

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Composting Rules

Rule Number(s): 3745-560-130, 3745-560-230, 3745-560-330

Date: November 26, 2013

**Rule Type:**

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

These rules establish the compost quality standards and the testing requirements for compost.

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2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**  
Ohio Revised Code 3734.02, 3734.028, and 3734.12.
3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**  
*If yes, please briefly explain the source and substance of the federal requirement.*  
No.
4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**  
Not Applicable.
5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**  
The purpose of these regulations is to fulfill a statutory requirement contained in Ohio Revised Code ORC 3734.02, 3734.028, and 3734.12, which gives the director the authority to draft rules regarding composting facilities in Ohio and specifically compost quality standards. Composting facilities are a type of solid waste facility that have unique specifications which require regulations separate from those applicable to other solid waste facilities.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**  
The measure of success is the amount of quality compost produced by Ohio composting facilities available for productive use. Additional measures include the continued minimal complaints regarding composting facility operation, continued minimal violations of environmental laws, and the absence of environmental and health impacts at regulated composting facilities or linked to use of quality compost.

### **Development of the Regulation**

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**  
*If applicable, please include the date and medium by which the stakeholders were initially contacted.*  
Ohio EPA contacted stakeholders on the composting and solid waste landfill listserv lists. These interested parties were contacted via email notifying them of the Early Stakeholder Outreach Period on August 9, 2013.

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**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Ohio EPA did not receive any feedback during the Early Stakeholder Outreach period.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

These rules were most recently adopted and became effective April 2, 2012 based on a scientific basis consistent with industry standards. There were not appeals of these rules. The only amendments proposed are to correct typographical errors and correct two citations to established analytical sampling methods.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

These rules were most recently adopted and became effective April 2, 2012. The sole purpose of the proposed amendments is to correct typographical errors and correctly cite to established analytical methods.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

These rules were most recently adopted and became effective April 2, 2012. The sole purpose of the proposed amendments is to correct typographical errors and correctly cite to established analytical methods. The composting rules were however written to be performance based by outlining compost quality standards that need to be met.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another existing Ohio regulation.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Agency will separately provide notice to composting facilities via our listserv email service to inform them of regulatory changes. The regulations will be applied consistently to the regulated community through uniform compliance with the compost quality standards outlined in the rules.

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## **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

The impacted business community includes owners and operators of the 391 Class I, Class II, and Class III composting facilities in Ohio.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Because this rulemaking effort was initiated with the sole purpose of correcting typographical errors and correcting the citations to established analytical methods contained in the rules, there are no adverse impacts associated with the rule amendments. The nature of the adverse impact for this rule set as codified is in the form of sampling costs.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

Because this rulemaking effort was initiated with the sole purpose of correcting typographical errors and correcting the citations to established analytical methods contained in the rules, there are no adverse impacts associated with the rule amendments. As expressed in the Rule Summary and Fiscal Analysis Forms filed with the 2012 adoption of these rules, the cost of testing all 4 tables in this rule range from \$460.00 to \$268.50 based upon three laboratory quotes. The third quote of \$360.00 was from a laboratory with national Seal of Testing Assurance (STA) Program certification. Some facilities in Ohio voluntarily use such voluntarily certified laboratories. The number of times that the required testing is necessary is dependent upon the operator decisions for distribution of compost product.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Ohio Revised Code 3434.028 specifically requires the Director of Ohio EPA to adopt rules to establish standards of quality for compost products produced by compost facilities to ensure that the use of those products in accordance with accepted agricultural or horticultural practices does not pose a threat to public health or safety or the environment. Compost quality standards ensure that the compost product used by the public does not have levels of pollutants that would pose a health, safety, or environmental hazard.

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### **Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

An owner or operator of a composting facility subject to the regulations contained in Ohio Administrative Code 3745-560 are also subject to the director's exemption authority established under 3734.02(G) of the Ohio Revised Code and variance authority under 3734.05 of the Revised Code that provides for consideration of alternative means of compliance.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The director or the approved health department will evaluate the applicability of ORC section 119.14 to solid waste facilities regulated under OAC Chapter 3745-560 when assessing fines and penalties for paperwork violations and first-time offenders.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at: <http://epa.ohio.gov>.