

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Package Title: DMWM-CRO-16 (Cessation of Regulated Operations Program)

Rule Numbers: 9 rules: 3745-352-01, 3745-352-05, 3745-352-10, 3745-352-15, 3745-352-20, 3745-352-25, 3745-352-30, 3745-352-35, and 3745-352-40

Date: July 2016

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☐ Rescinded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.

These 9 rules comprise the Cessation of Regulated Operations (CRO) Program. This program provides the requirements that apply when a facility ceases regulated operations. It requires responsible parties to secure abandoned sites until all regulated substances (e.g., chemicals), are properly removed or cleaned up.

The program includes the incorporation by reference rule (3745-352-01) and a Definitions rule applicable specifically to OAC Chapter 3745-352 (3745-352-05). There are rules that describe the applicability of the program (3745-352-10) and who must comply with the rules

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

(3745-352-15), responsibilities of the owner or operator of a facility that has ceased regulated operations (3745-352-20), as well as the responsibilities of a holder of a first mortgage on real property, a fiduciary, an indentured trustee for debt securities, or a receiver (3745-352-25). Rules address security requirements (3745-352-30), requirements regarding the designation of a contact person at the facility (3745-3652-35), and how to get a waiver from compliance with certain requirements (3745-352-40).

Of these nine rules, only the Incorporation by reference rule (3745-352-01) is being amended at this time. The amendments to this rule include website updates, dated reference updates, and some non-substantive stylistic corrections. The rest of the rules are being submitted as no-change rules.

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

Ohio Revised Code (ORC) 3752.03 provides 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?

No, these rules are not associated with any federal program. They implement state statute (ORC Chapter 3752).

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)?

These rules serve to protect human health and the environment when a facility ceases regulated operations by ensuring the proper management of on-site chemicals and wastes. The public purpose is to prevent threats to human health and the environment that are created when business owners and operators irresponsibly abandon businesses where chemicals were produced, used, stored or handled.

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 rules through the degree of compliance by the regulated community, which will minimize occurrences of hazards to public health, safety, and the environment 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.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On July 2, 2015, Ohio EPA requested suggestions from stakeholders through its Early Stakeholder Outreach (ESO) process. In addition to posting a request for early stakeholder comment on the Ohio EPA website, Ohio EPA also sent approximately 2,000 emails to various interested stakeholders representing regulated entities, professional associations, environmental groups, consultants, and attorneys, inviting their participation in the review and comment process.

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

No written comments were received as a result of Ohio EPA's ESO request for input. Since the underlying statute has not changed, and stakeholders did not provide any suggested changes to these rules, Ohio EPA made the decision to submit these rules as no-change rules, except in the one rule that needs some updates to provide accurate references.

- 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 rules in OAC Chapter 3745-352 are not based on scientific data. The rules establish legal obligations for notice, duties, procedures, and other responsibilities of regulated business owners and operators to secure abandoned sites until all regulated substances (e.g., chemicals), are properly removed or cleaned up.

- 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. ORC Chapter 3752 sufficiently describes the requirements that are reflected in these rules. No inadequacies have been identified by stakeholders in the current rules. Therefore, Ohio EPA has made the determination to retain the rules without change except for minor updates to the incorporation by reference rule (3745-352-01).

- 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. ORC Chapter 3752 sufficiently describes the requirements that are reflected in these rules. No need for changes has been identified by stakeholders in the current rules. Therefore, Ohio EPA has made the determination to retain the rules without change except for minor updates to the incorporation by reference rule (3745-352-01).

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

ORC Chapter 3752 is specific to establishment of the Cessation of Regulated Operations Program. The rules in OAC Chapter 3745-352 are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

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's Cessation of Regulated Operations Program rules were originally implemented in 1996 and have existed since that time. The Ohio EPA is seeking to only update the incorporation by reference rule (3745-352-01). Notice of this minor amendment will be provided and posted on the Agency webpage.

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;

ORC Chapter 3752 applies to owners or operators of facilities required to file a chemical inventory report under the Emergency Planning and Community Right-to-Know Act (EPCRA). Facilities exempted from CRO include: underground storage tanks regulated by the State Fire Marshal's Bureau of Underground Storage Tank Regulations (BUSTR); oil/gas production operations; and public utilities.

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

The adverse impact is the employer's time involved in the following:

- Within 30 days after permanent cessation of regulated operations, submit a notice of cessation of regulated operations using a prescribed form, designate a contact person, and secure the facility and post warning signs.
- Within 90 days after permanent cessation of regulated operations, submit a chemical inventory form, and a certification that all regulated substances have been removed from the facility.

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 adverse impact is facility specific and highly variable. The adverse impact is directly impacted by the amounts of regulated substances at the facility, the business' choices on removal of those substances, and the selected manner of securing the

facility and posting signs. The adverse impacts associated with the time to provide certification and notification may require one to several workdays.

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

A review of the rules finds that they closely follow the requirements established by ORC Chapter 3752 and are consistent with the intent of the statute.

Regulatory Flexibility

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

While ORC Chapter 3752 does not provide an exemption, there is significant flexibility available to businesses on how to comply with the rules. Ohio EPA will work with businesses on a facility specific basis to identify options and acceptable timeframes to achieve 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 will evaluate the applicability of ORC section 119.14 to businesses regulated under OAC Chapter 3745-352 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?

The following resources are available:

- Ohio EPA's Division of Material & Waste Management provides technical and regulatory assistance and maintains a [webpage specific to the Cessation of Regulated Operations Program](#).
- 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://www.epa.ohio.gov/ocapp/ComplianceAssistanceandPollutionPrevention.aspx>.