



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Water Well Standards

Rule Number(s): 3745-09-01, 3745-09-02, 3745-09-03, 3745-09-04, 3745-09-05, 3745-09-06, 3745-09-07, 3745-09-08, 3745-09-09, 3745-09-10

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/ ___ rules

No Change/ ___ rule (FYR?)

Amended/ ___ 10 rules (FYR? Yes, 10)

Rescinded/ ___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

Ohio EPA's Division of Drinking and Ground Waters (DDAGW) is reviewing and considering revisions to Rules 3745-09-01 through 3745-09-10 of the Ohio Administrative Code (OAC) to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code (ORC). The rules establish regulations for defining, siting, constructing, disinfecting, sampling, developing, and abandoning public water system wells.

DDAGW is proposing that minor changes be made to OAC Rule 3745-09-01, which cover definitions relevant to Water Well Standards. The proposed changes focus on modifying and adding definitions that better align with updated references. For example, definitions for "hydrofracturing" and "dug hole" have been added to the rule, while the definitions for "seal" and "abandoned well" have been adjusted. Similar amendments are proposed for

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Rules 3745-09-02, 3745-09-03, and 3745-09-04 as clarifying language has been added to all three rules. Notably, in Rule 3745-09-02, the amended language clarifies when a variance from the requirements of Chapter 3745-9 can be requested. The amendments also call for a date on well cap construction for public water system wells, and defines acceptability and use of existing shallow, unconsolidated wells.

Rule 3745-09-03 is proposed to be amended with minor language changes that assist with clarifying how wells shall be monitored. Similarly, Rule 3745-09-04 also features minor amendments that clarify where non-potable wells may be located, relation to other structures and what variances may be allowable when siting the well. Rule 3745-09-05 outlines well construction requirements, within which the agency is proposing to add language that will make certain materials mandatory in the well construction process. The proposal also includes additional circumstances that would require a well to be modified or repaired to stop contamination. The amendments proposed in Rule 3745-09-06 are more significant. The agency proposes to introduce requirements that regulate how flowing wells shall be completed, controlled, and monitored.

Rules 3745-09-07 and 3745-09-10 contain requirements for how and when a well shall be sealed, whether due to well abandonment or the construction of a new well. The agency has proposed that minor language amendments be made to these rules to clarify how and when concrete shall be used for certain grouting applications during the sealing of wells. The agency also proposes that Rule 3745-09-09 be filed with modifications that will define hydraulic fracturing, help to determine specific capacity of wells, and to establish applicability, need and criteria for re-evaluating pump capacities. There are amendments proposed that establish additional radiological sampling criteria for new noncommunity wells. The rule also proposes to establish regulations for how PFAS contaminants should be analyzed according to EPA Analytical Method 533 and EPA Method 537.1. Finally, the agency is proposing that Rule 3745-09-08, covering well disinfection requirements, is amended to update the referenced material that was used to develop the rule as well as incorporate the standards it contains into the rule's requirements.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

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.”

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4. **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, chapter 3745-9 does not specifically implement a federal requirement, but does protect public drinking water systems from contamination due to poor well design, construction, and treatment.

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

These rules do not exceed the scope of federal requirements.

6. **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 such regulations (as stated in ORC Section 6109.04) is ensuring the availability of a safe and adequate supply of public drinking water. These rule amendments help achieve this purpose by ensuring that all wells are constructed, maintained, and monitored appropriately so they are not a threat to public health.

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

The Ohio EPA will measure the success of these rules 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.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. **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.

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Stakeholders include public water system owners and operators, consultants, environmental organizations, other state agencies and in general, the public at large. The only measure someone must take to be notified of DDAGW's potential rule activity is to request to be added to our electronic mailing list. In fact, stakeholders may sign-up themselves for this notification.

Stakeholders were notified of the DDAGW's intent to file these proposed changes on September 21st, 2020 by electronic mail. The early stakeholder outreach period was from September 21st 2020 until October 21st 2020.

In addition, DDAGW will be seeking comment from stakeholders during the division's interested party review period. The interested party review period occurs before the rules are filed with JCARR and is used to address any concerns or questions from staff and our stakeholders.

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

Stakeholders were notified of the DDAGW's intent to file these rules as Amended on September 21st, 2020, by electronic mail. There was one process clarification question received from stakeholders regarding the amendments in the rule.

11. 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 these rules is established in Section 6109 of the Revised Code and Ohio EPA promulgated these rules under Rules 3745-09-01 through 3745-09-10. References used include the latest revisions to 40 CFR Part 141 Subpart Y. Based on past data collected by the Ohio EPA and under previously stated authority of Chapter 6109 of the Ohio Revised Code, the agency determined that the amendments to be made are appropriate.

12. 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 Chapters 3745-9 maintain consistency with existing industry and agency-wide standards and maintain some flexibility in rule to use director-approved alternatives.

13. 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.*

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Rules 3745-09-01 through 3745-09-10 are performance-based regulation because they set a required outcome that must be met. Specifically, the rules set requirements for well construction, monitoring, testing, disinfection and more that must all be compliant to operate the well. For example, it is a requirement that no wells shall be built within 10ft of a foundation of any building except a pumphouse.

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

The agency reviewed the regulation alongside existing regulatory documents and determined they did not duplicate.

15. 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 provides draft rule revisions to staff for internal review and comment. Additionally, training may be provided, and all effective rule revisions are distributed to staff. Implementation of these rules include 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

16. 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; and

All public water sources in the state of Ohio will be subject to regulation under these rules.

