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VIA E-MAIL (ddagw_rulecomments@epa.ohio.gov)

ATTN: Corin Bonnett
Ohio EPA - Division of Drinking and Ground Waters (DDAGW)
Lazarus Government Center
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, OH 43215

Re: Proposed Draft Operator Certification Rule Revisions (OAC Chapter 3745-7)

Dear Ms. Bonnett:

The Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") appreciates the opportunity to comment on Ohio EPA DDAGW's proposed draft revisions to the Operator Certification Rules (OAC 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 300 billion gallons of wastewater each year.¹ Our members have a great interest in ensuring an open operator certification process that promotes the availability of qualified operators to run Ohio's water utilities.

As an initial matter, we note that both AOMWA and NEORSR previously provided detailed comments regarding Ohio EPA's review of these rules as part of the Early Stakeholder Outreach (ESO) process. While we appreciate the e-mail response we received to our request for clarification regarding the new "professional operators" language, our members were troubled by the fact that the Agency did not address any of our numerous other comments, either directly in the rulemaking or through a response to comments document. We hope that Ohio EPA will be more responsive and willing to engage affected stakeholders on these issues as part of this interested party review process. An open dialogue is particularly important here given the significant impact of these rules on the ability of Ohio's utilities to manage and staff their water and wastewater systems now and in the future.

¹ AOMWA members include Akron, Avon Lake, Butler County, Canton, City of Hamilton, Columbus, Dayton, City of Fairfield, Hamilton County, Lancaster, Lima, Marysville, Metropolitan Sewer District of Greater Cincinnati, Middletown, Newark, Northeast Ohio Regional Sewer District ("NEORSR"), Portsmouth, Springfield and Warren.

**c/o Northeast Ohio Regional Sewer District
3900 Euclid Ave.
Cleveland, OH 44115
(216) 881-6600**

We therefore request that the Agency consider and respond to the following comments and requests for clarification (many of which were also submitted as part of the ESO process), as well as those comments submitted separately by its members, including City of Akron, City of Columbus, City of Dayton and NEORS.

1. Amending Operator to Professional Operator. AOMWA supports the stated purpose of this change — recognizing operators as professionals in their field. However, we feel strongly that the operator certification rules should remain focused on actual responsibilities and obligations of persons in these positions. This change in nomenclature should not be indicative of further restrictions or obstacles that prevent qualified applicants from obtaining certification.

2. Operating Experience (OAC 3745-7-01(O)(2)). AOMWA is very concerned about the proposed change to further limit the types of experience qualifying as “operating experience.” Allowing laboratory, pretreatment, collection system, distribution and engineering experience to count for no more than 25% of the total operating experience requirement (a drastic 75% reduction from the current rules) ignores operational realities of large utilities, which often have staff working exclusively in these fields. Persons working in these areas are required to have extensive knowledge of a system’s operations in order to effectively perform these functions. For example, there is no justification to limit the amount of design and engineering experience that can count toward “operating experience” – for instance, a person involved in the design and engineering of a particular system undoubtedly gains invaluable experience regarding the operation of that same system. Moreover, given compartmentalization of personnel responsibilities required by some utilities’ labor union agreements, this change may preclude persons working in areas other than those identified in draft OAC 3745-7-01(O)(2)(a) from meeting the operating experience requirement altogether.

The stated purpose of this rulemaking is to ensure that “PWSs, treatment works and sewerage systems have the appropriate staffing with technical expertise to operate and oversee the system.” See CSI Business Impact Analysis at ¶5. However, this proposed change is directly at odds with this purpose and threatens to unfairly prevent otherwise qualified persons from meeting their operating experience requirements. AOMWA therefore strongly urges the Agency to reconsider this change.

