Staffing Rules Add Strain to Ohio's Water and Sewer Utilities

May 15, 2019

Categories:

Publications

Authors:

Stephen N. Haughey

Ohio's water and sewer authorities are estimated to need a capital investment of $9.68 and $11.16 billion, respectively, over the next 20 years to upgrade or replace aging water and wastewater infrastructures according to the American Society of Civil Engineer's (ASCE) 2017 report. Absent a significant new federal funding bill, performing this essential work will cause a considerable long-term drain on municipal revenues. In addition, in a report issued in January 2017 by Policy Matters Ohio, the non-partisan research institute estimated that Ohio's local communities are operating with more than one billion less today in annual revenues than in 2010, due to elimination of Ohio's estate tax, ending reimbursements for business taxes, and cutting Ohio's Local Government Fund in half.

These financial realities are sufficient cause for concern for many of Ohio's utilities. Unfortunately, many older utilities are confronting these realities while also facing declining water use and reduced sewer discharges (due to a variety of reasons, including recycling and conservation measures and effective I/I programs), thus reducing needed revenue streams. At the same time, many utilities are operating with smaller, aging workforces, and having substantial difficulty attracting replacements, particularly for their most experienced operators.

These stresses faced by many of Ohio's utilities are intensified by a series of rules that the Ohio Environmental Protection Agency (EPA) adopted and expanded over the past five years or so, the last expansion effective in August 2018. The rules establish minimum staffing, oversight, reporting, and recordkeeping requirements for all publicly owned water and wastewater treatment plants, and water distribution and sewer collection systems. The rules, which are codified at Ohio Administrative Code (O.A.C.) Chapter 3745-7, are designed to achieve an important purpose. The relationship between an operator's qualifications, the amount of weekly oversight provided by qualified operators, and protection of water quality and delivery of safe, reliable potable water, can hardly be

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

questioned. Nevertheless, the rules continue to expand at an inopportune time for many water and sewer utilities.

The rules classify Ohio's water/wastewater treatment plants and distribution/collection systems into one of five classes (A, I, II, III, or IV) based primarily on a combination of (1) design capacity of the plant, (2) population served by the distribution system, (3) complexity of treatment provided, (4) stringency of permit limits, and, with respect to sewer collection systems, (5) the classification assigned to the treatment plant. Such classification of Ohio's water and sewer utilities is not new. For many years now, the classification has determined the minimum level of operator license required to "be in charge" of a treatment plant or distribution/collection system, and to sign periodic reports submitted on behalf of the utility.

However, what started out as literally a one-sentence rule has undergone several significant revisions, each time expanding the requirements to "be in charge" of a treatment plant or distribution/collection system. For example, water and sewer utilities must submit a form to Ohio EPA identifying at least one designated operator of record (DOR) in charge of each individual wastewater or water treatment plant and distribution/collection system and must file a new form within three days of terminating a DOR or employing a new one. With limited exceptions, the utility must ensure that each DOR maintains a valid, unexpired license equal to or greater than the classification assigned to the plant or system.

In addition, with respect to treatment plants, utilities must ensure that a DOR is "physically present" at the plant to: (1) perform "technical operation" (defined as making process control or system integrity decisions which directly impact the quality or quantity of water or wastewater effluent), and (2) fulfill minimum weekly staffing requirements assigned to each classification of treatment plant. For small Class I water and wastewater treatment plants, the minimum staffing requirement is at least three days a week and a total of at least 1 1/2 hours. For medium size Class II plants, it is five days a week and 20 hours. For larger Class III and IV plants, which make up the majority of Ohio's publicly owned water and wastewater treatment plants, it is five days a week and 40 hours.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

Regardless of the minimum number of staffing hours or days required weekly, every wastewater plant must still be visited at least once a day, five days a week, when in operation, by a "representative" of the utility (not necessarily the DOR), and the visit recorded in an Observations and Measurements (O&M) log. For small water treatment plants, the minimum required visit is seven days a week when the plant is in operation. These "visits" cannot be a "drive by," but by definition must be of sufficient duration to perform routine sampling, maintenance, and inspection of processes to ensure proper operation and compliance.

In the latest expansion of the rules, utilities must now ensure that the DOR or another licensed operator "visits" some portion of each water distribution and sewer collection system at least three or five days each week, depending on whether the system is classified as a Class I or II system, respectively, under the rules. The visits must be recorded in an O&M log for the system. If visits are performed by an operator other than the DOR, the utility must document the individual's authorization, and that operator must report all problems to the DOR.

