

“I Need To Leave Early Today And Will Be Out Tomorrow For My Child’s Parent-Teacher Conference. I’d Also Like To Take My Four Weeks Of Vacation In July To Backpack The Appalachian Trail.”

Understanding And Incorporating Into Everyday Operation Ohio EPA’s Expanded Minimum Staffing Rules For Water And Sewer Utilities



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I. EXPANDED MINIMUM STAFFING RULES COME AT AN INOPPORTUNE TIME FOR MANY WATER/SEWER UTILITIES

A. Ohio's water and sewer authorities 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 (<https://www.infrastructurereportcard.org/state-item/ohio/>)

B. Policy Matters Ohio, a non-partisan research institute, estimates 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 (<https://www.policymattersohio.org>)

- C. Many older water and sewer utilities that are confronting these financial realities also face 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 much-needed revenue streams
- D. At the same time, many utilities are operating with smaller, aging workforces, and are having substantial difficulty attracting replacements, particularly for their most experienced operators

- E. These financial and workforce stresses faced by many utilities are intensified by rules that Ohio EPA has adopted and expanded over many years, the last expansion effective in August of 2018, establishing minimum staffing, reporting, and recordkeeping requirements for all publicly-owned water and wastewater treatment plants, and water distribution and sewer collection systems
- F. The rules, codified at O.A.C. Chapter 3745-7, are admittedly designed to achieve a very important, praiseworthy goal:
 1. 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, cannot be questioned

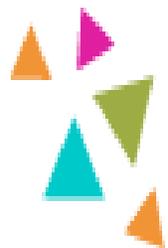
WE CAN:



WE CAN:



OR WE CAN:

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II. SUMMARY OF OEPA'S MINIMUM STAFFING RULES (PRE-8/2018)

- A. The rules classify Ohio's water/wastewater treatment plants (WWTP or WTP) 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
 5. With respect to sewer collection systems, classification assigned to the treatment plant

B. Classification of Ohio’s water and sewer utilities is not new

1. For decades OEPA has classified plants and distribution/collection systems, which determine the minimum level of operator license required to “be in charge” of the plant or system and sign periodic reports submitted on behalf of the utility

C. What started out as little more than a one-sentence rule has undergone several significant revisions, each time expanding the requirements to “be in charge” of a plant or distribution/collection system

D. Utilities now must submit forms to Ohio EPA identifying at least one designated operator of record (DOR) in charge of each individual WWTP, WTP, and distribution/collection system, and either the utility or the DOR must file a new form within 3 days of terminating the DOR or employing a new one

- E. 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
- F. With respect to treatment plants, utilities must ensure that a DOR is “physically present” at the plant to:
 1. Perform “technical operations,” defined as making process control or system integrity decisions which directly impact the quality or quantity of water or wastewater effluent, and
 2. Fulfill the following minimum weekly staffing requirements assigned to each plant based on its classification:

- a) For a Class A WWTP, the minimum staffing requirement is at least 2 days a week and a total of at least 1 hour
- b) For a Class A WTP, the minimum staffing requirement is at least 2 days a week and a total of at least 1 hour, or 1 day a week and at least 30 minutes, depending on whether treatment is provided by something beyond just a filter
- c) For a Class I WWTP or WTP, the minimum staffing requirement is at least 3 days a week and a total of at least 1.5 hours
- d) For a Class II WWTP or WTP, the minimum staffing requirement is at least 5 days a week and a total of at least 20 hours
- e) For a Class III or IV WWTP or WTP, the minimum staffing requirement is at least 5 days a week and a total of at least 40 hours

CAVEAT: Regardless of the minimum number of staffing hours or days required weekly, each WWTP and WTP must be “visited” at least once a day, 5 days a week (WWTP) or 7 days a week (WTP), when in operation, by a “representative” of the utility (not necessarily the DOR), and each visit recorded in the O&M records

These “visits” cannot be a “drive by.” The term “visit” is defined in the rules as one of sufficient duration to perform routine sampling, maintenance, and inspection of processes to ensure proper operation and compliance

G. O&M records required to be kept for all WWTP, WTP, and distribution/collection systems, including, among other information, data sufficient to demonstrate that minimum staffing requirements are met, but flexibility was provided for utilities to choose one or combination of hardbound books, time cards, separate O&M records, or organized computer logs