3. Minimum Staffing Requirements (OAC 3745-7-03(C)(2) & -04(C)(2)). AOMWA requests clarification regarding the new requirement that operators of record at a distribution and sewerage system must visit such systems a minimum number of days per week. Again, this requirement appears inconsistent with the operational realities of large utilities, where various personnel are overseeing different aspects of the system and the responsibilities of an operator of record may limit his or her availability to visit the system. As an example, the City of Columbus has a sewerage system staff of approximately 150 persons (larger than the staff at either of the City’s two wastewater treatment plants) that maintains and operates a wastewater collection system with over 3,000 miles of pipe in a service area of 600 square miles. For such a large sewerage system it would be impractical and inefficient to require the operator of record to spend a part of five days each week visiting some portion of the system. AOMWA therefore requests clarification regarding the intent of this change, and suggests that having an operator of record overseeing a particular distribution or sewerage system in accordance with the minimum staffing requirements should be sufficient to meet this requirement.

In addition, and as noted in AOMWA's earlier comments, the current rules require a Class III or Class IV operator of record to be physically present at the plant for five days a week for a minimum of 40 hours per week. The rules also allow for the director to approve a reduction in the minimum hour requirements in certain circumstances, such as where a facility has adequate levels of automation or continuous monitoring to make reduction of the 40 hour requirement appropriate. AOMWA believes that there should be corresponding language to allow for a reduction in the five day per week requirement upon application to the director as well. This change would allow public water systems and treatment works to apply for approval of flex schedules for their operators (e.g., four 10-hour days) where appropriate.

Finally, operator responsibilities often may require travel to other areas of a water or wastewater system (e.g., a well, monitoring station, or pumping station). Ohio EPA should also clarify that such "out-of-plant" activities can count toward minimum staffing requirements as long as the operator of record is performing his or her normal duties within the water or sewerage system.

4. New Degree Specifications for Education and Experience Requirements for Class A Professional Operators (OAC 3745-7-06(B)(8)(c)***). AOMWA is concerned that the new draft footnote in draft OAC 3745-7-06(B)(8)(c), which limits the type of degree that can count toward the education and experience requirements for Class A professional operators, is overly restrictive. First, qualified persons may have a degree with a major not on this list, yet may have appropriate course work or even a subject minor in areas including the physical or natural sciences. Other degree majors are also likely to provide an operator candidate with appropriate academic learning and knowledge, particularly foundational courses in mathematics or any science. For example, a degree in mathematics – which is generally not included in the definition of either physical sciences (such as chemistry, physics, earth sciences) or natural sciences (such as biology and various sub-categories) – should qualify an individual to become an operator. Second, associate degrees are offered in many of these majors from 2-year accredited schools. AOMWA requests that the proposed footnote be revised to allow degrees in other appropriate specializations, such as mathematics, and from 2-year accredited schools to meet these requirements.

5. Recordkeeping Requirements (OAC 3745-7-09(A), (C)(3) & (6)). AOMWA believes that the new proposed recordkeeping requirements set forth in draft OAC 3745-7-09(A) are overly prescriptive. While it is appropriate to specify what records and information must be maintained, specifying the form of log books and computer programs used to maintain this information is unnecessary. These changes are also likely to force larger utilities with complex operations to upgrade to more expensive automated computer systems, a significant additional cost which is not noted in the Agency's compliance cost analysis. See CSI Business Impact Analysis at ¶14.c. Moreover, changes in draft OAC 3745-7-09(A)(3)(b) suggest that even the smallest deviation from these requirements, such as failure to record arrival and departure times *in military time*, would be prima facie evidence of a violation of minimum staffing requirements. In addition, adding responsibility for ensuring compliance with these recordkeeping requirements to the list of duties for professional operators in draft OAC 3745-7-09(C)(3) is unreasonable, particularly given the complex computerized data management systems likely needed to meet these requirements at larger utilities. Likewise, the additional requirement that professional operators report minimum staffing times on an approved form is overly burdensome and duplicative of the requirements set forth in draft OAC 3745-7-09(A).

For these reasons, AOMWA asks that the Agency reconsider these recordkeeping requirement changes, or alternatively, to revise them in a manner that allows plant managers and operators more flexibility in determining what methodology is best suited to document and maintain this information based on their specific facility operations.

