

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3745-560-200

Rule Type: Amendment

Rule Title/Tagline: Class II composting facility establishment.

Agency Name: Ohio Environmental Protection Agency

Division: Division of Materials and Waste Management (DMWM)

Address: 50 West Town St., Suite 700 PO Box 1049 Columbus OH 43216-1049

Contact: Michelle Mountjoy **Phone:** 614-728-5372

Email: michelle.mountjoy@epa.ohio.gov

I. Rule Summary

1. Is this a five year rule review? No
 - A. What is the rule's five year review date? 5/13/2023
2. Is this rule the result of recent legislation? No
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 3734.02, 3734.12
5. What statute(s) does the rule implement or amplify? 3734.02, 3734.05, 3734.12
6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No
 - A. If so, what is the citation to the federal law or rule? Not Applicable
7. What are the reasons for proposing the rule?

Ohio EPA is filing this rule to clarify siting specifications for composting facilities.
8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule specifies requirements for establishment of a class II composting facility. Amendments include revisions to paragraph (D)(1)(g) and the removal of a redundant siting criteria in paragraph (D)(1)(j). Historically, the rules have required a 250-foot setback from a class II composting facility to an occupied dwelling.

9. **Does the rule incorporate material by reference?** Yes
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule contains references to the OAC (Ohio Administrative Code). While copies of these rules are generally available to the public through libraries and on-line sources, including the Ohio EPA website, ORC section 121.75 exempts such references from the provisions of ORC sections 121.71 through 121.74.

11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

Not Applicable.

13. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

The cost of compliance associated with this rule includes those necessary to prepare and submit a registration application and establish financial assurance. Although a cost of compliance exists with this rule, any estimate must account for a range of significant variables. The cost will naturally vary depending on the facility size, design, and location.

There are no fees for composting facility registrations; however, class II composting facilities are required to obtain an annual license, which includes a \$100 application

fee and a license issuance fee due thirty days after receipt of the license. The license issuance fee is determined based on the maximum amount of material (in tons) authorized to be on site.

Financial assurance costs are subject to several variables including the size of the facility, the owner's or operator's selection of a financial assurance instrument and financial institution, or the financial institution's evaluation of that business's creditworthiness. For class II composting facilities accepting solid wastes, the closure cost estimate is calculated using a rate of \$2.50 per cubic yard multiplied by the operational capacity of materials placement area. For class II composting facilities accepting alternative materials, the cost estimate is calculated using a rate of \$8.00 per cubic yard or the local disposal rate, whichever is higher, multiplied by the maximum amount of alternative materials authorized to be on site. 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. If the closure cost estimate is \$5,500 or less, no financial assurance is required.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**
16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable.

III. Common Sense Initiative (CSI) Questions

17. **Was this rule filed with the Common Sense Initiative Office? Yes**
18. **Does this rule have an adverse impact on business? Yes**
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

This rule requires a registration and license prior to establishment of a class II composting facility.

- 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 comply with the requirements of this rule will prohibit Ohio EPA from issuing a registration. Establishing a class II composting facility without a registration poses a risk to public health, safety, or the environment and could lead to a penalty or sanction on the owner or operator.

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

This rule requires submittal of a registration application as a condition of compliance. Expenditures are identified in question number thirteen.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

This rule increases business expenses initially when preparing and submitting a registration application and obtaining a license. Expenditures are identified in question number thirteen.

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

- 19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. How many new regulatory restrictions do you propose adding to this rule?**

Not Applicable

- B. How many existing regulatory restrictions do you propose removing from this rule?**

Not Applicable

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

Not Applicable

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable

Rule Summary and Fiscal Analysis

Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	No
B. County Government	Yes
C. Township Government	Yes
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

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

3. Is this rule the result of a federal government requirement? No

- A. If yes, does this rule do more than the federal government requires? *Not Applicable***
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**
- Not Applicable*

4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:

A. Personnel Costs

See the response to question number two, 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.

- 5. Please explain how the local government(s) will be able to pay for the increased costs associated with the 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 composting facility.

- 6. What will be the impact on economic development, if any, as the result of this rule?**

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

Rule Summary and Fiscal Analysis

Part C - Environmental Rule Questions

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.

(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.

Throughout the development of the rule, impacted parties were invited to submit comments on the approach being taken, the concepts being considered, and the rule language. Interested/affected parties were contacted via listserv to inform them of the process that would be used to obtain input on this rule and the concepts under consideration and were given 30 days to submit comments. Subsequently, a copy of the proposed rule was posted on a dedicated Ohio EPA, Division of Materials and Waste Management website and comments were again invited. Once the rule is filed with JCARR, a public notice through the Register of Ohio will be provided in accordance with ORC section 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 reviewed the existing rule and authorizing statutes in accordance with ORC section 106.03 in reaching the determination to amend this rule. 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 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**