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VIA EMAIL ONLY

Rules Coordinator
Ohio EPA, Division of Drinking and Ground Waters
P.O. Box 1049
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Re: Comments Regarding Operator Certification Program – Early Stakeholder Outreach

Dear Rules Coordinator:

The Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”) appreciates the opportunity to provide feedback and comments on Ohio EPA’s Operator Certification for Wastewater Treatment Works rules set forth in Ohio Administrative Code Chapter 3745-7. AOMWA is a not-for-profit trade association that represents the interests of public wastewater agencies across the state of Ohio, serving more than 4 million Ohioans and successfully treating more than 320 billion gallons of wastewater each year.¹

On February 16, 2023, AOMWA provided comments that requested an opportunity to participate in a stakeholder meeting with Ohio EPA. As described in that initial set of comments, AOMWA members are experiencing challenges arising from two related issues. First, Ohio’s wastewater treatment utilities face an unprecedented shortage in the wastewater operator workforce. As Ohio EPA has acknowledged in a 2018 report, “it is estimated that *30 to 50 percent of the water/wastewater workforce could retire within the next ten years*” (i.e., by 2028).² AOMWA members have been forced to invest significant time in recruiting and training potential operators, which has forced them to divert attention from their primary purpose of treating wastewater and protecting the environment. Second, Ohio’s regulatory framework has become restrictive in a manner that creates more challenges for the development of the operator profession. These regulatory restrictions have exacerbated the workforce shortages. We appreciate the Agency’s invitation to participate in a virtual meeting. During that meeting, which was held on March 21,

¹ AOMWA members include cities of Akron, Avon Lake, Bowling Green, Canton, Columbus, Dayton, Euclid, Fairfield, Hamilton, Lancaster, Lima, Lorain, Marysville, Middletown, Newark, Portsmouth, Solon, Springfield, Wadsworth, Warren, and Butler County, Greene County, Hamilton County, Summit County, the Metropolitan Sewer District of Greater Cincinnati, the Northeast Ohio Regional Sewer District, and the Tri-Cities Regional Wastewater Authority.

² *Ohio EPA and OWDA Operator Workforce Development Summit Report* (Sept. 19, 2018) (emphasis added).

2023, we offered several specific constructive comments aimed at improving the regulatory framework and encouraging better development of wastewater operators while maintaining existing standards. The following memorializes our comments and provides additional comments based on the Agency's responses:

- 1. Increase opportunities to develop operators by modifying definition of "operating experience."** In 2017, Ohio EPA severely limited the development of certified operators by modifying the definition of "operating experience." OAC 3745-7-06(B)(8) requires varying years of operator experience to sit for the Class I, II, III, IV exams. However, Ohio EPA's 2017 rule revisions limited the types of work that can qualify, despite opposition from the utilities explaining that these types of experience led to better certified operators. AOMWA requests that the Agency restore full-time eligibility for these activities, which are legitimate operating experience. The Agency's proposed solution of "cross training" these individuals in other areas has not been feasible because of union restrictions and other practical staffing constraints, as described in the meeting.
- 2. Increase opportunities to develop operators by expanding Operator in Training program.** Ohio EPA provides an operator in training status, which allows a candidate to sit for an examination while working to fulfill operating experience requirements. OAC 3745-7-07. This avenue is available to applicants for the Classes A, I, and II examinations. However, the Agency does not currently authorize Operators in Training for the Class III level. In light of the shortages described above, the operator in training framework is an already-built framework that could be easily extended to Class III operators.
- 3. Increase opportunities to attract out-of-state operators by expanding reciprocity.** The current rules impose restrictions on reciprocity for operators who have been certified through the ABC system, a nationally standardized system. Even when an out-of-state certified operator has taken and passed a written examination through ABC, under current Ohio law, a council of individuals will review each national standardized test that was passed to ensure it is equivalent to each of Ohio's own tests. OAC 3745-7-13(B). If a state (understandably) declines to share its test because it is concerned about the potential for its questions to become public, we understand that Ohio EPA will not grant reciprocity to anyone from that state. We believe Ohio EPA should permit some form of reciprocity if a state declines to share its exam. During our meeting with the Agency on March 21, Ohio EPA explained that it had unsuccessfully attempted to work with other states including Pennsylvania, Florida, California and Texas to obtain a copy of their exams. In this instance, we submit it is inequitable to the applicant and Ohio's utilities to prohibit them from obtaining any certification in Ohio. AOMWA requests that Ohio EPA remove the rule's current requirement for the director to be furnished with a copy of the examination so as to avoid prohibiting individuals from attaining their license simply because the state would not share a copy of its examination. If Ohio EPA believes it is still necessary to certify that individual at a lower level than that which the individual was certified in their prior state, AOMWA proposes that Ohio EPA only certify one level lower than the individual's prior state.

In addition, we understand that Ohio EPA typically approves of out-of-state certified operator reciprocity applicants at least one class level below the corresponding license or certification held by the applicant in the state where the license or certification is held. We believe that wastewater and water operations do not vary dramatically state-to-state, and we believe this aspect of the rules could be improved.

