types of hydrants to exist under certain conditions (e.g., if they are labeled for non-potable use or the weep hole is sealed).

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Ohio EPA does not assign fines and penalties for first-time offenders in most instances, and prefers to obtain compliance through outreach first and, if needed, written notice of violations prior to any type of formal enforcement.

18. What resources are available to assist small businesses with compliance of the regulation?

For technical assistance, small business PWSs can turn to Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) and their Ohio EPA District Office Inspector.

Small business PWSs could also obtain assistance from Ohio RCAP. Ohio EPA sets aside part of the federal capitalization grant for Capability Assurance Plan Assistance. Ohio EPA uses this funding to contract with Ohio RCAP to provide assistance for PWSs with a population of 10,000 or less. Some examples of the assistance they provide include the following:

- Help small systems prepare their loan applications, including determining the ability to repay.
- Assist small PWSs with determining the most cost effective action for providing a safe drinking water supply.
- Help with developing and/or completing their capability assurance plan.
- Sponsor training seminars such as utility board training, financial management, asset management, and budget and rate setting training.