6. Reciprocity (OAC 3745-7-13). AOMWA continues to believe that Ohio's operator reciprocity requirements are too restrictive and unreasonably limit the pool of available, qualified operators to the detriment of human health and the environment. There is no reason why a qualified Class III or Class IV operator from across state lines should not be eligible for certification by reciprocity in Ohio. Instead of requiring a comparison to demonstrate that an out-of-state certifying authority or ABC examination is equivalent to Ohio EPA's exam, AOMWA encourages Ohio EPA to draft and adopt rule revisions recognizing that the standardized testing procedures – ABC-approved testing in particular – utilized in most other states are commensurate with the Ohio EPA certification process for the purposes of determining reciprocity.

7. Operator Certification Renewal and Contact Hours Requirement (OAC 3745-7-15). Consistent with Ohio EPA's recognition that operators are professionals in their field, we believe that Ohio EPA should consider moving to a Continuing Professional Development (CPD) system similar to that utilized by the Ohio Professional Engineers in lieu of the current contact hour course approval process. CPD requirements could be satisfied with coursework on technical, ethical or managerial topics related to public water systems or wastewater treatment works and specific to the type of license being renewed. Coursework could be left to the discretion of the individual operator who would then need to provide verification of attendance and the content of such coursework to Ohio EPA upon request. Such a system would better ensure that operators are qualified and able to maintain their certifications without the burdensome applications, paperwork and delay associated with the current process.

We also note that the requirement to complete an application for certification renewal by "November thirtieth of the year the certification expires" in draft OAC 3745-7-15(C)(2) would have the effect of giving professional operators one less month to complete their required contact hours. In order to make clear that there is no reduction in the length of time that operators have to meet the contact hour requirement, we request that language be added to clarify that professional operators may begin receiving credit for contact hours as soon as an application for certificate renewal is submitted. This could be accomplished by revising draft OAC 3745-7-15(D)(4) to read: "The minimum required number of director-approved contact hours shall be completed during the two-year period preceding the expiration date of the certificate **or submittal of a certification renewal application to the director...**"

8. Class IV Certification Process. Finally, AOMWA reiterates its request that Ohio EPA follow the example of other states and adopt a standardized, objective exam for Class IV operator certification. By modernizing and streamlining the operator certification process, Ohio EPA would help better ensure that qualified applicants from within the state are not unnecessarily prevented from obtaining their Class IV certification due to technicalities built into the certification process.

As evidenced by the comments above, we believe that Ohio's Operator Certification Rules must seek to better address recruitment, retention and succession planning challenges currently facing the State's utilities. Our members have had much difficulty attracting and retaining qualified operators for their facilities due to the burdensome nature of Ohio's certification rule requirements. This problem is further exacerbated by the fact that many of the State's current certified operators are retiring, so the pool of capable certified operators is shrinking.

There appear to be fundamental issues with the way in which Ohio approaches its operator certification program that contribute to this problem and hinder qualified applicants from becoming certified operators. For example, one of our members reports that it is exceedingly difficult for operators to pass their certification exam because providers are not allowed to educate applicants regarding examples of actual questions on and the content of these exams. Although not all aspects of the program are subject to this rulemaking, such practices are indicative of a closed system that unreasonably seeks to prevent, rather than to assist, potentially qualified applicants from attaining their certification.

Given the broad ramifications of these draft rule revisions and the operator staffing challenges currently facing Ohio's water and wastewater utilities, AOMWA will be following up with Ohio EPA DDAGW personnel in conjunction with other utility groups to request a meeting to discuss these comments and other issues related to Ohio's Operator Certification rules.

Should you have any questions in the meantime, please contact Andrew Etter at andrew.etter@squirepb.com or (614) 365-2765. Thank you for your attention to and consideration of these comments as well as those submitted by Akron, Columbus, Dayton and NEORS.

Sincerely,



Brian M. Gresser, P.E.
President, AOMWA

cc: (via e-mail)
Guy Jamesson, AOMWA / City of Columbus
Chris Clark, AOMWA / City of Dayton
Kyle Dreyfuss-Wells, AOMWA / NEORS
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