



## Division of Drinking and Ground Waters Response to Comments

### Proposed Changes to Contingency Plans Rule

3745-85-01, Contingency Plans.

### Agency Contact for this Package

Corin Bonnett, Division of Drinking and Ground Waters (DDAGW)  
(614) 644-2752, [corin.bonnett@epa.ohio.gov](mailto:corin.bonnett@epa.ohio.gov)

Ohio EPA issued public notice and requested comments for the period of June 27, 2016 to July 27, 2016 on proposed rules in the Ohio Administrative Code (OAC). This document summarizes the comments and questions received during the comment period.

Ohio EPA reviewed and considered all comments received during the comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

#### **Comment 1:**

**The following are comments on proposed language that requires systems using automation to practice operating their system manually each month:**

“In reference to proposed change OAC 3745-85-01 (D)(5), we agree that good contingency planning is a must for all Public Water Systems and manual operation is a valid exercise. However, asking plants to operate ‘manually’ once per month is excessive; once or twice annually should be sufficient. The last thing we want to do is upset the plant operations during HAB's season while trying to complete a monthly ‘manual’ operations exercise.” **(Toledo Metropolitan Area Council of Governments)**

“We agree that good contingency planning is a must for all Public Water Systems. However, asking plants to operate ‘manually’ once per month is excessive; once or twice annually should be sufficient, if each operator is trained properly. The last thing we want to do is upset the plant operations during HAB's season while trying to complete a monthly ‘manual’ operations exercise.” **(Ron Wetzel, Ottawa County Regional Water Treatment Plant)**

“Requiring treatment plants to go into manual operation on a monthly basis is not only impractical for plants the size of Cleveland's, but is also potentially

dangerous. This requirement serves no purpose and has a cost associated with it. A return to manual operation requires that additional staff be called in to work. The number of people required can vary greatly depending on the size of the plant. Additionally, there are quite a few variations on what can go wrong with a SCADA system. It is usually not the whole thing that goes down, but a component of it.” **(Cleveland Water)**

“Proposed OAC 3745-85-01(D)(5) For a public water system of Columbus' size, the requirement to exercise the manual operation of the water system-plants and distribution system-under the scenario of the loss of automation would take Columbus to the limits of its staffing capabilities and be expensive and extremely burdensome. Columbus proposes that this scenario be subject to a table top functional exercise every five years.” **(Columbus Division of Water)**

“D(5): Public water systems that use automation to monitor or control the systems shall include plans to manually operate the public water system in the event of loss of automation. These plans shall be exercised at least monthly. Documentation of the exercises shall be included in the public water system's operation and maintenance records. *While the City agrees loss of automation as a scenario should be exercised periodically, the City views a monthly frequency to be excessive. The City suggests twice per year.*” **(City of Perrysburg)**

“(D)(5) - Many water systems have very complete operations throughout their treatment plant and distribution systems. This can include balancing water quality from multiple treatment plants, managing multiple pressure zones, ensuring adequate fire flow, ensuring proper electrical usage, ensuring water age does not become excessive and many other items.”

“We fully support periodic manual operation of portions of the system and we understand the intent of this section is to ensure that system operators are familiar enough with the system to be able to operate it without system automation. Especially for big systems, operating the entire system manually would be an extremely time consuming exercise and introduce un-necessary risk on a routine basis. We believe that the intent of this can be accomplished by having water systems operate portions of their systems without automation monthly and should be limited to operating portions of the system at different times so as to maintain the integrity of the system and ensure the system is not compromised. We suggest modifying this section to say:

“A portion of the plans shall be exercised monthly in such a way as to not jeopardize the system, and to the extent possible, different sections of the plan should be exercised each month.” **(Greater Cincinnati Water Works)**

**Response 1:**

We made the revisions proposed by Greater Cincinnati Water Works. These revisions should address concerns about taking a whole system down, taking

critical portions of a system down during a critical season and effects on very complex facilities which require additional human resources.

**Comment 2:**           **The following are comments on proposed language that requires systems with auxiliary power to practice operating the system on auxiliary power each month:**

“Proposed OAC 3745-85-01(D)(6) Columbus can reasonably determine on a monthly basis that our auxiliary power systems are functioning. However, Columbus believes it is unreasonable to require Columbus to operate on auxiliary power on a monthly basis.” (Columbus Division of Water)

“(D)(6) - Similar to the comment for (D)(5), it may not always be advisable to exercise all auxiliary power at the same time, particularly in larger more complex systems. We recommend wording similar to the comment for (D)(5) be included for (D)(6).” (Greater Cincinnati Water Works)

**Response 2:**           We made the revisions proposed by Greater Cincinnati Water Works. This should address concerns about this provision.

**Comment 3:**           **The following are comments for proposed language that require systems to use their contingency plans, notify Ohio EPA and develop an after-action report for minor or routine incidents such as small line breaks:**

“(G)(2) - Based on the language in this section, in combination with the list of circumstances listed in (D)(4), OEPA is proposing that utilities notify OEPA of what may be relatively small and very frequent circumstances. For example, every pump or motor failure, small water main break, or power failure, no matter how short or whether it causes a problem with service, would require notification.”

