

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

Agency Name

Division of Hazardous Waste Management **Kit Arthur**
(DHWM)

Division

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3745-352-20

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

What are my responsibilities if I am an owner or operator?.**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? **No**

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: **3752.03**

5. Statute(s) the rule, as filed, amplifies or implements: **3752.04, 3752.05, 3752.06, 3752.07, 3752.09, 3752.10**

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

This rule is proposed to remove unnecessary language; to correct rule references, word choice, and punctuation; to re-structure the rule slightly to make its intent clearer; to add language to the rule from the statute [ORC 3752.06(a)(4)] to address a scenario that the currently effective rule is silent on; and to address SB265 requirements regarding cross-references. It is also submitted for its 5-year review.

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:

The rule details the responsibilities of an owner or operator of a CRO-regulated facility. New paragraphs are added to the rule from statute, or are re-located within the rule, to clarify the rule's intent and to address all the scenarios that an owner or operator might encounter. Since paragraphs are added and moved, cross-references to paragraphs within the rule are corrected. And the ending comment is added to the rule to make it consistent with other rules having cross-references, and to provide for the requirements regarding cross-references addressed in SB265. A list of specific changes to this rule is provided at Attachment B to this RSFA.

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) section 121.75 (A), (D), and (E) exempt federal codes, a regulation in the Code of Federal Regulations, and generally available text or other materials, respectively, from the requirements of ORC section 121.71 through 121.74. All citations that meet the definition of a rule by reference, their dates, and their availability are listed in new rule 3745-352-01 titled "Incorporated by reference."

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

Not Applicable.

12. 119.032 Rule Review Date: 7/13/2006

(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 not change the Agency's budget in 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:

There is no associated cost of compliance with these amendments. A discussion of the costs of compliance with this rule is included as Attachment C to this RSFA.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

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.

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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.

A list of contacts is provided at Attachment A to this RSFA.

- (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 Ohio Revised Code, Chapter 3752.

- (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 ? **No**

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

(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**

Not Applicable

Interested Parties List

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NASHVILLE TN 37228-1605

STEVE CURTIS
CURTIS MANAGEMENT RESOURCES
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FAIRBORN OH 45324

STEVE FARRELL
WRIGHT STATE UNIVERSITY
3640 COLONEL GLENN HIGHWAY
ALLYN HALL ROOM 131
DAYTON OH 45435

STEVE FORYTEK
REPUBLIC ENVIRONMENTAL SYSTEMS
33 INDUSTRY DRIVE
BEDFORD OH 44146

STEVE HILL
GE AIRCRAFT ENGINES
1 NEUMANN WAY
MD T165
CINCINNATI OH 45215-1988

STEVE MCNARY
CRAWFORD FITTING COMPANY
31500 AURORA ROAD
OLON OH 44139

STEVE MOORE
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MS 9030
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VORYS SATER SEYMOUR & PEASE
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SAFETY-KLEEN CORPORATION
581 MILLIKEN DRIVE SE
HEBRON OH 43025

TIM THICKSTUN
MODERN AMERICAN SAFETY TRAINING
841 ALTON AVENUE
COLUMBUS OH 43219

TOM HARLAN
GENERAL ELECTRIC LIGHTING
1975 NOBLE ROAD
CLEVELAND OH 44112

THOMAS P PAPPAS & ASSOCIATES
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COLUMBUS OH 43215

TONY DINOVE
ISAAK WALTON LEAGUE - OHIO DIVISION
26 GARDEN ROAD
COLUMBUS OH 43214

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LUBRIZOL
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WICKLIFFE OH 44092

VALERIE LEWIS
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WAYDE HARTWICK
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1136 ST GREGORY
CINCINNATI OH 45202

