

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Connection Ban Standards Rule Package

Rule Number(s): 3745-11-01, 3745-11-02 and 3745-11-03

Date: July 26, 2013

**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Rescinded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.

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## **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.*

This rule package consists of the three rules pertaining to the administrative procedures for the Director's issuance of connection bans.

OAC Rule 3745-11-01 consists of definitions used in OAC Chapter 3745-11. It is proposed that the definition of "Treatment works" be changed to be consistent with the statutory definition contained in ORC 6111.01.

OAC Rule 3745-11-02 specifies the conditions that warrant a standard connection ban or special ban. A standard connection ban prohibits further connections to a sewerage system or treatment works. A special connection ban prohibits the construction of household sewage treatment systems if it can be shown that pollutants from new household systems will be discharged to waters of the state.

OAC Rule 3745-11-03 describes how to apply for a variance from a connection ban. The director may grant a variance if compelling public need, extreme individual hardship, or other extraordinary circumstances require a variance.

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

OAC 3745-11-01:

Statutory Authority: ORC 6111.03, 6111.04, 6111.44

Rules Amplify: ORC 6111.03, 6111.04, 6111.44

OAC 3745-11-02:

Statutory Authority: ORC 6111.03, 6111.04, 6111.44, 6111.45, 6111.46

Rules Amplify: ORC 6111.03, 6111.04, 6111.44, 6111.45, 6111.46

OAC 3745-11-03:

Statutory Authority: ORC 6111.03, 6111.04, 6111.44, 6111.45, 6111.46

Rules Amplify: ORC 6111.03, 6111.04, 6111.44, 6111.45, 6111.46

**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.*

Not applicable. There are no federal counterpart regulations for connection ban standards.

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

The connection ban standards are based on state statute. The authority to implement this regulation is in ORC 6111.03. Please see the response to Item 2 above.

**4. 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)?**

It is necessary for Ohio EPA to impose connection bans in extreme cases, to prevent further wastewater connections to failing sewerage systems or treatment works that would cause even more water pollution and pose an even greater risk to public health. Ohio EPA imposes connection bans rarely. There is currently only one active standard connection ban and one active special connection ban.

The only active special connection ban in Ohio is at South Bass Island. In 2004, there was an outbreak of gastrointestinal illness in residents and visitors to South Bass Island that affected 1,450 people. Sewage that contaminated the groundwater aquifers was determined to be the likely cause of the outbreak. South Bass Island has inadequate soil depth to bedrock, which is fractured. This increases the risk of on-site subsurface sewage disposal systems causing sewage to go directly to groundwater supplies.

The only active standard connection ban in Ohio is at Cadiz, Ohio. The wastewater treatment plant exceeded its average daily design flow 60% of the days in 2011 and 78% of the days for the first 60 days of 2012. This amount of flow was causing raw sewage to overflow from manholes and the wastewater treatment plant to violate its national pollutant discharge elimination system (NPDES) permit limits. Ohio EPA had received numerous complaints from the public about the overflows of sewage.

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

Ohio EPA measures the success of connection bans multiple ways.

Ohio EPA analyzes self-reported data from wastewater treatment plants. This allows Ohio EPA to determine if flow and permit limit violations are increasing, decreasing or remaining the same. If permit limit violations decrease, the regulation was successful.

Ohio EPA conducts biological and water quality sampling and determines whether or not a stream is attaining its designated use and whether or not a discharger is causing water quality impairments. Stream sampling after the connection ban has been removed should document an improvement in water quality.

## **Development of the Regulation**

- 6. 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.*

Ohio EPA sent electronic notice to Division of Surface Water's rulemaking interested party list and posted the Early Stakeholder Outreach fact sheet on DSW's website on April 23, 2013. The comment period deadline was May 23, 2013.

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

Not applicable, the Agency received no comments.

- 8. 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?**

Not applicable. These rules contain the procedural requirements for the Agency to follow in implementing connection bans, and for the public to follow when requesting connection ban variances.

- 9. 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?**

None. This existing regulation has been working successfully and the Early Stakeholder Outreach provided no comments.

- 10. 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.***

Not applicable. Connection bans are implemented after performance-based regulation has failed. There are regulations that require facilities to be in compliance with their national pollutant discharge elimination system effluent limits and to not have sewage overflows. These regulations don't dictate how facilities meet their limits or prevent overflows. Only after sewerage systems or treatment works have a history of failing due to receiving more wastewater than they can successfully treat, does the director impose a connection ban.

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

Although Ohio EPA collaborates with state and local Health Departments when implementing this regulation, Ohio EPA is the only Agency with the statutory authority to impose a connection ban. Only a review of existing Ohio EPA rules was necessary and no duplication was found.

**12. 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.**

The Agency will continue to implement the rules through current practices. The regulation is applied consistently and predictably because Ohio EPA only uses it as a last resort and only through Orders, which are negotiated with the applicable regulated community.

**Adverse Impact to Business**

**13. 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;**

These rules do not impact any business that already has a facility built, or has already laid the foundation of a facility and received the proper permits and approvals. These rules impact any business that wants to add a new connection to a public sewerage system in an area that has a connection ban. However, variances may be granted to allow new businesses to still be able to connect. Please see the response to comment 15 for more details.

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

A business wanting to add a new connection, for instance if a new hotel wanted to locate where a connection ban was active and wanted to tie into the sewerage system, would have to wait for the connection ban to be lifted or would have to add their own treatment system. If they waited, the impact would be time. If they chose to add their own treatment system it would cost money to install the treatment system, apply for the proper permits, and employ an operator.

**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 adverse impact from the regulation is expected to be minimal. Ohio EPA imposes connection bans rarely, and when a connection ban is imposed, Ohio EPA typically works with the community to negate any possible impact to new businesses.

However, if a business did put in a treatment system, the cost varies depending on the kind of wastewater, flow and location.

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

It is important for the Agency to protect public health and the environment from the discharge of raw or poorly treated sewage. Ohio EPA uses connection bans only in extreme cases. In addition, Ohio EPA mitigates adverse impacts to the business community as much as possible. For example, in the Village of Cadiz, Ohio EPA learned that there were going to be four potential businesses locating in the Village, who would be affected by the connection ban. Ohio EPA worked with Cadiz to show that sufficient wastewater was removed from the system to allow for the increased flow resulting from the four businesses. The end result was that the four businesses were exempt from the connection ban and therefore still allowed to connect to the sewerage system.

**Regulatory Flexibility**

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

Yes. Rule 3745-11-03 describes how a person can apply for a connection ban variance. This is applicable to anyone, not just small businesses.

**16. 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?**

Not applicable. Ohio EPA does not impose connection bans on first-time offenders or for paperwork violations. Ohio EPA only imposes connection bans as a last resort when there has been a history of non-compliance and a sewerage system or treatment works cannot handle the flow it receives before any additional connections are made.

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

This rule package does not impact small businesses already established. However, for any business looking to add a connection in an area with a connection ban, the following resources are available:

Ohio EPA's **Office of Compliance Assistance and Pollution Prevention (OCAPP)** is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business

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performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at: <http://epa.ohio.gov/ocapp>.

Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at: <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5888.

The NPDES and PTI programs have information available on the Ohio EPA website at <http://epa.ohio.gov/dsw/SurfaceWater.aspx>. The website also has Division of Surface Water staff and management contact information available. They are always available to answer questions.