“In the case of larger, more complex systems, OEPA would potentially receive several notifications each day from each utility for instances that are, in fact, normal daily problems easily handled by utility staff. We do not believe this is the intent of this particular section. As written, this requirement would be overly burdensome to both the utilities and OEPA staff and at the same time, would imply that typical breakdowns and failures, which are quickly remedied or have reliable backup procedures, are in fact indicative of poorly run systems. We recommend this section be re-worded to limit notification to the OEPA for situations which produce a significant adverse impact on utility operations and endanger the production of safe drinking water.”

“(G)(3) - Similar to the comment for (G)(2), producing an After-action Report (AAR) for every minor incident, including small line breaks, will defeat the purpose of an AAR and lead to unnecessary documentation serving no purpose. Small incidents such as small line breaks are part of the routine

operations of a utility and most utilities have well established SOPs and redundancy in place to handle small crises. If a utility does not have these in place, it should be caught during the sanitary survey and the Director (according to (F)(4) of this proposal) could require development or improvement of the plan. AARs should be reserved for documenting unusual and extreme events. We suggest modifying this section to require AARs only for significant events.” **(Greater Cincinnati Water Works)**

“In reference to proposed change OAC 3745-85-01 (G)(2), we certainly understand the need to notify Ohio EPA for large scale emergencies involving plant operation or the main distribution system. However, we question the requirement for notifying Ohio EPA immediately for frequently occurring incidents such as small line breaks. Typically, the use of the contingency plan for small line breaks is very limited where the only requirement may be to notify a small group of affected customers and provide instructions. The actual use of the plan may be only in using an example notice from the appendix. In this case, would the use of the notice be defined as an ‘activation of the contingency plan’? We respectfully request clarification and/or the exclusion of small line breaks from OAC 3745-85-01 (G)(2).” **(Toledo Metropolitan Area Council of Governments)**

“Sections (4)(e) and (G)(3) indicate that all water main breaks would trigger the use of the contingency plan and the required follow-up reports. Most water main breaks are quite routine, in no way an emergency, and repaired within a few hours. Only significant water main breaks should trigger the activation of the contingency plan. A significant water main break could be defined in the rule as a break that affects more than 75 services, or a certain percentage of a pressure zone, or some other criteria. Having small breaks considered routine rewards systems that have an extensive and working valve network that enables the isolation of main breaks.”

“Language should also be included so only breaks that drop pressure below 20 psi would trigger the use of the contingency plans. Many main breaks are fixed ‘live,’ meaning customers keep water service and no boil advisory is needed. These instances should not be considered emergencies.” **(City of Norwalk)**

“How will the future depressurization rule/policy be applied towards this requirement? Based upon (G)(3), it appears every waterline break, regardless of size, is required to have an incident report filed in which the Contingency Plan's effectiveness is evaluated. Cleveland Water, with 5500 miles of pipe, has over 1800 breaks per year. We can assure the Agency the Contingency Plan is not looked at or even needed for over 99% of the breaks we repair. An ‘emergency’ that occurs five times a day is not a true emergency. This requirement serves no useful purpose for large systems and should be removed from the rule.” **(Cleveland Water)**

“Proposed OAC 3745-85-01(G)(3) The proposed change would require Columbus to prepare an after-action report for ‘small line breaks.’ In a system of Columbus’ size and age, there are hundreds of small line breaks every year. Small line breaks do not trigger the implementation of our existing Unified Emergency Response Plan. This proposed requirement should be deleted.”  
**(Columbus Division of Water)**

**Response 3:** We revised Section (D)(4)(e) to say, “line breaks that affect the routine delivery or treatment of water” and we deleted the mention of small line breaks in Section (G)(3).

**Comment 4:** **The following are comments on providing a copy of the contingency plan to the county EMA:**

“Regarding the proposed revision of water utilities providing county EMA offices with a copy of their Contingency Plan, this is not necessary from Lucas County EMA’s perspective. Our EMA personnel will not utilize the Contingency Plan itself during an EOC activation or at any other time as we are not the subject matter experts. Lucas County EMA needs two key pieces of information from the utility 1) the issue that can, is, or will impact the community and 2) the type of support the utility requires from EMA. Therefore, we recommend the requirement for a water utility to provide a county EMA with a copy of their Contingency Plan be removed and the original language that the utility make the plan available to EMA upon request be reinstated. We also recommend that the utility make county EMA aware of how the utility will notify county EMA that they are implementing their Contingency Plan and provide the information mentioned in item 1) and 2) of this paragraph.” **(Lucas County EMA)**

“C(3): ...also supply a copy of the plan to the county emergency management agency (EMA). *At least some County EMA personnel objected to the lack of consultation on this requirement, noting the considerable amount of staff time involved in maintaining records and in the preparation, conducting of, and post-evaluation of emergency plan exercises.*” **(City of Perrysburg)**

**Response 4:** In developing revisions to these rules, Ohio EPA consulted with the state EMA. Personnel from the state EMA felt it was important that copies of the contingency plan be maintained by the local EMA to ensure that local emergency officials and public water systems are working closely together and able to provide an efficient and coordinated response in the event of an emergency. Having a copy at the local EMA allows local health professionals and other state partners to get a head start at identifying constituent populations which may need assistance.

In addition, having a copy of the contingency plan at the local EMA allows the plan to be readily accessed in case the copy of the contingency plan maintained at the water plant is destroyed in the event.

The contingency plan includes the information requested by Lucas County EMA.

