

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

Agency Name

Division of Hazardous Waste

Division

Kit Arthur

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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 for five year review (FYR)? **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 submitted with amendments for its required five-year review. A detailed list of the locations and nature of the amendments is provided in Attachment A to this RSFA.

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 details the responsibilities of an owner or operator of a CRO-regulated facility.

The amendment corrects references to portions of Ohio statute that have been relocated.

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 3745-352-01 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:

This rule does not incorporate any text or other material by reference that is not exempted from compliance with sections 121.71 to 121.74 of the Revised Code.

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. Five Year Review (FYR) Date: **4/19/2017**

(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 amended 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:

Costs of compliance with this rule: Ohio EPA wrote this 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 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 Ohio EPA, local emergency planning committee, and local fire department. An owner/operator who 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 Ohio EPA, that all removal requirements have been completed. With that form, the owner/operator must provide additional information required by Ohio Revised Code (ORC) Chapter 3752.

When Ohio Revised Code (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 of overall regulatory compliance requirements to 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. In 2005, for example, U.S. EPA performed 23 emergency removal actions at such facilities in Ohio. They spent approximately \$6 million on emergency responses and cleanup actions on Ohio projects in 2006. In addition, U.S. EPA spent approximately \$5.5 million in responding to the Dayton Tire and Rubber facility hazardous chemical release of 1987. The City of Dayton spent approximately \$2 million to clean up the site. These costs could have been avoided 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 8 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.

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.

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**

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**

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

This rule includes reporting requirements if a facility has permanently ceased regulated operations. Related expenditures are discussed in the summary of estimated costs of compliance; see Question #15.

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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.

The draft CRO rules were available on our website from 07/15/2016 to 08/15/2016. Comments were due on the Interested Parties draft CRO rules on 08/15/2016. Anyone may access, review, and comment on these rules when posted on the website. In addition, we sent electronic notification to a large number of people regarding the availability of the draft CRO rule changes and intended no-change submittals. The hazardous waste general interest Interested Parties electronic notification list (listserv) is extensive, and includes regulated entities, consultants and attorneys, public interest groups, citizens, and governmental entities. A copy of the Interested Parties letter that was posted online 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 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 ? **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**

CRO - RSFA Attachment A

Rule 3745-352-20 is amended as follows:		
Location	Change	Reason
(A)(2)(f)	remove "division (A) of section 4919.79, division (E) of section 4921.04, division (C) of section 4923.03, or division (C) of section 4923.20" and add "Chapter 4905., 4921., or 4923."	a

- a Cross-reference corrections.

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