

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: DERR's Hazardous Waste Management Rules- Set O

Rule Numbers: 69 rules in OAC Chapters 3745-50, 3745-51, 3745-52, 3745-53, 3745-54, 3745-55, 3745-56, 3745-57, 3745-65, 3745-66, 3745-67, 3745-68, 3745-266, 3745-270, and 3745-273

Date: April 2017

Rule Types:

☒ New

☒ Amended

☒ 5-Year Review

☒ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

This rule package includes a number of hazardous waste management rules regarding permitting; identification and listing of hazardous waste; generator standards; treatment, storage, and disposal standards; land disposal restrictions; universal waste management; and used oil management. These will be considered and bundled together as the "Set O" rules. In general, the Set O rules will fall into three basic categories:

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A. Federally driven changes. Ohio's hazardous waste rules must be promulgated to maintain equivalence with their federal counterpart provisions in 40 CFR Parts 260 to 279. These are the federal Resource Conservation and Recovery Act (RCRA) regulations.

Federal Register subject/title	Federal Register (FR) location, date	Impacted Ohio rules
Effect of a permit	52 FR 45788, 12/01/1987	3745-50-49 new [see 40 CFR 270.4]
Liners and leak detection systems for hazardous waste land disposal units (Effect of a permit portion)	57 FR 3462, 01/29/1992	3745-50-49 new
Organic air emission standards for tanks, surface impoundments, and containers (Effect of a permit portion)	59 FR 62896, 12/06/1994	3745-50-49 new
Hazardous waste technical corrections and clarifications rule (Effect of a permit portion)	75 FR 12989, 03/18/2010	3745-50-49 new
Cathode ray tube export rule	79 FR 36220, 06/26/2014	3745-50-10, 3745-51-39, 3745-51-41 rescind, 3745-51-41 new
Set O Housekeeping: exempt rules maintaining exemption	--	3745-52-23, 3745-54-76, 3745-56-71, 3745-56-72, 3745-56-76, 3745-65-76, 3745-66-77, 3745-67-30, 3745-67-57, 3745-67-82, 3745-68-13
5-yr review rules (including exempt rules that we have chosen to make reviewable)	--	Amend, review, request exemption from future review: 3745-51-23, 3745-51-39, 3745-51-40, 3745-52-205, 3745-54-99, 3745-65-94, 3745-270-05#, 3745-270-06, 3745-270-44# # means rule has no amendments; shown as amended to request exemption Rescinded: 3745-51-41 (exempt), 3745-53-11 (review), 3745-53-20 (review) New, request exemption from future review: 3745-50-49, 3745-51-41, 3745-53-11, 3745-53-20

Federal Register subject/title	Federal Register (FR) location, date	Impacted Ohio rules
5-yr review rules (including exempt rules that we have chosen to make reviewable) [continued]	--	Amend, review, continue review: 3745-50-10, 3745-50-28, 3745-50-31, 3745-50-32, 3745-50-33, 3745-50-34, 3745-50-35, 3745-50-37, 3745-50-46, 3745-50-58, 3745-51-01, 3745-51-02, 3745-51-07, 3745-52-10, 3745-52-12, 3745-52-41, 3745-52-50, 3745-52-60, 3745-53-10, 3745-54-12, 3745-54-16, 3745-54-71, 3745-54-77, 3745-54-93, 3745-54-94, 3745-55-74, 3745-57-91, 3745-65-12, 3745-65-16, 3745-65-33, 3745-65-71, 3745-65-77, 3745-66-74, 3745-266-70, 3745-266-80, 3745-266-101, 3745-266-200, 3745-273-08, 3745-273-20, 3745-273-40, 3745-273-56, 3745-273-70

Effect of a permit. We are proposing to add a new rule entitled “Effect of a Permit” that was added to the federal RCRA rules in 1987, and was amended in 1992, 1994, and 2010 as shown in the table above. Prior to 2012, the subject matter of that rule was not specifically included in the director’s rulemaking authority in Ohio statute ORC 3734.12, so we could not promulgate an equivalent state rule. In 2012, the statute was amended to include the authority to promulgate rules consistent with and equivalent to RCRA concerning any matter not already listed in the statutory authority. Therefore, we are now proposing to adopt the state equivalent to this federal rule. This rule provides that a permittee is subject to specific requirements that are not included in their permit when there are new federal or statutory requirements.

Cathode ray tube exports. We are also proposing to amend two rules to match their amended federal counterpart provisions, and rescind and replace a rule pertaining to the exportation of intact cathode ray tubes. The new rule instructs those affected to refer to the federal counterpart rule, since the state does not have authority over importation or exportation.

B. State-initiated changes. These state-initiated changes consist of miscellaneous corrections of spelling, punctuation, word choice, sentence structure, redundant or unnecessary text, cross-references, typos, etc. This type of correction applies to the ORC 106.03 and 106.031 exempt rules as well as the review rules, discussed below. Virtually all of the rules in Set O contain these minor corrections, as shown in the last three rows above.