**Comment 5:** “(C)(3) - We believe providing a copy of the contingency plan to the local EMA provides a security risk and unnecessarily burdens the EMA to keep the document confidential. We do however, support working closely with local EMA's and allowing them to view the contingency plan. We suggest this requirement be changed to allow EMA to view the contingency plan at the utility, but that the utility not be required to provide a copy of the plan to the EMA. We also support language encouraging the utility to develop a working relationship with their EMA.” **(Greater Cincinnati Water Works)**

**Response 5:** Section (H) of this rule addresses security. We consulted with the state EMA and they felt it was important that contingency plans be maintained at local EMAs.

**Comment 6:** “Paper copies of an emergency contingency plan are cumbersome, difficult to update and keep current, and environmentally unfriendly. Cleveland Water maintains an electronic plan on our network. One or two paper copies are located at the Utilities Administration Building, one as a continual ‘mark-up’ copy, the other as an actual working copy. To provide paper copies at every location listed is just not practical for a system the size of Cleveland. We should be given the option of keeping the document in electronic format.” **(Cleveland Water)**

**Response 6:** There is nothing in the rule that prevents the utility from maintaining an electronic copy of the contingency plan.

**Comment 7:** “C(1): This copy of the contingency plan shall be available onsite for twenty-four hour inspection by representatives of the director or emergency response personnel. *It should be understood that this copy will still be locked up and will require the presence of an approved employee to unlock the office/building where it's kept.*” **(City of Perrysburg)**

**Response 7:** We understand and due to security concerns, we expect that a utility official would need to provide access to the contingency plan.

**Comment 8:** **The following are comments on the role of county EMAs:**

“Lucas County Emergency Management Agency (EMA) was made aware of the Draft - Ohio EPA Revisions to Contingency Plan Rule through our partnership with local drinking water utilities and the Toledo Metropolitan Council of Governments (TMACOG). As an agency committed to the health, safety, and

welfare of our communities, we are submitting the following perspective pertaining to the Draft Revisions.”

“Our overarching concern is that Ohio EPA has proposed writing into an Ohio Administrative Code (OAC) seemingly expected duties and responsibilities of county EMAs. It is extremely troublesome that there appears to be a lack of communication and no collaborative effort between Ohio EPA and Ohio EMA on the proposed revisions. This lack of communication and collaboration is evidenced in that Lucas County EMA was brought into this process by our drinking water utilities not Ohio EMA or the Emergency Management Association of Ohio. When Lucas County EMA contacted Ohio EMA regarding these proposed revisions, Ohio EMA indicated an official review and approval had not been performed by their agency. Thankfully, the utilities thought we should be involved in the process given that County EMAs are mentioned numerous times throughout a document that Ohio EPA is attempting to have made into law.”

“Prior to the July 12th phone call between TMACOG and Mike Baker, it was thought that County EMAs would be highly relied upon for the proposed revisions related to ‘exercises.’ However, during the call Mr. Baker conveyed that the exercise requirements are open to interpretation per the needs of each utility. Therefore, Lucas County EMA recommends removal of all language related to ‘county EMA’ and ‘exercises’ as it is open to interpretation by the water utility and does not involve county EMAs in a functioning role. If the actual intent of the ‘exercises’ is to have the water utility review their plans on a consistent basis, Lucas County EMA recommends that type of language, rather than ‘exercises’ should be utilized to provide clarity.” **(Lucas County EMA)**

**Response 8:**

Ohio EPA has been in contact with Ohio EMA throughout the rule drafting process. At the Spring 2016 Ohio Emergency Management Conference, water contingency planning was a topic of discussion and it was mentioned that this rule was under revision.

The only provision in this rule that mentions utilities contacting EMA regarding exercises is related to hazardous spills and this provision is not a new provision, it has been in the rule. We are not requiring EMAs to develop new or additional exercises. However, we are encouraging cooperation between water systems and their local EMAs in order to ensure that in the event of an emergency, water services are returned to normal as quickly as possible.

**Comment 9:**

**The following are comments on the frequency of emergency exercises:**

“(E) - We support this section and believe regular emergency exercises will help utilities to better prepare for emergencies.” **(Greater Cincinnati Water Works)**

[Section (E)(1-3)] “Cleveland Water conducts table top exercises with key personnel as needed. Ohio EPA Northeast District Office staff attended our last one in the Spring. In order to conduct an appropriate exercise for a system the size of Cleveland Water, we need approximately 50 people to be in the room. This is not something that is easy to do on an annual basis and does not warrant an annual frequency. To do a tabletop exercise in which each circumstance identified as a potential risk is required to be practiced every 5 years is overkill. Text book crises and emergencies are not reality, and we believe our table top exercise is far more useful than an arbitrary ‘check it off the list’ type of exercise dictated in this rule. Additionally, the documentation requirement in (3) is unnecessary, and therefore is counter to the Paperwork Reduction Act.” **(Cleveland Water)**

“Proposed OAC 3745-85-01(E)(1) The proposed changes would require Columbus to exercise responses to at least two circumstances (proposed rule requires a minimum of ten circumstances) annually to exercise all of them every five years. This is unduly burdensome. Columbus believes that the schedule should be extended to reduce the burden that would be imposed by this requirement.” **(Columbus Division of Water)**

“E(1): At least annually, public water systems shall exercise the responses to one or more of the circumstances identified in the plan. Each circumstance identified by the plan shall be included in an exercise at least once every five years. *The demands on the local EMA offices will be enormous in assisting PWS to set up table-top exercises or exercises in the field. The requirement to test every circumstance at least every 5 years is quite burdensome. A lesser frequency should be substituted.*” **(City of Perrysburg)**

**Response 9:**

We added language to Section (E)(1) to clarify that more than one circumstance may be combined in a single scenario. For example, a natural disaster could cause extended power failure, loss of water and line breaks while the operator of record is on vacation. This exercise would cover 5 of the 10 most likely circumstances. Based on this flexible approach, we do not believe the annual requirement is excessive or causes undue hardship.

