

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

Agency Name

**Division of Materials and Waste
Management (DMWM)****Michelle Mountjoy**

Division

Contact

50 West Town St., Suite 700 PO Box 1049 Columbus 614-728-5372**614-728-5315****OH 43216-1049**

Agency Mailing Address (Plus Zip)

Phone

Fax

michelle.mountjoy@epa.ohio.gov

Email

3745-560-05

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Composting - closure cost estimate.**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: **3734.02, 3734.12**5. Statute(s) the rule, as filed, amplifies or implements: **3734.12, 3734.02**

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

This rule is being filed to satisfy the five year rule review requirements of section 106.03 of the Ohio Revised Code (ORC).

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 identifies the requirements for financial assurance for composting facilities. Changes include the addition of a provision that allows composting facilities with a closure cost estimate below \$5500 to be exempt from establishing financial assurance, language to allow Ohio EPA to review and require revisions to a closure cost estimate when appropriate, and language that allows owners or operators of class II composting

facilities to request approval from the director of a closure cost estimate that is lower than the calculated estimate. The rule was also amended to clarify that class II composting facilities need to update their closure cost estimate annually, but do not need to adjust for inflation.

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 references to the OAC and ORC. While copies of these rules and statutes are generally available to the public through libraries and on-line sources, including the Ohio EPA website, ORC section 121.76 (A) exempts such references from the provisions of ORC sections 121.71 through 121.74.

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: **11/14/2017**

(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 proposed rule will not change Ohio EPA's projected budget during the current biennium.

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

The proposed filing of this rule will neither increase nor decrease Ohio EPA revenues or expenditures in the current biennium and will have no impact on Ohio EPA's budget.

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:

The cost of compliance associated with this rule includes those necessary for class I and class II composting facilities to prepare and submit a closure cost estimate in order to establish the necessary financial assurance to perform final closure. For class I composting facilities, the closure cost estimate must be facility specific and equal to an itemized third party cost estimate for final closure activities for the point in the operating life when closure would be most expensive. For class II composting facilities, the closure cost estimate is \$2.50 per cubic yard for authorized solid wastes, and \$8.00 per cubic yard for authorized alternative materials. The estimate is based on the operational capacity of the facility, and is required to be reviewed annually.

Exact closure cost estimates are variable depending on the size of the facility, the owner or operator's selection of a financial assurance instrument and financial institution, or the financial institution's evaluation of that business's creditworthiness.

The cost of a standby trust agreement averages between \$500 to \$3,500.00 depending on the bank, and a funded trust can cost anywhere from 1% of the amount in the trust for deposits of \$250,000.00 or less to .7% of the amount for deposits up to \$1,000,000.00. For surety bonds, costs range from 2% to 4% of the penal sum of the bond depending on the creditworthiness of the applicant. There may be collateral

required as well if the company's credit scores are not adequate. For the letter of credit, full collateral is usually required and some banks may also charge fees. The cost of insurance is variable depending on the insurer and the creditworthiness of the applicant.

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**

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? **Yes**

Failure to complete or update a closure cost estimate or failure to establish the appropriate amount of financial assurance may result in a penalty or sanction on the owner or operator of the composting facility.

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

This rule requires the owner or operator of a class I or class II composting facility to prepare and annually review and submit a closure cost estimate and establish financial assurance for final closure of the facility.

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
No	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.

This rule will only impose a cost to counties, townships, or municipal corporations that voluntarily choose to own or operate a solid waste composting facility. Comprehensive costs are outlined in the RSFA Part A document, as well as the Business Impact Analysis.

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.

See the response to question number two, above.

(a) Personnel Costs

See above.

(b) New Equipment or Other Capital Costs

See above.

(c) Operating Costs

See above.

(d) Any Indirect Central Service Costs

See above.

(e) Other Costs

See above.

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.

A county, township, or municipal corporation is only subject to the financial requirements in the event that the county, township, or municipal corporation voluntarily chooses to own or operate a solid waste composting facility.

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

There is no anticipated impact on economic development related to this filing.

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.

Interested/affected parties were contacted via listserv to inform them of the process that would be used to obtain input on this rule. Concepts regarding the content of the rule and a copy of the rule were posted on a dedicated Ohio EPA, Division of Materials and Waste Management website. Throughout the development of the rule, impacted parties were invited to submit comments on the approach being taken in the evaluation of the rule. A list of interested parties is available upon request.

Additionally, once the rule is filed with JCARR, a public notice through the Register of Ohio will be provided in accordance with ORC 119.03.

(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.)

Internally, Ohio EPA assessed the existing rule and authorizing statute in accordance with ORC 106.03 during the review of this rule. Ohio EPA considered other regulatory

and non-regulatory approaches when evaluating this rule and also considered enforceability and criteria from the internal procedures document titled, "The Division of Solid and Infectious Waste Management's Rule Writing Manual." Ohio EPA released the rule for an interested party comment period, and solicited comments from both the public and industry.

- (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 Answered

- (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**