

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

Agency Name

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

Division

Michelle Mountjoy

Contact

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

Agency Mailing Address (Plus Zip)

614-728-5372

Phone

614-728-5315

Fax

michelle.mountjoy@epa.ohio.gov

Email

3745-599-35

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Beneficial use - legitimacy criteria.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **No**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, 6111.03, 6111.035, 6111.32**5. Statute(s) the rule, as filed, amplifies or implements: **3734.02, 3734.03, 6111.03, 6111.035, 6111.32**

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

Ohio EPA is filing this rule to implement a new regulatory program regarding the beneficial use of solid wastes, industrial wastes, and other wastes regulated under Ohio Revised Code Chapters 3734. and 6111.

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 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. 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 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 121.76 (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:

(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

The creation of this 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 creation 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 beneficial use program is based upon the owner valuing a beneficial use byproduct and its use greater than the cost of disposal. Therefore, the owner has an economic interest in managing the beneficial use byproduct similarly to other valued materials intended for use. 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 the owner demonstrate upon Ohio EPA request that the beneficial use byproduct has not been accumulated speculatively. This requirement is intended to guard against the speculative stockpiling of beneficial use byproduct beyond feasible use and possibly avoiding disposal costs. The Ohio EPA envisions that such a request will be made when

accumulation significantly exceeds removal for use. The cost of compliance is the owner's time, when requested, to explain how the amounts accumulated are consistent with rule or permit. The cost of compliance is affected by the owner's choice of recordkeeping.

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 comply with the legitimacy criteria contained in this rule may endanger human health, safety, and the environment and could result in a penalty or sanction on the person managing the beneficial use byproducts.

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

This rule requires a demonstration that use of the beneficial use byproduct is within the timeframes specified in the permit per a request from the director. Expenditures are identified in question number 15.

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

Yes

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 school districts, counties, townships, or municipal corporations that voluntarily seek and obtain authorization to beneficially use a material. 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.

This rule will only impose a cost to school districts, counties, townships, or municipal corporations that voluntarily seek and obtain authorization to beneficially use a material.

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 rule filing.

Page E-1

Rule Number: 3745-599-35

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.
-

(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 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 rule and authorizing statute in accordance with ORC section 106.03 in reaching the determination to create 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 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**