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

Rules 3745-09-01 through 3745-09-10 detail the various requirements in place to ensure well water is uncontaminated and safe for consumption. Much of the rule package causes

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no adverse impacts on the operators of the water system and the few that do require minor adjustments. Rules 3745-09-01 and 3745-09-02 cover water well term definitions and the scope of the rule package, respectively. Neither amended rule will cause any impact to a water system. Language has even been added to 3745-09-02 to potentially allow certain variances upon submission of an application and then director approval. In this way, the regulations have become less stringent than before the rule was amended. Rule 3745-09-03 contains minor amendments only meant to clarify the monitoring requirements for wells. Rule 3745-09-04 also contains clarifying language but regards the well siting requirements listed within the rule. Amendments within 3745-09-04 forbids the construction of any well that is within 10 ft of a building or it's foundation, unless it is a pumphouse. It similarly does not allow for the construction to take place within another structure that may lead to contamination.

Rule 3745-09-05 outlines the requirements for the construction of all wells stated in 3745-09-01. The specific amendments will require that similar materials be used in all well components, adaptors, and fittings to prevent galvanic corrosion. This may require well operators to update the construction of their wells. Rules 3745-09-06 also pertains to well construction but highlight the geologic aspects that must be considered. The amendments within 3745-09-06 add control requirements for flowing wells. Rule 3745-09-07 details the varied allowable forms of grout that maybe used in the construction of a well and clarifies what space is to be sealed on the well. Rule 3745-09-10 focuses on grout application as well, but only as it pertains to abandoned wells, dry holes, or test wells. The rule includes how the process of sealing these abandoned wells must be conducted. Rule 3745-09-08 outlines how well disinfection must proceed before the well is fit for public consumption, staying consistent with past standards set by the agency. Rule 3745-09-09 discusses the required pump tests a well must pass before it may be used by the public.

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.

3745-09-01: The additional definitions associated with water well standards will not incur any additional costs onto the PWS.

3745-09-02: The amendments made to the scope and exemptions of Water Well Rules only incur costs in terms of the time it would take to fill out and submit a formal variance

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application for director approval. Currently, variances are negotiated between the PWS and a DDADW staff member to achieve compliance with the rules. However, said formal variance application process will be installed soon. PWS owners are not required to comply with new well cap standards set forth in the "Water System Council Pitless Adapter Standard PAS-97" until January 1st, 2024. All other costs are consistent with past costs of constructing, operating, monitoring, and sealing a well.

3745-09-03: The costs related to this rule are associated with installing a monitoring well and sealing an unused monitoring well. The cost to install a monitoring well depends on numerous factors including depth of the well, diameter, geologic location. These and other factors lead to the wide price range we see for this activity, which can be anywhere from \$2,000 to \$8,000. The cost associated with sealing an unused monitoring well also depends on many of the same circumstances but is much less expensive and on average will cost a PWS between \$500 and \$1,500.

3745-09-04: The costs associated with this rule are consistent with standard well siting charges. The rule has modified where a well may be built but has not affected the cost to operate or site the location. If PWS operators must purchase land to site a new well, it could cost anywhere from \$0 to as much as \$25,000 or even more depending on location and the amount of space required.

3745-09-05: The costs associated with this rule would be to PWS owners who are constructing a well and must abide by the new material requirements set forth by the new amendments. Specifically, it requires all well components, adapters, fittings to be made from similar material or constructed in a way that galvanic corrosion cannot occur. Since this rule regulates proper well construction, the cost of compliance with the rule is the same as the price range to construct a well; between \$2,000 and \$8,000.

3745-09-06: The amendments to this rule add controls for flowing wells, particularly as it relates to the discharge of the wells. The amendments will incur costs for PWS owners if they choose to construct a well over an aquifer with hydrostatic heads greater than the land surface elevation.

3745-09-07: The costs incurred from complying with this rule are consistent with the standard cost of applying grout to a well during the construction or sealing of a well. This will be tied in with the cost of construction of the well which is a range of \$2,000 to \$8,000.

3745-09-08: The potential costs incurred by this rule are for the disinfection of a well in accordance with industry standards and would fall to the PWS owner. No amendments have been made to this rule and therefore costs will remain consistent. Disinfecting requirements are tied into the cost of constructing a well, which has been stated. Disinfection of a well after construction can cost between \$90 and \$120.

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3745-09-09: The amendments made to this rule contain clarifying information as it pertains to the development and monitoring of well pump tests. The testing and analysis of these well pump tests will vary depending on what the well is classified as and the duration of the test. The rule also requires the analysis of PFAS samples in accordance with the regulations, which may cost as much as \$800. Most new wells are low use wells and should cost the PWS operator between \$700 and \$1,500 to test. Pumping tests ran on medium or high use wells can cost as much as \$9,000.

3745-09-10: The costs incurred by this rule are brought by the amended regulations for how an abandoned well must be sealed. The costs would fall on to the PWS owner as they must pay for the filling of the well with concrete that meets the specifications laid out in the rule. The cost to properly seal an abandoned well will range from \$500 to \$1,500.

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

The agency determined that the regulatory intent justified the adverse impacts as the additional costs are insignificant when compared to ensuring wells are adequately constructed, monitored properly and free of contaminants. Much of the costs mandated by the rule are a part of routine monitoring practices already.

Regulatory Flexibility

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

No exceptions or alternative means of compliance for small businesses have been written into these rules. Rule 3745-09-02 does however allow for a variance application that could result in some leniency on certain requirements, pending director approval.

19. 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.

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

Small business PWSs can go to their Ohio EPA District Office Inspector or Rural Community Assistance Program (RCAP) for technical assistance. Ohio EPA contracts

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with RCAP to aid PWSs with a population of 10,000 or less to address their drinking water and wastewater treatment needs. OCAPP (Ohio EPA's Office of Compliance Assistance and Pollution Prevention) is another resource available to help small business owners. OCAPP is a nonregulatory 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 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 epa.ohio.gov/ocapp

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