

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: DMWM-HW Set L

Rule Number(s): 114 rules in OAC Chapters 3745-50 to 3745-57, 3745-65, 3745-66, 3745-69, 3745-256, 3745-266, 3745-270, 3745-273, and 3745-279

Date: January, 28 2015 (resubmittal)

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☒ Rescinded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.

This rule package includes a number of hazardous waste management rules regarding permitting; fees; identification and listing of hazardous waste; transporter standards; generator standards; treatment, storage, and disposal standards; land disposal restrictions; universal waste management; and used oil management. These will be considered and bundled together as the “Set L” rules. In general, the Set L rules will fall into three basic categories:

- A. Federally driven changes. Ohio’s hazardous waste rules must match their federal Resource Conservation and Recovery Act (RCRA) counterpart rules. A number of the Set L rules need to be amended to address changes to their federal RCRA counterpart provisions, as published in these Federal Registers:

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Federal Register subject/title	Federal Register (FR) location, date	Impacted Ohio rules
1. Expansion of comparable fuels (see withdrawal and re-amendments at FR 06/15/2010)	73 FR 77954; 12/19/2008	3745-51-04, 3745-51-38 [all amendments in this FR were superseded]
2. Withdrawal of expansion of comparable fuels (withdraws FR 12/19/2008, re-amends)	75 FR 33712; 06/15/2010	3745-51-04, 3745-51-38rescind, 3745-51-38new
3. Removal of saccharin and its salts from the lists of hazardous waste constituents and hazardous wastes (U202)	75 FR 78918; 12/17/2010	3745-51-11appendix, 3745-51-33, 3745-270-40
4. Technical corrections; unwanted material at labs owner by colleges and universities	75 FR 79304; 12/20/2010	3745-52-200, 3745-52-206, 3745-52-212, 3745-52-214
5. LDRs: Revision of the treatment standards for carbamate wastes	76 FR 34147; 06/13/2011	3745-270-40, 3745-270-48
6. Guidelines establishing test procedures for the analysis of pollutants under the Clean Water Act; analysis and sampling procedures	77 FR 29758; 05/18/2012	3745-50-11
7. Conditional exclusion for solvent-contaminated wipes	78 FR 46447; 07/31/2013	3745-50-10, 3745-51-04
8. Conditional exclusion for CO ₂ streams in geologic sequestration activities (RCRA portions)	79 FR 358; 01/03/2014	3745-50-10, 3745-51-04

- B. State-initiated changes. The following concepts specific to Ohio will be updated or corrected in the Set L rules package (these changes are not shown in the federal counterpart provisions):
- i. SB 294 (129th GA, Senator Schaffer), which provided that certain reports that were required as “annual reports” be changed to “biennial reports” to match the federal RCRA requirement. (Rules 3745-50-11, 3745-51-04, 3745-51-06)
 - ii. Correction of Ohio EPA division names and contact information, as a result of reorganization within Ohio EPA. (Rules 3745-50-29, 3745-52-34, 3745-53-30, 3745-54-52, 3745-54-56, 3745-65-56, 3745-279-42, 3745-279-43, 3745-279-51, 3745-279-52, 3745-279-62, 3745-279-73)

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- iii. Ohio's 72-hour recyclers rule and its financial assurance requirements. One rule contained an error that required a re-write of the financial assurance requirements to correct unworkable cross-references. That corrected language was voluminous, and to make the requirements easier to read and understand, they were removed from their original rule (3745-51-06) and put into a new rule (3745-51-100). The new rule is not more stringent than the prior language, it just eliminates the problematic cross-references.
 - iv. Miscellaneous corrections of spelling, punctuation, word choice, sentence structure, redundant or unnecessary text, cross-references, typos, etc. This type of correction applies to the ORC 106.03 and 106.031 exempt rules as well as the review rules, discussed below. (Most of the rules in Set L contain these minor corrections, so the list of rules is not provided here.)
- C. ORC 106.03 and 106.031 reviews. Many of these rules are subject to review under ORC 106.03 and 106.031, the five-year review requirements. Ohio EPA has not identified any major problems with any of these rules (except as noted above in 1.B.iii.), but minor corrections (to spelling, punctuation, word choice, outline structure, rule cross-reference errors and updates, etc.) will be made. (Most of the rules in Set L are subject to this review requirement and contain these minor corrections, so the list of rules is not provided here.)