WENDELL TURNER
HIXSON ENGINEERING
659 VAN METER STREET
CINCINNATI OH 45202

185 Labels
I:\USERS\DSHARPE\IP mailing labels.wpd
07/29/05

Rule 3745-352-20 is amended as follows:		
location	amendment	reason
(A)(1)(b)	after "Administrative Code" remove the comma and the rest of the first sentence	a
	-after "paragraphs" remove "(A)(2)(c) and" and add "(A)(2)(d) to" before "(A)(2)(f)" -remove "(A)(2)(h)" and add "(A)(2)(g)"	b
(A)(1)(c)	remove "3745-352-40" and add "3745-352-35"	b
(A)(2)(c) [new]	add the following new paragraph [which is a re-write and re-location of (A)(2)(d), which is stricken below]: Submit a precise description of where each stationary tank, vat, electrical transformer, or vessel of any type is located, and a description of what regulated substance each stationary tank, vat, electrical transformer, or vessel of any type contains or is contaminated with if you will be leaving any stationary tank, vat, electrical transformer, or vessel of any type that contains or is contaminated with regulated substances;	c
(A)(2)(c) [old]	re-designate as new (A)(2)(d)	c
(A)(2)(d) [new]	at the beginning, remove "Remove" and add "Drain or remove all regulated substances from each stationary vat, tank, electrical transformer, and vessel, and from all piping, that is to remain at the facility and remove"	d
	after "Code" add a comma	e
	after the new comma, remove "by doing" and add "and do" to correct the verb tense	e, g
(A)(2)(d) [old]	remove paragraph	c
(A)(2)(g) [new]	add new paragraph; language is from (A)(2)(h) which is stricken below, and includes rule reference corrections and a change from "and " to "to" within the rule references	c
(A)(2)(g) [old]	re-designate as (A)(2)(h)	c
(A)(2)(h) [new]	[2 times] remove "(A)(2)(c) and (A)(2)(h)" and add "(A)(2)(d), (A)(2)(e), and (A)(2)(g)"	b
	remove "3745-66-20" and add "3745-66-21"	b
(A)(2)(h) [old]	remove paragraph	c
(A)(3)	remove "(A)" and add "(A)(2)(d) to (A)(2)(g)"	b
(A)(3)(a)	remove "(A)" and add "(A)(2)(d) to (A)(2)(g)"	b
(A)(3)(b)	remove "(A)" and add "(A)(2)(d) to (A)(2)(g)"	b

Rule 3745-352-20 is amended as follows:		
location	amendment	reason
(B)	in 1st sentence (question): remove "only"	a
	near the end: remove "comply with" and add "do"	a, e
(B)(2) to (B)(4) [old]	remove paragraphs	c
(B)(2)(a) to (d) [new]	add paragraphs; language is mostly from the stricken paragraphs above	c
(D)(2)(a)	remove "and (A)(1)(b) and add "to (A)(1)(c)	b
(D)(3)	after "thirty days" remove "of" and add "after"	e
end	add the following: [Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-352-01 of the Administrative Code titled "Incorporated by reference."]	f

- a Unnecessary language is removed.
- b Rule reference correction.
- c Rule re-structuring change, made to more clearly address the several scenarios that could occur.
- d Language from statute [ORC 3752.06(A)(4)] is added to address stationary items.
- e Punctuation or word choice correction.
- f This amendment was made to address SB265 requirements regarding cross-reference specificity.
- g This amendment was added after the draft rule's Interested Parties review, as a result of in-house review prior to proposal.

3745-352-20 RSFA Attachment C

Ohio EPA wrote this proposed rule so that the regulated community will not constantly have to refer to both the statute and rules to determine their compliance requirements. We have not identified any Ohio businesses that will be significantly affected economically by this rule.

This proposed rule describes the responsibilities of an owner or operator that has ceased regulated operations at a reporting facility. Overall, the owner/operator must provide notification to the agency, local emergency planning committee, and local fire department. An owner/operator that has permanently ceased regulated operation must secure the facility, designate a contact person, and remove all regulated substances from the facility. The owner/operator must certify, on a form required by the agency, that all required removal requirements have been completed. With that form, the owner/operator must provide additional information required by Ohio Revised Code (ORC) Chapter 3752.

When ORC Chapter 3752 went into effect in 1996, the legislature determined that an owner or operator of a subject facility will bear the cost to comply with this rule. This Ohio Administrative Code (OAC) rule reiterates the same requirements currently in ORC Chapter 3752. Therefore, this rule will not increase or decrease the cost or overall regulatory compliance requirements of Ohio businesses.

The legislature, in enacting ORC Chapter 3752, determined that the cost to the public resulting from the failure of the regulated community to take adequate security and safety precautions was too great. Last year, for example, U.S. EPA performed twenty-three emergency removal actions at such facilities in Ohio. They have spent approximately \$6 million on emergency response and cleanup actions on Ohio projects since last year. In addition, U.S. EPA spent approximately \$5.5 million in responding to the Dayton Tire and Rubber facility hazardous chemical release, which occurred in 1987. The City of Dayton spent approximately \$2 million to clean up the site. We could have avoided these costs if the facility had taken security precautions.

We recognize the cost to comply with ORC Chapter 3752 and this OAC rule is facility-dependent. We estimate the cost of preparing the required notification forms will be less than \$520 for most parties. Our estimate is based on eight hours to complete all forms, using a labor rate of \$65 per hour. Depending on the size of the package, we estimate the cost of mailing to all required agencies will be less than \$7. Since most facilities have adequate security measures available, we expect little cost from this requirement. We estimate the cost of a warning sign is between \$7 and \$12.