4. **Evaluate dismal testing passage rates and consider Ohio EPA policies that may be contributing.** Recognizing the need to retain standards at an appropriate level, AOMWA notes that the current exam passage rates are extremely low by comparison with other professionally licensed fields, as the total December 2022 passage rate for all Ohio EPA certified operators (water and wastewater) was merely 22%. Ohio EPA tests one full certification level above the national standard for most wastewater treatment certification classifications (i.e., Ohio EPA Class I = ABC Class II, Ohio EPA Class II = ABC Class III, Ohio EPA Class III = ABC Class IV).³ We believe that Ohio EPA should perform a careful assessment of its testing process to ensure that its standards are not set so high that the Agency is contributing to the shortages. Specifically, Ohio should give level-for-level credit to the ABC exams. Ohio EPA should also continue to offer both a paper and pencil exam and the ABC exam; although the ABC exam has some advantages because of testing frequency, it contains many topics that are unrelated to Ohio wastewater operations, so Ohio EPA should leave both options open to maximize the pathways to certification.
5. **Increase flexibilities for facilities in good standing.** Unlike most if not all other professional licensing programs, Ohio EPA's program currently prescribes a minimum number of hours that must be spent by an operator at a given facility per week. When a facility is in good standing (i.e., in compliance with Ohio's applicable effluent limitations, etc.), we believe that the certified operator program's requirements for maintaining minimum staffing hours should be reduced. For example, in addition to the existing flexibilities in minimum staffing, if a facility is in compliance with Ohio's laws and regulations, Ohio EPA should authorize an additional 5-hour reduction for weeks including a holiday. AOMWA recognizes that the requirement to work weekends and holidays is likely to deter people from entering the profession.

When we spoke with Ohio EPA regarding this issue, the only justification offered by the Agency was that the operator could select any combination of days to fulfill the minimum staffing time and to avoid working the holiday. However, we believe that, in the case of a facility that is in compliance with the laws and regulations, the facility should be afforded some discretion to select whether it is necessary to work a full 40 hours and that the staffing time requirement should be reduced as described above.

6. **Increase flexibilities for backup operators.** Ohio's rules currently provide a temporary mechanism to allow utilities to comply with staffing requirements while using a "backup" operator. Specifically, the current rules permit a Class II, III, or IV treatment works or Class II sewerage system to be replaced by a backup professional operator with a certificate one classification lower than the treatment works or sewerage system for a period of up to thirty consecutive days. AOMWA requests that the backup operator provisions be revised to allow a backup operator no more than two classes lower than the treatment works or sewerage system for a period of up to thirty days. The Agency already allows staffing times to be fulfilled in part by an operator two classifications below on a permanent basis for certain public water systems under OAC 3745-7-03(C)(3), and there is a compelling basis to treat backup operators the same because of the workforce shortages.
7. **Consider tailoring the rules to address differently sized utilities.** In the 2017 operator certification program rule review, Ohio EPA explained that many of the restrictive changes to the program were intended to address concerns at smaller systems, such as mobile

³ Ohio EPA, Ohio EPA/ABC Professional Operator Exam Equivalency Chart (Feb. 2022), <https://epa.ohio.gov/static/Portals/28/documents/opcert/ABC-EEC.pdf>

home parks and wastewater package treatment plants. AOMWA would support revisions that tailor the rules for smaller and larger systems, in order to avoid unintended consequences for large utilities.

8. **Increase staffing availability by eliminating redundant site visits.** The rules require that the permittee, the permittee's representative, or an agent visit all treatment works five days a week. OAC 3745-7-04(C)(4)(b). AOMWA proposes Ohio EPA modify OAC 3745-7-04(C)(4)(b) to remove this separate requirement for a visit to the treatment works five days per week, as this is causing a redundancy of staffing where a professional operator of record or certified operator is already required to visit a sewerage system three or five days per week under OAC 3745-7-04(C)(2)(a)-(b). A utility could demonstrate automation and continuous monitoring to support that this staffing requirement is unnecessary.
9. **Increase flexibility for a Class III operator to attain management experience.** Currently, a Class III operator may serve as a Class IV system operator for a period of up to two years if the operator has applied for and received approval to take the Class IV exam. OAC 3745-7-02(E). However, as outlined in OAC 3745-7-06(C)(2), a Class III operator cannot be approved to take the Class IV exam unless they have obtained two years of management experience. AOMWA requests that Ohio EPA provide flexibility in when the management experience must be attained because requiring this management experience prior to approval to sit for the Class IV examination can sometimes block individuals from pursuing the Class IV certification pathway.

AOMWA appreciates Ohio EPA's consideration of these comments as it prepares a set of draft rules for interested party review. We believe that the operator certification program is a strong program and, with some modest revisions, can be improved to help expand the pool of available certified operators. Should you have any questions, please contact Rees Alexander at rees.alexander@squirepb.com or (614) 365-2798. Thank you again for your attention to and consideration of these comments.

Sincerely,



Frank Greenland, PE
President, AOMWA

cc: (via email)
Rees Alexander, Esq., Squire Patton Boggs (US) LLP
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