C. ORC 106.03 and 106.031 reviews. Eleven of the amended rules in Set O are exempt from review under ORC 106.03 and 106.031, the five-year review requirements, as shown in the table. Two rules (3745-54-93 and 3745-266-101) are currently exempt from review, but we are reviewing them now and will assign a review date to them upon their promulgation because we believe they warrant further review. The remaining 55 rules in Set O are either subject to review, or are new rules that have been reviewed and we will seek exemption from further review upon their promulgation. Ohio EPA has not identified any major problems with any of these rules, but minor corrections (to spelling, punctuation, word choice, outline structure, rule cross-reference errors and updates, etc.) will be made. Set O contains no “no-change” rules.

Many of the rules in Set O do not appear to be equivalent to their currently effective federal counterpart rules. However, they are equivalent to their federal counterpart rules as the federal rules appeared prior to November 28, 2016. On that date, U.S. EPA published two Federal Registers, known as the Export-Import Rule and the Generator Improvement Rule, that amend, rescind, re-locate, and create a large number of federal rules. Ohio EPA is not addressing the November 28, 2016 Federal Registers in their entirety in the Set O rulemaking because not all the Ohio rules that need to be changed are in Set O.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code 3734.02, 3734.05, 3734.12, and 3734.18 provide the authority for these rules.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

Yes, some of the proposed changes are being made to address changes in the federal RCRA program, as shown in the table above. Ohio hazardous waste management rules are required to be consistent with and equivalent to their federal counterpart provisions, with exceptions provided in the Ohio Revised Code. Ohio’s Hazardous Waste Management Program is authorized by U.S. EPA via a series of rule reviews and document submittals designed to verify that the state’s program continues to operate according the federal requirements (see 40 CFR Part 271). As such, Ohio maintains primacy over the management and permits required by RCRA.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

None of the proposed changes exceed the federal requirements. Some of the proposed changes are specifically required by U.S. EPA pursuant to the Federal Registers listed in the table above. The rules listed in the table above in the “housekeeping” row and the “5-year review rules” rows have amendments in them that are not identical in wording to their federal counterpart provisions, but they are considered by U.S. EPA to be equivalent and not to exceed the federal requirements.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of the hazardous waste rules is to provide a system of management designed to prevent releases, fires, explosions, and exposure to hazardous and toxic wastes. In order for Ohio EPA to maintain its authorization to regulate hazardous waste in Ohio, Ohio EPA must adopt rules that meet the federal requirements. The proposed rules are being adopted to maintain Ohio’s authorization. Without this authorization, Ohio businesses would be regulated by U.S. EPA. Further, these changes are important because they protect human health and the environment.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Ohio EPA will measure the success of these regulations through the degree of compliance with these regulations by the regulated community, the minimal occurrences of hazards to public health, safety and the environment, and continuation of Ohio EPA’s federal authorization to regulate hazardous waste in Ohio.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.

In July of 2014, Ohio EPA requested suggestions from stakeholders through its Early Stakeholder Comment (ESO) process. In addition to posting a request for early stakeholder comment on the Ohio EPA website, Ohio EPA also sent approximately 1,996 emails to various interested stakeholders representing regulated entities, professional associations, environmental groups, consultants, and attorneys. The list of interested stakeholders,

including the Ohio Manufacturers Association, Ohio Petroleum Council, Ohio Sierra Club, Ohio Environmental Council, etc., is available upon request.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Early Stakeholder Outreach (ESO) comment period for this rulemaking occurred at the same time that a different Hazardous Waste Management rulemaking package, Set L, was proposed and in its comment period. All the comments we received on the Set O rules' ESO were duplicates of the comments submitted for the proposed Set L rules; those comments were addressed in the Set L rulemaking. There were no ESO comments on the rules in this rules package.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The Ohio hazardous waste rules are required by state and federal law to be equivalent to the federal rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Alternative provisions would not be appropriate for these rules. The Ohio hazardous waste rules are required by state and federal law to be equivalent to the federal rules.

11. Did the Agency specifically consider a performance-based regulation? Please explain. Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No. The Ohio hazardous waste rules are required by state and federal law to be equivalent to their federal counterpart rules.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

When they were originally promulgated, Ohio EPA worked with LSC and the regulated community to ensure that these rules did not duplicate any other Ohio rules. These rules and/or other Ohio EPA rules have been amended in the past to eliminate duplicative requirements.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio EPA implementation of this rule package will include notifying the regulated community of the rule requirements, providing guidance to the regulated community, and possibly offering presentations on rule updates. Ohio EPA is developing guidance and presentations for inspectors and field staff as well, so they will be well equipped to offer assistance as they interact with the regulated community.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The business community impacted by Ohio's hazardous waste rules consists of the businesses that generate, treat, store, dispose of, or transport hazardous waste.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Ohio EPA has identified no adverse impacts regarding these rule amendments. The rules in Set O contain minor corrections that will have no adverse impact on cost of compliance.

