

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: 2016 Iron and Manganese Treatment

Rule Number: 3745-91-09

Date: 4/19/2016

Rule Type:

New

5-Year Review

Amended

Rescinded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.

Ohio EPA is proposing to amend rule 3745-91-09 of the Ohio Administrative Code (OAC), which describes circumstances under which public water systems (PWSs) are required to provide treatment for removal of iron and manganese. This rule has been reviewed pursuant to the five-year rule requirements set forth in Ohio Revised Code (ORC) Section 106.03 and the division is proposing minor changes. OAC Rule 3745-91-09 was previously included rules package to be filed with no changes.

The proposed revisions to OAC Rule 3745-91-09 do not change the intent of the rule but clarify that existing community systems making modifications to their source or treatment are required to provide treatment to remove iron and manganese to meet the secondary maximum contaminant level (MCL) for both contaminants.

- 2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**
 ORC Section 6109.04 authorizes the Agency to adopt this regulation and states that the director shall “adopt, amend, and rescind such rules in accordance with Chapter 119. of the Revised Code as may be necessary or desirable to...govern public water systems to protect the public welfare, including rules governing contaminants in water that may adversely affect the sustainability of the water for its intended uses or that may otherwise adversely affect the public health or welfare.”
- 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.
 No, OAC Rule 3745-91-09 does not implement a federal requirement and it is not required for Ohio EPA to retain primary enforcement authority from the Federal Government. However, this rule is used to help enable Ohio EPA to administer the Safe Drinking Water Act.
- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**
 OAC Rule in 3745-91-09 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 public purpose for adopting this regulation is to ensure the availability of a safe and adequate supply of public drinking water. This rule helps achieve this purpose by describing the circumstances under which PWSs are required to provide treatment for removal of iron and manganese.
- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**
 The Agency will base success of this regulation on PWS compliance rates within our various drinking and ground water programs. 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 owners and operators, consultants, environmental organizations and the general public. The only measure a person has to take to be notified of the DDAGW's potential rule activity is to request to be added to our electronic or hard-copy mailing list.

OAC Rule 3745-91-09 was originally included in the "Plan Approval and Consumer Confidence Reports (CCR) Rules" package, which was to be filed with no changes. Stakeholders were notified of this rules package on April 1, 2015.

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

During the Early Stakeholder Outreach for the package, a comment was received that the rule should more clearly state that existing community water systems are required to provide treatment to remove iron and manganese to meet the secondary MCL. This comment led to this rule being drafted with changes.

Upon the close of the interested parties review period, Ohio EPA will consider comments and prepare a summary detailing the agency's response to the comments and outlining any changes made to the rule.

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?

Statutory authority for this rule is established in Section 6109. of the Revised Code. Ohio EPA promulgated this rule under OAC Chapter 3745-91. The federal counterparts, which include the SDWA Amendments of 1996, are the foundation for this rule. References used include the latest revisions to 40 CFR Parts 141 and 142. The measurable outcome is to ensure PWSs are meeting the secondary maximum contaminant levels for iron and manganese. Installation of treatment may be required in order to achieve this outcome.

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?

The regulations in OAC Rule 3745-91-09 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.*

OAC Rule 3745-91-09 is performance based because it specifies a required outcome. The rule requires PWSs to provide treatment to remove iron and manganese to meet the secondary MCL.

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

Ohio EPA reviewed current regulations and determined there are no 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 this rule includes the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing the rule amendments.
- Developing internal procedures and guidance documents for staff to use in implementing rules.
- Regularly notifying staff of rule changes.
- Giving presentations 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;

PWSs in the state of Ohio of all population sizes and types are impacted by these rules. Community PWSs are especially affected by these rules because OAC Rule 3745-91-09 specifies that community systems are required to provide treatment to remove iron and manganese to meet the secondary MCL.

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

The adverse impacts of this rule are the costs associated with treatment for the removal of iron and manganese.

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.

The estimated cost of iron and manganese treatment required by this rule varies greatly depending on the size of the system. For example, for extremely small community water systems, such as nursing homes and apartment buildings, the estimated cost would be between \$13,466 and \$67,231. For a very small community of 250 people, the unit process for pressure filters is estimated to cost about \$268,924. The cost would increase to approximately \$403,386 for a community of 1,000 people. The estimated annual operating cost would be about \$1,345.

Figures are updated using U.S. Department of Labor, Bureau of Labor Statistics Inflation Calculator used to account for inflation from 2001 to 2016.

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 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.

These rules primarily affect community PWSs and do not provide any exemptions or alternative means of compliance for small businesses.

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, 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), their Ohio EPA District Office Inspector, or the Rural Community Assistance Program (RCAP). Ohio EPA contracts with RCAP to provide assistance for PWS with a population of 10,000 or less.