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code (ORC) 3734.02, 3734.05, 3734.12, and 3734.18 provide the authority for these rules.

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?

Yes, some of the proposed changes are being made to address changes in the federal RCRA program. Ohio hazardous waste management rules are required to be consistent with and equivalent to their federal counterpart provisions, with exceptions provided in the Ohio Revised Code.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Some of the proposed changes are specifically required by U.S. EPA. Several of the changes being made are to comply with changes in Ohio law. None of the changes proposed exceed the federal requirements.

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)?

In order for Ohio EPA to maintain its authorization to regulate hazardous waste in Ohio, the Agency must adopt rules that meet the federal requirements. The proposed rules are being adopted to maintain Ohio's authorization. Without this authorization, Ohio businesses would be regulated by U.S. EPA. Further, these changes are important because they protect human health and the environment.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Agency will measure the success of these regulations through the degree of compliance with these regulations by the regulated community, the minimal occurrences of hazards to public health, safety and the environment, and continuation of the Agency's federal authorization to regulate hazardous waste in Ohio.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

In March of 2013, Ohio EPA requested suggestions from stakeholders through its Early Stakeholder Comment (ESO) process. In addition to posting a request for early stakeholder comment on the Ohio EPA website, Ohio EPA also sent 1,996 emails to various interested stakeholders representing regulated entities, professional associations, environmental groups, consultants, and attorneys. The list of interested stakeholders, including the Ohio Manufacturers Association, Ohio Petroleum Council, Ohio Sierra Club, Ohio Environmental Council, etc., is available upon request.

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

Several comments were received as a result of Ohio EPA's ESO request for input. As a result of the input, two state-initiated subjects of interest were removed from "Set L" for further consideration, and to work with those interested parties regarding potential rule changes. The subjects that were removed from "Set L" are 1) changes to allow waste collection events to more easily accept hazardous waste from conditionally exempt small quantity generators, and 2) the addition of aerosol cans and antifreeze to the list of "universal wastes" in Ohio. Ohio EPA has agreed to revisit these issues in a future rule packet after the parties have had an opportunity to have further discussions.

Two ESO comments were received regarding the existing rule definition of treatment. Upon consideration of these comments, Ohio EPA has drafted an amendment to be consistent with the definition of treatment in ORC 3734.01.

Ohio EPA now intends to release an interested party draft of the Set L rule amendments for stakeholder review and comment.

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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.

The Ohio hazardous waste rules are required by state and federal law to be equivalent to the federal rules.

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?

Alternative provisions would not be appropriate for these rules. The Ohio hazardous waste rules are required by state and federal law to be equivalent to the federal rules.

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.

No. The Ohio hazardous waste rules are required by state and federal law to be equivalent to their federal counterpart rules.

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

When they were originally promulgated, Ohio EPA worked with LSC and the regulated community to ensure that these rules did not duplicate any other Ohio rules. These rules and/or other Ohio EPA rules have been amended in the past to eliminate duplicative requirements.

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.

Ohio EPA implementation of this rule package will include notifying the regulated community of the rule requirements, providing guidance to the regulated community, and offering presentations on rule updates. Ohio EPA is developing guidance and presentations for inspectors and field staff as well, so they will be well equipped to offer assistance as they interact with the regulated community.

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 business community impacted by Ohio's hazardous waste rules consists of the businesses that generate, treat, store, dispose of, or transport hazardous waste.

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

Regarding the amendments

The Agency has identified no adverse impacts regarding these rule amendments. Most of the rules in Set L contain minor corrections that will have no adverse impact on cost of compliance.