The expanded rules also require that utilities maintain accurate, up-to-date log books (hard-bound or computer) that document the date, time (both arrival and departure time each day) of each DOR or other qualified operator fulfilling the minimum staffing requirements. And if the utility's logbook is a computer system, the rules require that it have programming sufficient to automatically document the time, date, and person making each entry, and prevent the removal or deletion of the data. The new rules also add that a failure to document times of arrival and departure for the operators of record constitutes prima facie evidence that the minimum staffing requirements were violated unless the DOR presents "acceptable" documentation to substantiate otherwise.

The latest expansion of the rules also adds the following additional responsibilities for each DOR of a municipal water or treatment plant or distribution/collection system:

1. They must ensure that all recordkeeping requirements are met;

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

2. Together with any qualified operator that may serve from time to time as a backup to the DOR, they must ensure that the minimum staffing requirements are met for the plant or system for which they are designated as the operator of record;

3. They must display their valid license for public examination at the water or wastewater treatment plant; and

4. They must report monthly to Ohio EPA the data required to substantiate the minimum staffing requirements, using new electronic forms developed for drinking water reports and wastewater discharge monitoring reports.

These new responsibilities are in addition to the existing responsibility of a DOR to (1) provide "effective" on-site management and supervision of the technical operation of the plant or system over which they are the DOR, and (2) inform the owner of the plant or system, and if applicable Ohio EPA, of events that require notification under a permit, Ohio Revised Code Chapters 6109 (water) or 6111 (wastewater), or rules adopted thereunder. To ensure that none of these responsibilities "slip by" during times when a qualified operator may be serving as a backup to the DOR, the expanded rules clarify that backup operators are held responsible for all violations of the responsibilities of the DOR while serving in that capacity.

The rules provide for limited reduction in minimum staffing requirements at water or wastewater treatment plants based on the level of automation and continuous monitoring or achieving a certain level of staffing redundancy. The rules also provide limited exceptions for (1) temporary situations up to 30 days, without Ohio EPA's approval, when the DOR cannot be physically present at his or her designated plant or system to fulfill the minimum weekly staffing requirements, or (2) a longer period, with the Agency's approval, when, for example, the DOR retires, is off on military leave or long-term illness, or otherwise departs employment.

From what began as a requirement that publicly-owned wastewater and water treatment plants simply be under the "supervision" of a certified operator, Ohio EPA's rules for staffing have evolved into a complex set of rules regulating in considerable detail how local

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

utilities staff and manage their treatment plants and distribution/collection systems. Along with this expansion, the responsibilities for operators in charge of these plants and systems have increased significantly, along with the accompanying risk that failing to comply will lead to fines for the utility and suspension or loss of the operator's license.

Under the present circumstances, it is important that owners of water and sewer utilities in Ohio work closely with their operating staffs to develop a plan of DORs and qualified backup operators assigned to each treatment plant and distribution/collection system, sufficient to provide the coverage needed to comply with Ohio EPA's minimum staffing rules. To the extent possible, to control costs and reduce compliance risks, utilities should seek the maximum reduction in minimum staffing requirements allowable under the rules for each treatment plant. When evaluating capital upgrades, additional automation and continuous monitoring equipment should be considered if needed to qualify for the maximum reduction. Because a "qualified" backup operator is one level of license below the DOR, and there is no limit on the number of backups, utilities should encourage entry and lower-level operators to obtain higher classes of licenses, in order to increase the pool of qualified backup operators available for each DOR when they are, for any number of reasons, unable to meet the minimum staffing requirements for a particular day or week.

No one disputes that sufficient oversight by qualified operators is necessary to protect water quality and ensure the delivery of safe, reliable water. But very few, if any, other regulatory programs in Ohio mandate minimum staffing requirements for local government workforces. Ohio EPA's staffing rules for water and wastewater operators continue to expand in scope and complexity. In some ways, they function as an unfunded regulatory mandate, at an unfortunate time when distribution of local funds is down, revenue streams for many utilities are declining or stagnant, and finding qualified replacement operators is already a problem for many utilities. Careful planning is critical in order to avoid gaps in coverage and to minimize the risk of fines or, worse yet, possibly having the license of a vitally-important operator subject to

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

suspension or revocation.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons