

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3745-599-35

Rule Type: No Change

Rule Title/Tagline: Beneficial use - legitimacy criteria.

Agency Name: Ohio Environmental Protection Agency

Division: Division of Materials and Waste Management (DMWM)

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I. Rule Summary

1. Is this a five year rule review? Yes
 - A. What is the rule's five year review date? 11/27/2023 and 11/27/2028
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, 6111.03, 6111.035, 6111.32
5. What statute(s) does the rule implement or amplify? 3734.02, 3734.03, 6111.03, 6111.035, 6111.32
6. What are the reasons for proposing the rule?

Ohio EPA is filing this rule to satisfy the five year rule review requirements of section 106.03 of the Ohio Revised Code (ORC).
7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule outlines the legitimacy criteria for the management of a beneficial use byproduct. Legitimacy criteria ensure that beneficial use byproducts are managed as

a valued commodity and are not being speculatively accumulated in amounts greater than feasible uses.

8. **Does the rule incorporate material by reference? Yes**
9. **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 a reference to the Ohio Administrative Code (OAC). While copies of this rule 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.

10. **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

11. **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.

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

This rule requires that the beneficial use byproduct be stored and managed as a valuable commodity and that releases to the environment be prevented. In addition, this rule requires that, upon the request of Ohio EPA, evidence be provided that the beneficial use byproduct has not been accumulated speculatively. This is intended to guard against the stockpiling of beneficial use byproduct beyond feasible use. Variability in the material, proposed use, location of use, and size of the project will contribute to the overall cost of compliance under this rule.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**

14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**
15. **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

16. **Was this rule filed with the Common Sense Initiative Office? Yes**
17. **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? 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 comply with the storage specifications contained in this rule may endanger human health, safety, and the environment and could lead to a penalty or sanction on the offender.

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

This rule requires the person engaging in beneficial use to submit a demonstration, upon request, that the beneficial use byproduct is not being accumulated speculatively. Expenditures are identified in question number twelve.

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**

Recordkeeping and preparation of a legitimacy demonstration could increase business expenses. Expenditures are identified in question number twelve.

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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.

The rule will only impose a cost to counties, townships, or municipal corporations that voluntarily choose to beneficially use a beneficial use byproduct. 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 beneficially use a beneficial use byproduct.

- 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.

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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. A list of interested parties is available upon request. 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 retain this rule without change. 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**