Federally-based changes. One rule containing federally-based changes only updates the name of a document being referenced (see 1.A. table item in row 6.), which has no adverse impact to the cost of compliance. The federally-based amendments in two rules (3745-51-04, restructured new 3745-51-38, see 1.A. table in row 2) do not increase or decrease the rules' stringency, but maintain the current level of stringency of the rules, so these rule amendments should not impact the cost of compliance. All the remaining federally-based amendments (as listed in 1.A table) reduce the stringency of the state rule to match the reduced stringency of the federal counterpart regulation (as discussed in the preamble of each Federal Register listed). We estimate that there will be no additional cost of compliance for these amendments; in fact, these amendments may result in cost savings to the regulated community.

Other changes. Many of the rules in Set L are not amended to match amended federal counterparts but are in Set L to make other corrections and to meet their five-year review requirement. These mostly non-substantive amendments do not impact the stringency or cost of compliance for these rules.

Regarding the rules as they exist, as a Program, for five-year review purposes.

Ohio EPA's hazardous waste management rules are required, by federal statute and rule, as well as Ohio statute, to be functionally equivalent to the final federal rules (i.e., there may be text differences from the federal rules, but the resulting requirements must be the same.) Each Ohio rule has a counterpart federal rule (there are a few exceptions to this; in Set L this is discussed in 1.B.iii.). If the state hazardous waste rules did not exist, the federal hazardous waste rules would still apply to Ohio businesses, so any costs incurred as a result of compliance with the Ohio rules would also be incurred as a result of compliance with the federal counterpart rules. With the exception of a few Ohio statute-based fee rules (see 3745-50-36, the only one in Set L), the cost of compliance for state and federal requirements would be similar.

The adverse impact of the hazardous waste management rules (state or federal) varies widely depending on the nature of the management activity being conducted by the regulated community. This can include costs of obtaining a treatment, storage, and disposal permit (which can cost over \$100,000), personnel training, safety equipment, conducting inspections and keeping records, submitting reports to Ohio EPA (electronically in many cases, which incurs a nominal cost), etc.

In promulgating the Ohio hazardous waste rules, Ohio EPA's DMWM only makes changes necessary to "Ohioize" the finalized federal language so that the rules 1) maintain the required equivalence with the federal program, 2) do not create problems (or costs) for the citizens and industries of Ohio that were addressed and resolved during the federal comment-response process and in the federal rule promulgation process, and 3) do not create new problems (or costs) for the citizens and industries of Ohio that were not addressed in that federal comment-response and federal rule promulgation process.

So that the Agency's intentions and the reasons for the amendments are clear, all the draft rules (and proposed rules, via the RSFA and its attachments) are accompanied by a cover sheet that explains the location and nature of the amendments in each rule. Equivalence and state rule stringency is reviewed by U.S. EPA Region 5 via the authorization process that is also a federal requirement (see 40 CFR Part 271.)

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.

The Agency estimates a \$0 adverse impact regarding these rule amendments. Some of the amendments in the Set L rules would be expected to reduce industry's cost of compliance.

During the promulgation of the federal rules, costs and adverse impacts are taken into consideration, and comments regarding those issues are addressed before federal rules are published as final rules. Federal preamble (in the Federal Registers listed in the table in 1.a., and listed at the end of each federal rule in the CFR) includes discussion of costs and adverse impacts that were identified by commenters and addressed during the federal rulemaking. Often that discussion is quite detailed and extensive, so we are not restating it here.

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

Ohio EPA must promulgate rules that are equivalent to the federal RCRA rules in order to maintain its authorization to regulate hazardous waste in Ohio. Without adoption of these rules, Ohio EPA could lose its ability to regulate hazardous waste in Ohio and the impacted community would be subject to the same rules by U.S. EPA.

Regulatory Flexibility

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

No, a facility's activity regarding hazardous management determines whether they are subject to the hazardous waste management rules (both federal and Ohio rules).

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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 will evaluate the applicability of ORC section 119.14 to entities regulated by these rules 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>.