

Rule Summary and Fiscal Analysis (Part A)**Ohio Environmental Protection Agency**

Agency Name

Division of Materials and Waste Management (DMWM)

Division

Kit Arthur

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3745-52-41

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Annual report.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **SB294**General Assembly: **129**Sponsor: **Senator Schaffer**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **3734.12**

5. Statute(s) the rule, as filed, amplifies or implements: **3734.12**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is amended to implement the intent of a portion of SB294, by changing the annual reporting requirement to a biennial reporting requirement.

Non-substantive corrections are proposed, and its 5-year review is accomplished by this rulemaking.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule provides the specific requirements of the report that is being changed from an annual report to a biennial report.

The proposed amendments to this rule are discussed in detail in Attachment A to this RSFA. They include non-substantive amendments in (A) [spaces between words] and (B) [word choice correction], paragraph format (indenting) correction of the last paragraph of the rule, and substantive changes to accomplish the change from the annual to the biennial reporting requirement in the rule title, (A), and (B).

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule contains referenced materials which may include federal statute, federal regulation, government documents, private documents, or references to other Ohio Administrative Code (OAC) rules. All of these materials are generally available on the worldwide web, through libraries, or from other sources. Ohio Revised Code (ORC) 121.75 (A), (D), and (E) exempt federal codes, a regulation in the Code of Federal Regulations, and generally available text or other material, respectively, from the requirements of ORC 121.71 to 121.74. All citations in this rule that meet the definition of a rule by reference, their dates, and their availability are listed in OAC rule 3745-50-11 titled Incorporated by reference.

ORC sections and OAC rules that meet the definition of a rule by reference are generally available to the public either online or through libraries. Additionally, ORC 121.76(A)(1) and (A)(3) exempt such sections and rules from the requirements of ORC 121.71 to 121.75.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not Applicable

10. If the rule is being **rescinded** and incorporates a text or other material by

reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. 119.032 Rule Review Date: **11/15/2012**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0.00

This proposed rule will have no impact on revenues or expenditures. It will not change the projected budget of Ohio EPA during the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not Applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Although there is a cost of compliance associated with this rule, we cannot develop an accurate cost of compliance estimate for this rule due to the number of variables involved. The cost will vary depending on the specific circumstances, including the amount and types of hazardous waste that is managed, and the methods used to manage them. These proposed amendments do not add to the cost of compliance with this rule.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

This rule does not directly require a license, permit, or prior authorization to operate. However, an owner or operator of a hazardous waste management facility subject to this rule is also required to comply with additional applicable rules in OAC Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, 3745-270, 3745-273, and 3745-279 which may require a license or permit to operate.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

This rule does not directly impose a criminal penalty, civil penalty, or another sanction, or create a cause of action for failure to comply. However, an owner or operator of a hazardous waste management facility subject to this rule is also required to comply with additional applicable rules in OAC Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, 3745-270, 3745-273, and 3745-279

which may impose consequences for non-compliance.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

This rule does not directly require specific expenditures; however it does require the report of information.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
Yes	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

We cannot provide an estimate of the cost of compliance with this rule. We do not have information on the types and amounts of hazardous wastes that are generated by local governments and schools.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

We do not have an estimate of the cost to school districts, counties, townships, or municipal corporations that may have disposed of their hazardous waste by the methods discussed in this rule. The costs would be some subset of the costs described in the answer to #15 and would be related to the amount of hazardous waste disposed of at the location.

(a) Personnel Costs

Not available.

(b) New Equipment or Other Capital Costs

Not available.

(c) Operating Costs

Not available.

(d) Any Indirect Central Service Costs

Not available.

(e) Other Costs

Not available.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

There are no new requirements imposed by the proposed amendments to this rule. In fact, since this rule removes the requirement to submit a report in alternate years, it should result in cost savings.

7. Please provide a statement on the proposed rule's impact on economic development.

We expect this proposed rule to have no impact on economic development.

Environmental Rule Adoption/Amendment Form

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
 - (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
 - (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
 - (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
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(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

The draft rules were available on our website from September 26 to October 12, 2012 for anyone to access, review, and comment on, and we sent electronic notification to a large number of people regarding the availability of the draft hazardous waste rule changes. The hazardous waste general interest Interested Parties mailing list (U.S. mail) is extensive (9 pages), and includes regulated entities, consultants and attorneys, public interest groups, citizens, and governmental entities. They received the same Interested Parties letter that we posted on-line. A copy of the Interested Parties mailing list is available upon request.

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of

documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

The documents considered in the development of this rule include the equivalent federal counterpart regulation (40 CFR 262.41.), the Federal Registers documenting the changes to that federal regulation, the LSC Manual, and the Ohio Revised Code, particularly 3734.12 and 3734.121 as amended by SB294 (effective September 5, 2012).

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?

Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **No**

Not Applicable

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**

RSFA Attachment A
Biennial Set

Rule 3745-52-41 is amended as follows:		
Location	Change	Reason
title	remove "Annual" and add "Biennial"	a, b
(A), 1st sentence	within the quotation marks: -remove "Annual" -after "Waste" add "Biennial"	a, b
	after "March first of each" add "even numbered"	a, b
(A), 2nd sentence	within the quotation marks: -remove "Annual" -after "Waste" add "Biennial"	a, b
	after "Ohio EPA forms" remove "EPA9027, EPA9028, and "EPA9029" [without a space after each "EPA"] and add "EPA 9027, EPA 9028, and "EPA 9029" [with a space after each "EPA"]	c
(A), 3rd sentence	within the quotation marks: -remove "Annual" -after "Waste" add "Biennial"	a, b
	after "previous" add "calendar"	d
(B)	remove "an annual report" and add ' a "Hazardous Waste Biennial Report" '	a, b
	remove "applicable" and add "the"	b
ending [Comment]	remove the indented comment and add the same comment not indented	e

- a Pursuant to SB294 (Senator Schaffer, 129th General Assembly), we are changing the "annual report" to a "biennial report" and correcting other text as necessary where the federal counterpart provision indicates a "biennial report." These amendments improve the equivalence of the state rule to its federal counterpart (see 40 CFR 262.41).
- b This amendment makes the language equivalent to its federal counterpart provision (40 CFR 262.41) at this location.
- c This amendment corrects the format of the form numbers. The form numbers should have a space after "EPA" but are otherwise accurate.

RSFA Attachment A

Biennial Set

Rule 3745-52-41 is amended as follows:		
Location	Change	Reason

d The word “calendar” is added here as clarification.

e This amendment corrects the format/structure of the rule at this location.

This rule is submitted for 5-year review upon proposal. A new review date will be assigned.