**Comment 10:**

“For Section (B), we believe it sets an unrealistic, unattainable, and unsustainable requirement to state that the contingency plan is designed to ensure the delivery of safe drinking water at all times. We suggest that Section (B) be written as follows:

“Each community water system and wholesale system shall prepare and maintain a written contingency plan. When routine methods of delivery or treatment are compromised, the contingency plan shall provide for the protection of public health to the extent possible, through actions including but not limited to the notification of users, the provision of alternate sources of water and the restoration of service.” **(Greater Cincinnati Water Works)**

**Response 10:** We made the revisions proposed by Greater Cincinnati Water Works.

**Comment 11:** “As for the proposed revision pertaining to the provision of water to support affected persons, Lucas County EMA does not view this as a responsibility of the water utility alone but rather in collaboration with their jurisdiction. Obtaining resources from outside one's jurisdiction is a function of an activated EOC. However, to prevent the need for water distribution Lucas County EMA recommends that utility's procurement of water plan include contacting their county EMA to request activation of the State's Public-Private Partnership so that bottled water will be locally available for purchase. We also recommend that the Ohio EPA as well as water utilities include the preparedness information of one gallon of water per day per person in their public education materials.” **(Lucas County EMA)**

**Response 11:** We recognize that contacting the local EMA and activating the Public-Private Partnership is one way for a system to deal with the issue and we encourage this type of information to be included in the contingency plan. However, Ohio EPA believes that part of contingency planning is not depending solely on the local EMA or State EMA to provide water to customers. Upon finalization of the rule, we will be reviewing all associated public education materials and making changes if necessary.

**Comment 12:** [Section (D)(7)] “This section appears to be a small system issue. We assume redundancy of plants in the Cleveland system will suffice for paragraph (D)(7). This should be written into the rule accordingly. As a point of consideration, if Cleveland Water requested assistance from every viable water system bordering our system, the summation of their available plant capacities would not equal one of our plant capacities. Therefore, interconnections to other systems for the intent of replacing one of our plants is simply not possible. A simple variance for this should be provided in rule.” **(Cleveland Water)**

**Response 12:** The rule language is flexible enough to allow systems to describe their three alternate sources of water. This may be redundant plants within the system, the provision of bottled water, emergency connections, etc. Each utility can describe their chosen methods in the contingency plan. We will include examples of alternate sources of water in the contingency plan template.

**Comment 13:** [Section (D)(7)] “The requirement to provide 1 gallon of water per person should/ can be met by plant capacity of our remaining plants if one (or even two plants) should go down. We believe this requirement is aimed at small systems and should be identified as such.” **(Cleveland Water)**

**Response 13:** This requirement is aimed at all systems. The situation you describe would meet the requirements of the rule and should be included in your contingency plan.

**Comment 14:** “Proposed OAC 3745-85-01 (D)(7)(c) and (D)(8) The proposed requirement that Columbus provide one gallon per day per person served by the system cannot be met in the event of a system-wide shut down and the implementation of bottled water as an alternative source. While Columbus has made arrangements with the Franklin County Emergency Management Agency for supplying bottled water under limited system shut downs, there will not be sufficient bottled water resources to provide one gallon per day per person in the event the entire system is shut down. This requirement should be eliminated.” **(Columbus Division of Water)**

**Response 14:** The requirement to provide water has always been a requirement of these rules. We have just provided clarification that only a small percentage of a system’s total capacity needs to be provided during an emergency. The previous rule language required contingency plans to address the provision of safe water during emergency conditions. We believe that the public has an expectation that even during emergency conditions, all efforts will be made to ensure their basic drinking water needs are met.

**Comment 15:** **The following are comments on Section (D)(3):**

“(D)(3) - Utilities cannot guarantee that all sampling points are accessible at all times. In addition, the specific sampling points will vary depending on the type of emergency. We suggest the second to last sentence in this paragraph be changed to read:

“Public water systems shall ensure protocols are specified in their contingency plan to identify appropriate and accessible sampling points or to describe how a sampling point may be selected in a particular situation.” **(Greater Cincinnati Water Works)**

“Proposed OAC 3745-85-01(D)(3) The proposed language requiring all sampling locations to be accessible at all times is not possible. Columbus sampling points include private businesses that are not accessible at all times. This language should be deleted. The proposed language regarding ‘treatment options’ being included in procedures to be followed under most likely emergency scenarios is undefined and vague. ‘Treatment options’ should be defined more clearly. The last sentence of the proposed rule - ‘The director may require the public water system to include additional circumstances’ -is overly broad, vague, and leaves too much discretion with Ohio EPA. This language should be deleted or more narrowly tailored.” **(Columbus Division of Water)**

“We believe the last three sentences in paragraph (D)(3) need clarification. Sampling plans and public notification requirements are already provided by rule. ‘Treatment options’ is also an unclear requirement. If Section (D)(3) is solely aimed at addressing HABs, this is already required by rule through the Optimization Treatment Protocol and General Plan requirements.” **(Cleveland Water)**

**Response 15:** We made the revisions suggested by Greater Cincinnati Water Works. The revisions provide more flexibility.