Federally-based changes. The federally-based amendments in Set O are limited to two subjects: 1) The creation of new rule 3745-50-49 as the equivalent to 40 CFR 270.4. This rule clarifies the effect of a permit, as its title implies. 2) Amendments to address the export of cathode ray tubes (CRTs). In 3745-50-10, the definition of "CRT exporter" is added per amended 40 CFR 260.10. In 3745-51-39, a cross-reference is changed per amended 40 CFR 261.39. Existing 3745-51-41 is rescinded and replaced by new 3745-51-41 that address amendments to 40 CFR 261.41, and a jurisdictional issue. Since the

State of Ohio does not have powers of international commerce under the U.S. Constitution, we worded this rule so that the federal requirement applies.

None of these changes have an adverse impact to the cost of compliance. We estimate that there will be no additional cost of compliance for these changes; in fact, these amendments may result in cost savings to the regulated community in some circumstances.

Other changes. Most of the rules in Set O are not amended to match amended federal counterparts but are in Set O to fulfill their five-year review requirement and make minor stylistic amendments. These non-substantive amendments do not impact the stringency or cost of compliance for these rules.

Regarding the rules as they exist, as a Program, for five-year review purposes.

Ohio EPA's hazardous waste management rules are required, by federal statute and rule, as well as Ohio statute, to be functionally equivalent to the final federal rules (i.e., there may be text differences from the federal rules, but the resulting requirements must be the same.) Each Ohio rule has a counterpart federal rule (there are a few exceptions to this). If the state hazardous waste rules did not exist, the federal hazardous waste rules would still apply to Ohio businesses, so any costs incurred as a result of compliance with the Ohio rules would also be incurred as a result of compliance with the federal counterpart rules. With the exception of a few Ohio statute-based fee rules, the cost of compliance for state and federal requirements would be similar.

Several of the Ohio fee-based rules are amended in Set O for 5-year review (3745-50-33, 3745-50-34, 3745-50-35, and 3745-50-37). The fees addressed in these rules all come from Ohio Statute, as shown on the Statutory Authority and Rule Amplifies lines in the rule history area of each rule. None of the fees are being changed in any of these rules.

The adverse impact of the hazardous waste management rules (state or federal) varies widely depending on the nature of the management activity being conducted by the regulated community. This can include costs of obtaining a treatment, storage, and disposal permit (which can cost over \$100,000), personnel training, safety equipment, conducting inspections and keeping records, submitting reports to Ohio EPA (electronically in many cases, which incurs a nominal cost), etc.

In promulgating the Ohio hazardous waste rules, Ohio EPA only makes changes necessary to "Ohioize" the finalized federal language so that the rules 1) maintain the required equivalence with the federal program, 2) do not create problems (or costs) for the citizens and industries of Ohio that were addressed and resolved during the federal comment-response process and in the federal rule promulgation process, and 3) do not create new problems (or costs) for the citizens and industries of Ohio that were not addressed in that federal comment-response and federal rule promulgation process.

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So that Ohio EPA's intentions and the reasons for the amendments are clear, all the draft rules (and proposed rules, via the RSFA and its attachments) are accompanied by a cover sheet that explains the location and nature of the amendments in each rule. Equivalence and state rule stringency is reviewed by U.S. EPA Region 5 via the authorization process that is also a federal requirement (see 40 CFR Part 271.)

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

Ohio EPA estimates a \$0 adverse impact regarding these rule amendments. Some of the amendments in the Set O rules would be expected to reduce industry's cost of compliance.

During the promulgation of the federal rules, costs and adverse impacts are taken into consideration, and comments regarding those issues are addressed before federal rules are published as final rules. Federal preamble (in the Federal Registers listed in the table above and listed at the end of each federal rule in the CFR) includes discussion of costs and adverse impacts that were identified by commenters and addressed during the federal rulemaking. Often that discussion is quite detailed and extensive, so we are not restating it here.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Ohio EPA must promulgate rules that are equivalent to the federal RCRA rules in order to maintain its authorization to regulate hazardous waste in Ohio. Without adoption of these rules, Ohio EPA could lose its ability to regulate hazardous waste in Ohio and the impacted community would be subject to the same rules by U.S. EPA.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No, a facility's activity regarding hazardous management determines whether they are subject to the hazardous waste management rules (both federal and Ohio rules).

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17. How will the Agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The director will evaluate the applicability of ORC section 119.14 to entities regulated by these rules when assessing fines and penalties for paperwork violations and first-time offenders.

18. What resources are available to assist small businesses with compliance of the regulation?

Ohio EPA's Division of Environmental Response and Revitalization's (DERR) hazardous waste management program staff offers general hazardous waste management regulatory assistance and technical assistance to permit applicants and facility operators. DERR maintains numerous documents and resources through an extensive DERR website.

Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at: <http://epa.ohio.gov>.