H. Responsibilities of the DOR include:

1. Providing “responsible and effective” on-site management and supervision of the technical operation of the plant or system over which he or she is the DOR, and
2. Informing 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

I. Exceptions to minimum staffing requirements:

1. Limited reduction in minimum staffing requirements at WWTP and WTP can be approved based on the level of automation and continuous monitoring, or achieving a certain level of staffing redundancy
2. Limited exceptions when a DOR is unable to fulfill minimum staffing requirements applicable to his or her designated plant:

- a) Temporary situations up to 30 days, without notice to or approval by Ohio EPA needed, if a backup operator is present to fulfill the minimum staffing requirements, and has a license no lower than one classification below the DOR
 - 1) The temporary exception is not meant to be used to cover the first 30 days of a longer period that requires OEPA approval
- b) A longer period, with the Agency's approval, when, for example, the DOR retires, is off on military leave or long-term illness, or departs employment, etc.



III. NEW/REVISED (POST-8/2018) MINIMUM STAFFING RULES

A. Minimum staffing now expanded to water distribution and sewer collection systems:

1. Utilities must ensure that the DOR or another licensed operator “visits” (as defined above) some portion of each water distribution and sewer collection system at least 3 or 5 days each week, depending on whether the system is classified as I or II, respectively, under the rules
2. Visits must be recorded in an O&M record for the system, and 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

ALERT: Owners of distribution/collection systems cannot apply to OEPA for a reduced level of minimum staffing of the system

- B. Requirement for O&M/records or log book now revised to delete use of time cards, and to specify that if records are maintained in a computer log, it must have programming sufficient to automatically document the time, date, and person making each entry, and prevent the removal or deletion of data
 - 1. 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 are violated unless the DOR presents “acceptable” documentation to substantiate otherwise

**i.e.*, sufficient to prove that a violation has occurred unless proved otherwise

- C. Responsibilities added for each DOR of a WWP, WTP, or distribution/collection system:
1. The DOR must ensure that all recordkeeping requirements are met;
 2. Together with any qualified operator that may serve from time to time as a backup to the DOR, the DOR must ensure that the minimum staffing requirements are met for the plant or system for which he or she is designated as the operator of record;
 3. The DOR must display his or her valid license for public examination at the water or wastewater treatment plant; and
 4. The DOR must report monthly to Ohio EPA the data required to substantiate the minimum staffing requirements for the plant, using new eDWR form developed for drinking water reports and new eDMR form developed for wastewater discharge monitoring reports. The new minimum staffing requirements for distribution/collection systems are recorded in the “comment section” of the eDWR form, and using the collection system “parameter code” on the eDMR form

D. Clarification of responsibilities for qualified operators that serve as backup to the DOR:

1. Qualified backup operators are responsible for all violations of the responsibilities of the DOR while serving in a backup capacity to the DOR



IV. QUESTIONS POSED TO ME UNDER THE MINIMUM STAFFING RULES

A. If a WWTP is classified as Class IV, does the backup operator of record have to possess a Class IV license? Can a Class III operator also serve as the backup operator of record at a Class IV WWTP?

Required oversight/staffing of a Class II, III, or IV WWTP or WTP or Class II distribution/collection system can be performed by a backup certified operator with a classification one level below the plant or system up to 30 consecutive days at a time without notification to OEPA, but the rule clarifies that this allowance may not be misused to circumvent the oversight/staffing obligation of the DOR over his/her designated plant or system. In addition, with respect to these plant and systems, if the DOR has an established flex work schedule of 4 days of 10 hours each, the 5th day can be overseen/staffed by a qualified backup operator indefinitely

Other than not abusing the backup operator provision and not exceeding 30 consecutive days of using a backup operator as the DOR without OEPA approval, there are no limitations on the use of backup operators. This allows backups to be used whenever a DOR of record is on vacation, taking a personal day, out due to illness, or if he or she needs to be elsewhere for a meeting on a day when they would ordinarily be at their designated WWTP or WTP

B. Does a DOR have any responsibilities when his or her oversight duties are being fulfilled by a qualified backup operator?

No. Under the rules, a DOR *or* backup operator must be “available” during all periods of WWTP or WTP operation, defined as able to be contacted as needed 24/7 to make operational decisions in a timely manner. However, OEPA’s view is that once the DOR returns he or she is responsible for confirming that the backup properly completed the staffing obligations

C. When a DOR is performing duties for another plant under his or her direction, but is not physically at his or her designated plant, does that time count? For example, a DOR is entering and submitting data for one plant while located at another plant. Another example, a DOR is attending a meeting at the main office, but the meeting pertains to a project at the DOR's designated plant.

No. The rules specify that the DOR shall be physically present at his or her designated WWTP or WTP plant to fulfill the staffing requirements, except that any time spent working on equipment within the service area of a plant, if part of the DOR's normal job responsibilities, counts toward the minimum staffing requirements

D. Is the work week specified as Sunday to Saturday? If so, a DOR takes a personal day on Monday. Must the DOR make the day up either the Sunday before or the Saturday after the personal day?

The 2018 revised rules added a definition of “week” as the 7 days from Sunday to the following Saturday. If a qualified backup operator is available on the day the DOR takes a personal day, the backup operator can fulfill the minimum number of hours of staffing/oversight on the day in question, and there is no need for the DOR to make up the lost day. That situation is one of the purposes for which the allowance for backup operators was provided

As long as the use of a backup operator is not being abused in a way that circumvents the intent for a DOR to be the primary person overseeing the technical operation of an assigned plant, there is nothing wrong with a qualified backup operator filling in when the DOR is, for whatever reason, off work or busy at some other location. The hours/days of the backup count toward the minimum weekly amount

There is also no limit to the number of backup operators for a particular plant. As long as they have a license no lower than one level below the classification of the applicable treatment plant, multiple operators can serve as backups

1. If for whatever reason no qualified backup is available, how the lost day would be made up depends on the minimum staffing required for the plant
 - a) For a Class III or IV plant, which requires a minimum of 40 hours and 5 days of oversight by the DOR, taking a personal day on Monday could be addressed in any way that adds up to 40 hours and at least 5 visits during the 7-day week, including working some on the Sunday preceding the personal day, or on the following Saturday
 - b) *Nothing in the rules requires that each of the 5 daily visits to a Class III or IV plant be for 8 hours to reach the total of 40. A DOR can, for example, spend two hours at a Class III or IV plant on Sunday, take Monday off, and then spend 9.5 hours each of the following Tuesday through Friday, to reach 40. As long as the amount of time spent at a plant on a given day meets the definition of a “visit,” it counts as one of the 5 days*

E. Does this situation change if the plant is not normally staffed on weekends? Does missing a day mid-week (M-F) for a Class II, III or IV plant, each of which requires 5 days of staffing, where no qualified backup operator was available to fill in, mean that the DOR or a qualified backup operator must make up the lost day or hours on the weekend (or a holiday), even if the plant is not normally staffed on weekends or holidays?

The rules do not address this question. Nor is it addressed in the standard NPDES permit language relating to staffing, and there is no guidance or policy that addresses it

In all, or nearly all, NPDES permits is the following standard language:

C. All parameters, except flow, need not be monitored on days when the plant is not normally staffed (Saturdays, Sundays, and Holidays). On those days, report "AN" on the monthly report form.

If a plant's permit parameters and other permit monitoring requirements need not be sampled or monitored when the plant is not normally staffed, logic would say that the plant's minimum staffing requirements also do not apply when the plant is not normally staffed, and that the AN code can be used for those days on the new operator staffing e-DMR form. However, it is OEPA's view that the rules require that the utility make the DOR or a backup operator work the weekend or holiday to make up the lost time

In addition, because the rules do not limit the number of qualified backup operators that a utility can have, OEPA's position is that it is up to each utility to have sufficient qualified backup operators available to fill in when a DOR is for any reason unable to fulfill the minimum staffing requirements for the week

PRACTICE POINTER: Because Class IV licenses are difficult to obtain, and there is reportedly already a shortage of Class IV operators in Ohio, utilities should encourage as many operators as possible to obtain their Class III or IV license, and then organize them as a group, as if on call, to fill in as backup operators whenever needed for a DOR for a Class IV plant. Because Class II and III plants also require 5 days of staffing, the same thing should be encouraged for operators to obtain their Class I and II certifications, respectively

F. How is staffing information recorded when there is a mix of DOR and backup operator staffing for a given day during the week?

If a DOR takes part of a day off that would normally be included in the minimum staffing requirement for his or her designated plant, and a qualified backup operator steps in that day, both operators' respective days (date), hours (time in and time out) and name and certification number (just the middle 7 digits for the eDMR form) are recorded on the O&M record book or log for the plant, and included in the eDWR or eDMR form submitted to OEPA

G. For a plant requiring 20 hours a week/5 days a week for the DOR, on Mon, Tue, Wed, I work 4 hours totaling 12 hours. On Thurs. I work 7 hours and Fri. 1 hour, for a total of 20 hours in 5 days. Is this satisfactory or must I work 5 days for 4 hours each day?

Yes. The total hours needed each week need not be evenly distributed. There is no minimum number of hours of staffing each day, as long as the amount of time spent at the plant on any of the required staffing days is sufficient to meet the definition of a “visit” (see above)

In this example, even if the DOR works 10 hours on Mon. and Tues., he or she (or a qualified backup operator) must still spend sufficient time at the plant Wed. through Fri. to, at a minimum, meet the definition of a “visit”

H. While submitting data into the eDWR or eDMR form, how do we enter time data for a specific plant if the DOR was there in the morning, then left, and returned later in the afternoon? Can we enter multiple times which is common practice for a DOR?

Based on the e-DMR instructions, yes, the DOR is expected, if needed, to make multiple entries on the same day for each set of time in and time out that may occur throughout the day. The form allows multiple entries on the same day, as well as multiple operators, such as when the DOR and a backup operator both have time on the same day at the same plant that will count toward the minimum total of hours for the week

- I. On a holiday, such as Thanksgiving Day and the day after Thanksgiving, can I work Mon, Tues, and Wed. as scheduled, then submit the “AN” code to OEPA on the monthly report for Thurs. and Fri. since they are holiday days?

No, at least not in OEPA’s view. As discussed above, even if a Class II, III or IV plant is not normally staffed during weekends or holidays, the Agency interprets the rules to require a utility to staff the plant with the DOR or a qualified backup operator sufficient to meet the minimum 5 days of staffing required for such plant, and that the AN code cannot be used for the holidays of the week if the minimum staffing hours are not met for the week

J. Does a DOR's travel time to the plant count?

No, only time physically present at a plant by the DOR or a qualified backup operator counts toward the minimum staffing requirements. Apparently even if the DOR has a daily commute to the plant of, for example, 45 minutes, and spends that time on a cell phone dealing with plant issues, the time does not count

K. The biggest issues arise when a DOR is off unexpectedly due to, for example, illness, personal day, vacation, jury duty, etc., when the pool of qualified backup operators is small and they not only must cover the DOR's time, but often have their own designated plants to cover as a DOR.

Agreed. Unscheduled absences by a DOR can be problematic if the pool of qualified backup operators is small, or the qualified backup operators have their own DOR assignments at other plants. In such scenario, a plant may not achieve its required number of days and hours for a given week. But unless a utility chronically fails to achieve the minimum staffing requirements, or makes little or no effort to establish a pool of qualified backup operators, it is unlikely that OEPA take enforcement

Requirements for minimum staffing days/hours per week cannot be applied in a vacuum. They must be applied with the understanding that human beings, not robots, are the operators. A myriad of different things can occur, with little or no notice, that could cause a DOR to miss a day, leave early, head to another location for an important meeting, etc., and not every time this occurs will there be a qualified backup operator ready to step in at a moment's notice

V. RECOMMENDATIONS

- A. Develop a written staffing plan (including a succession plan) for each treatment plant and distribution/collection system
- B. Identify areas of weakness in coverage
- C. Plan with the understanding to expect the unexpected
- D. Gaps in coverage are almost certain to occur
- E. Create a pool of qualified backup operators as on call
- F. When undergoing a capital upgrade, include additional automation and continuous monitoring to support a reduction in staffing

- G. Document efforts to encourage operators to obtain higher levels of license
- H. Better to be accurate and miss a weekly staffing requirement than to falsify or misrepresent staffing data
- I. Understand that OEPA's minimum staffing rules do not, and cannot, function as a rigid, strictly enforced set of rules, but instead can only function as a "rule of reason" designed to improve compliance, protect water quality, and ensure a safe and reliable potable water supply

VI. QUESTIONS???



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Thank you!!