Sampling plans, treatment options and notifications vary, depending on the circumstance selected in the contingency plan and the capability of the particular facility. For each circumstance identified, appropriate treatment options should be included if applicable.

Ohio EPA believes allowing the director's discretion is both flexible and appropriate to address emerging contaminants. We revised the language in Section (D)(3) to say, "The director may require the public water system to include additional circumstances when the director determines that there is a threat to human health."

**Comment 16:** "There are two concerns with the proposed revision requiring a water utility have a contact list of critical needs- users such as hospitals, dialysis centers, and nursing homes. The first concern is that this proposed revision does not specify the reason for the utility to contact health and medical facilities. If there is a need for health and medical facilities to be contacted, it would seem that a protective action is necessary. The development of protective actions is a function of the Emergency Operations Center (EOC) Executive Group. The utility can make recommendations pertaining to protective actions, however, it is the Executive Group that makes the protective decisions. It is after this function occurs that notifications are made. This would include notifications to health and medical facilities. Therefore, it is our recommendation, that this section of the proposed revisions be deleted as this pertains to a function that occurs in an Emergency Operations Center (EOC) and not a water utility. The second concern is with the contact list itself. For Lucas County, this type of contact list is maintained by our ESF-8 partners such as the Health Department and the Hospital Council. The notification to these facilities would occur through our ESF-8 desk once the EOC has been activated and protective action decisions have been made. Therefore, Lucas County EMA recommends that water utilities not be assigned the task of maintaining an emergency contact list for health and medical facilities as this is already a responsibility of other organizations in the county. Lucas County EMA further recommends that utilities not directly contact health and medical facilities as this usurps the EOC process." **(Lucas County EMA)**

**Response 16:** The contingency plan rule has always had a requirement for a critical users list. A number of situations identified by contingency plans do not require the activation of the Emergency Operations Center. However, critical users may need to be aware of the situation at hand. In these cases, it is imperative that a public water system have contact information and the ability to contact these users to advise them of the situation. Ohio EPA does encourage water utilities to coordinate with local EMAs to ensure they identify all of the critical users within their service area. Some critical users may not be just health and medical

facilities, they may be manufacturers and schools that may not be covered by the procedures mentioned by the commenter.

**Comment 17:** “Proposed OAC 3745-85-01 (D)(9) This proposed change would require Columbus to describe the process by which it determines the critical water users list. This is a needless regulatory burden. The important requirement as provided in the currently effective rule is providing the list itself. This proposed change should be deleted.” (Columbus Division of Water)

**Response 17:** Ohio EPA needs to see the process used to determine if a utility missed any critical users. Simply looking at the list does not tell us how it was developed. Guidance on the process for determining critical water users will be included in the contingency plan template.

**Comment 18:** “Upon review of the CSI-Ohio, Business Impact Analysis for 2016 Contingency Plans, Lucas County EMA notes that the costs of the proposed revisions for Contingency Plans goes far beyond the cost of producing the actual Contingency Plan as stated in the document. The costs for implementing the proposed revisions as written must include at a minimum the following:

- Salary and benefits for a newly created, fulltime position of Exercise Planner
- Salary and benefits for all water utility personnel to participate in exercise training and education
- Salary and benefits of all personnel involved in the various components of an exercise program to include the planning committee, controllers, evaluators, and participants.” (Lucas County EMA)

**Response 18:** We added language to Section (E)(1) to clarify that the exercises do not have to be full-scale or functional exercises (which would require a planning committee, controllers, and evaluators) and that exercises can be conducted during normal business hours when water utility personnel are already being paid salary and benefits to conduct their job. Because of this, no additional expenses are required. Due to the fact that only one exercise per year is required, Ohio EPA does not believe a full-time Exercise Planner would be justified and therefore did not include this in our cost estimate.

**Comment 19:** “The cost analysis was flawed. A neighboring City representative reported that he cannot even read his existing contingency plan in two hours; I estimate the time required to update the City’s contingency plan to comply with this proposal would take at least 25-30 hours. The annual updates and exercises may take over 50 person hours.” (City of Perrysburg)

**Response 19:** Ohio EPA has acknowledged that preparing the contingency plan for larger system will be more expensive and more time consuming. The majority of items that we are proposing are just clarifications and not new requirements. Systems

who met the previous requirements should not incur costs exceeding our projections.

**Comment 20:** “(D)(2) - We suggest adding the requirement that funds not only be available, but also immediately accessible for emergency use to ensure personnel are authorized and have access to emergency resources.” **(Greater Cincinnati Water Works)**

**Response 20:** We revised Section (D)(2) based on this suggestion.

**Comment 21:** “The content of (D)(2) is obviously aimed at small and privately owned public water systems and should be specified as such. For a large water system like Cleveland, this just creates one more issue with maintaining an updated contingency plan and actually serves no purpose for us in an emergency. For example, as a condition of our bond rating, we are required to have a revenue: expense ratio of at least 125% and unencumbered cash requirements of 4-6 months expense. We recommend the Agency expand, update, and enforce the existing escrow requirements already contained in Ohio Administrative Code 3745-81-92. **(Cleveland Water)**”

**Response 21:** Ohio EPA believes the contingency plan is a tool. That tool should spell out how to obtain the funds necessary to abate a circumstance that affects the public water system’s ability to provide safe drinking water so that the operator of record has clear guidance in the time of crisis.

**Comment 22:** **The following are comments on the procedure used to return the system to normal service after depressurization:**

“(D)(13) – The addition of the phrasing ‘If depressurization of *any portion* of the public water system has occurred...’ is unrealistic. For example, the area immediately adjacent to ground tanks and pump suction lines may not have pressure above 20 psi on a regular basis. We suggest using the term ‘Disruption’ from OEPA’s ‘Policy for Evaluating and Responding to Water Distribution Systems’ in which ‘Disruption’ is defined as ‘depressurization due to physical disruptions such as line breaks, valve repairs, new construction, etc. and depressurization due to operational disruptions such as pump failure, power outages, telemetry failure, extreme fire flows, etc’ (see <http://epa.ohio.gov/portals/28/documents/pws/OPR-06-001.pdf> for the OEPA Depressurization Policy). This concept can be incorporated into this proposed rule by modifying the rule language to read:

“If depressurization due to physical disruptions such as line breaks, valve repairs, new construction, etc. and depressurization due to operational disruptions such as pump failure, power outages, telemetry failure, extreme fire flows, etc. the procedure that will be used to return the public water system to normal service.” **(Greater Cincinnati Water Works)**

[Section (D)(13)] “Wouldn't this section be dictated by the current Depressurization Policy or the Depressurization Rule being worked on by Ohio EPA and AWWA? Restating this procedure in the contingency plan is redundant.” **(Cleveland Water)**

**Response 22:** We made the revisions proposed by Greater Cincinnati Water Works.

Language in a policy is not enforceable. A depressurization rule has not been proposed at this time. If a depressurization rule is finalized, we will ensure that the depressurization rule and contingency plan rule match and are not redundant.

**Comment 23:** [Section (C)(1)] “Please indicate the purpose of your emergency response personnel needing to see our Contingency Plan.” **(Cleveland Water)**

**Response 23:** This provision does not just cover Ohio EPA personnel. It covers all emergency response personnel (e.g., police, fire, hazmat or other mutual aid responders). Having access to the contingency plan allows emergency response personnel to assess the scope of an emergency and begin to initiate appropriate actions to ensure public health and safety.

**Comment 24:** [Section (C)(4)] “Please explain 'format acceptable to the director'. We urge the Agency use discretion with requiring material and information that is truly needed by the Agency versus what is not needed for your very specific role in an emergency situation.” **(Cleveland Water)**

**Response 24:** The format acceptable to the director would be communicated to you at the time of the request. Ohio EPA envisions this to either be a hard copy of the contingency plan or an electronic copy of the entire contingency plan. The required material and information that is truly needed by the Agency is specified in this rule.

**Comment 25:** “Please explain the need for a 30-minute return call phone number. All other rule requirements have a 'same business day', '24-hour', or 'end of next business day' requirement. We have a 24-hour emergency hotline number, (216) 664-3060 and emergencies will typically include a call down list of appropriate Cleveland Water personnel. We assume this will suffice for Ohio EPA. Our concern is that a 30- minute return call deadline may not always be met and ramifications for that could involve a violation.” **(Cleveland Water)**

**Response 25:** Ohio EPA is requiring a return call within 30 minutes because in the event an emergency is ongoing, Ohio EPA needs to reach someone who can either stop the situation or begin taking action to abate the situation. There is a greater need during an incident to expedite communications to prevent an incident from becoming a disaster. Waiting 24 hours to be able to discuss an incident with someone from the utility while the emergency is occurring is unacceptable.

Having immediate access to a knowledgeable person allows Ohio EPA to position resources and provide all necessary assistance during an incident. Ohio EPA has used the City of Cleveland's hotline in the past and was placed on hold for fifteen minutes and was not able to speak with a person familiar with the incident within thirty minutes.

**Comment 26:** "In light of paragraph (H), Ohio EPA now believes the Agency can protect the contents of an emergency contingency plan from Freedom of Information Act requests. This was not able to be done when the post 9/11 Vulnerability Assessments were done, hence Ohio EPA returned copies of the VA as they were received. Historically, the Agency has insisted on transparency. Please provide an explanation and procedure, in writing, of how sensitive information will be protected from FOIA requests. By requiring this detailed critical infrastructure information to be submitted, Ohio EPA is taking responsibility for securing the information." **(Cleveland Water)**

**Response 26:** By including Section (H), Ohio EPA is declaring that these documents are not public records. Statutory changes subsequent to the Vulnerability Assessments have given the state agencies the ability to exempt security and infrastructure records from public disclosure. Ohio EPA will follow its existing procedures for protecting sensitive information.

**Comment 27:** "Requiring a map of the Cleveland Water system showing everything requested in (D)(1) is not only difficult, but is also not security- minded. We believe a map of Cleveland's system is not practical for Ohio EPA's use. Rather, we believe the Agency should ensure water systems have these maps available at sanitary surveys. Therefore, Cleveland Water believes this information should be kept in a format acceptable to the water system. If Ohio EPA truly needs this information for finding and isolating leaks in mobile home parks and small municipal water systems, we suggest Ohio EPA target those systems directly. Furthermore, if Ohio EPA staff attempted to use the information, instead of allowing Cleveland Water to do so, the Agency would create an operational hazard. Every valve that is closed can cause a domino effect and a person without a good understanding of our distribution system should not operate valves independently." **(Cleveland Water)**

**Response 27:** The contingency plan is a document designed for use by the facility. This rule provides flexibility for maintaining records in any format. In the event of an incident, the contingency plan (which includes the maps) should be accessible and usable by emergency response personnel.

Having access to the maps allows emergency response personnel to assess the scope of an emergency and begin to initiate appropriate actions to ensure public health and safety. We believe a contingency plan should address personnel. In the case of Cleveland Water, the contingency plan would address staff who would be performing actions during the incident. Ohio EPA staff or

emergency responders would simply use that information to contact the appropriate staff to begin the appropriate actions.

**Comment 28:** “Paragraph (D)(4) items (i) and (j) are new and the purpose needs clarification. Boil advisories, use advisories, and public notification/public education requirements are already in place for MCL, ALE, and treatment technique violations. What specifically is the Agency interested in detailing that is not already specified by rule?” **(Cleveland Water)**

**Response 28:** You are correct. These things are already specified by rule. We expect them to carry over to the contingency plan. When the circumstance calls for the use of boil advisories, use advisories, and public notification/public education, it should be spelled out in the contingency plan.

**Comment 29:** “We assume media broadcasting to critical users is adequate to meet (D)(9). The requirement to have a telephone number where a person can be reached at dialysis centers, et.al., 24 hours per day provides no additional benefit when we broadcast it to the entire Northeast Ohio area. Additionally, many of these centers are not open outside of normal business hours.” **(Cleveland Water)**

**Response 29:** No, media broadcasting to critical users is not adequate to meet this requirement. These users are considered critical due to health or other concerns. It is imperative that a person is contacted.

**Comment 30:** [Section (D)(14)(e)] “We believe this should be reworded to only require key operating and management personnel. We do not believe all employees need to be identified. Additionally, our 24-hour emergency hotline number is available: (216) 664-3060.” **(Cleveland Water)**

**Response 30:** The contingency plan is a document designed for use by the facility. It is important to have the 24-hour phone numbers of all staff personnel because if all of the staff needs to be called to operate the facility during an incident, the system needs to know the contact numbers for their personnel. Ohio EPA does not understand how the use of Cleveland’s 24-hour hotline would allow Cleveland to contact their employees.

**Comment 31:** [Section (D)(14)(n)] “The list of certified laboratories is available on the Ohio EPA website and is updated regularly. Having to maintain an updated paper version is not productive. Additionally, this is unnecessary for large systems like Cleveland who have their own certified laboratories.” **(Cleveland Water)**

**Response 31:** Generally, systems have particular labs under contract for laboratory analysis. All labs necessary for the incidents identified in the contingency plan should be identified in the contingency plan so that personnel are aware of these arrangements. In the event that personnel are authorized to contact any certified lab in the state, a link to Ohio EPA’s certified lab list may be provided.

In the case of Cleveland, if your lab can perform all analyses during the incident, then the appropriate contact number should be included. Ohio EPA would suggest the inclusion of back-up labs in the event Cleveland's lab is affected by the incident.

**Comment 32:** [Section (D)(14)(p)] "Identifying individuals authorized to expend money under the contingency plan is not relevant to large systems. Large municipalities have detailed procurement laws which the associated water utility must follow."  
**(Cleveland Water)**

**Response 32:** The contingency plan has the potential to address emergency situations. It should be clearly identified in the contingency plan what procedures and personnel are required to ensure the production and transmission of water during an incident. This will likely be different than normal procurements and should be specified.

**Comment 33:** "D(4)(f): Natural disaster (e.g. tornado, flood and drought). *Drought is not a sudden-onset event. Thus, it would be difficult to identify the beginning of a drought, if it is to be defined as an emergency event which would require notification to Ohio EPA within 24 hours of the beginning of the event, per (G)(2).*" **(City of Perrysburg)**

**Response 33:** Once you activate your contingency plan, you have 24 hours to notify Ohio EPA. In the specific instance provided in this comment, if a system activated their contingency plan due to a drought, they would have 24 hours from the activation of the plan to notify Ohio EPA.

**Comment 34:** "D(12): In the event that notifications are made in accordance with paragraph (D)(11) of this rule, the public water system shall maintain records documenting the time and method of notification. *While the City recognizes why Ohio EPA would value this documentation, in the frenzied moments of major emergencies, recording accurate times of notices will be difficult if not impossible.*" **(City of Perrysburg)**

**Response 34:** It is important for the water system to record data regarding notifications to ensure that all parties are appropriately notified.

**Comment 35:** "Proposed OAC 3745-85-01(F)(4) Columbus suggests modifying the proposed language to 'a schedule approved by the director.'" **(Columbus Division of Water)**

**Response 35:** We revised Section (F)(4) based on this suggestion. We replaced "provided by" with "acceptable to".

**Comment 36:** "Include climate change predictions in threat circumstance analysis." **(Wendy Drake, U.S. EPA, Region 5)**

- Response 36:** In the event that a system determines that this is one of the most likely circumstances to affect their system, they may include this in their contingency plan. At this time, we are leaving this up to the systems.
- Comment 37:** “Address trends heading towards failure/loss...don’t wait for the absolute failure.” **(Wendy Drake, U.S. EPA, Region 5)**
- Response 37:** We are in the process of developing rules for asset management that will cover this.
- Comment 38:** “Start performing regular adaptation activities to buffer future impacts and add resiliency.” **(Wendy Drake, U.S. EPA, Region 5)**
- Response 38:** We are in the process of developing rules for asset management that will cover this.
- Comment 39:** “Section (G)(1) requires public water systems to ‘follow the contingency plan.’ Better phrasing would be: ‘Follow the contingency plan to the extent emergency circumstances allow.’ Even the best contingency plans cannot foresee every possible set of circumstances. In addition, despite the best efforts of planners, the contingency plan may not contain what turns out to be the best solution. An old saying goes ‘Necessity is the mother of invention.’ A better solution might be generated at the time of an emergency, but could not be used because the rules require following the contingency plan.”
- “The proposed rules themselves contemplate that the contingency plan may not turn out to contain the best option(s). Section (G)(3) requires an ‘after-action report’ that includes any changes that need to be made to the contingency plan. Under the ‘follow the plan’ mandate, the better solution could not be used until the next emergency.” **(City of Norwalk)**
- Response 39:** We revised Section (G)(1) based on this suggestion.
- Comment 40:** “We believe Ohio EPA should prepare a template for all water systems to follow to make sure compliance is relatively easy and straightforward and identifies the information actually needed by Ohio EPA, and does not require information and data that is not needed for a specific purpose.” **(Cleveland Water)**
- Response 40:** There is a template that is currently available on our website. Templates will be updated to reflect new rule requirements once the rule becomes effective.
- Comment 41:** “As Cleveland Water has previously commented, vague Early Stakeholder Outreach notices make it very difficult to provide substantive comments. Frequently, there is very little detail to even offer an opinion or comment. When the Contingency Plan Early Stakeholder Outreach period was opened, there were again very few details provided. Our phone conversations with Ohio EPA

staff indicated the focus of the plans would be towards small village and mobile home park systems based upon some recent experiences of the Agency. This is quite likely why the Agency received no comments during the Early Stakeholder Outreach period, as mentioned in the accompanying Business Impact Analysis document. The draft rule requirements appear to be geared towards small systems, but the extrapolation of these requirements to a system the size of Cleveland is not relevant or practical. This proposed rule must make some type of differentiation between system sizes and expectations in order to make the contingency plan a reasonable and useful document.” **(Cleveland Water)**

**Response 41:** The early stakeholder outreach process is an interested party notification that occurs before Ohio EPA begins their rule-making process. It is considered an early courtesy to those interested parties who have signed up to receive rule notifications. Ohio EPA prepares early stakeholder outreach fact sheets to ensure that stakeholders are brought into the review process as early as possible and to obtain additional input and discussion before the rule language is developed. The early stakeholder outreach fact sheet provides a list of the amendments being considered. The amendments being considered at the time of the early stakeholder outreach may or may not be included in the proposed rule, which is first available to stakeholders during the interested party review period.

**Comment 42:** “How much ‘consult’ing is expected out of the local EMA? Item E2” **(Anita Stechschulte, Ohio EMA)**

**Response 42:** This provision is in the existing rule so we expect a similar level of effort by public water systems. The intent is to have water systems reach out to local EMAs who routinely are involved in hazardous materials exercises so that they can participate and learn from those exercises. We are not expecting special exercises to be set up specifically for water systems. However if one were set up it could give the opportunity for multiple water systems in a jurisdiction to participate.

**Comment 43:** “Who is responsible to enforce the exercise component? For EPA’s hazardous materials program (SERC)- EMA is responsible for planning and exercising.” **(Anita Stechschulte, Ohio EMA)**

**Response 43:** The Ohio EPA will enforce the exercise component of this rule.

**Comment 44:** “Is 250 customers a small number? Will this law be effecting a lot of water systems?” **(Anita Stechschulte, Ohio EMA)**

**Response 44:** Systems smaller than 250 are considered our small systems. The paragraph affecting systems with populations greater than 250 will affect approximately 2300 facilities statewide and approximately 530 facilities in our Northwest District.

**Comment 45:** “When is the rule expected to be final and enforceable?” **(Anita Stechschulte, Ohio EMA)**

**Response 45:** We hope this rule will be finalized and enforceable by the end of 2016.

**Comment 46:** “What is the thinking behind the contingency plan being made available to Ohio EPA within 5 days of request? Is there a provision that allows for immediate access to the plan (by Ohio EPA) in the event the plan is activated?” **(Andrew Elder, Ohio EMA)**

**Response 46:** The submission within five days of a request is a provision aimed at situations outside of an emergency where the Agency may have the need or desire to review a facility’s contingency plan. The five days gives a system a reasonable amount of time to get the document to the Agency in a format that is acceptable. Paragraph (C)(1) requires a copy of the plan to be kept at an accessible, secure location at the water treatment plant and that the plan is available for 24 hour inspection by representatives of the director or emergency response personnel.

**Comment 47:** “Is it feasible to reduce the 24 hour notification period? It seems like immediately upon activating their plan, getting EPA technical support on site could help mitigate things like a fire hydrant getting smashed turning into a complete system depressurization.” **(Andrew Elder, Ohio EMA)**

**Response 47:** Notifying Ohio EPA immediately, but no later than 24 hours from the start of an incident is consistent with notification provisions in several of our other rules.

**End of Response to Comments**