

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio EPA

Regulation/Package Title: Solid Waste Composting Facility

Rule Number(s): Propose to amend rules 3745-500-02, 3745-500-03, 3745-500-35 and retain the remaining rules in Chapter 3745-500 without change. Propose to retain all rules in Chapter 3745-501. Propose to amend rules 3745-503-05 and retain the remaining rules in Chapter 3745-503. Propose to amend rules 3745-560-01, 3745-560-02, 3745-560-04, 3745-560-05, 3745-560-100, 3745-560-105, 3745-560-110, 3745-560-130, 3745-560-200, 3745-560-201, 3745-560-202, 3745-560-210, 3745-560-220, 3745-560-230, 3745-560-300, 3745-560-302, 3745-560-310, 3745-560-320, 3745-560-330, 3745-560-335, 3745-560-400, 3745-560-402, 3745-560-410 and retain the remaining rules in Chapter 3745-560 without change.

Date: March 6, 2017

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☐ Rescinded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

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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.

All of the rules contained in Chapters 3745-501, 3745-503, and 3745-560 are due for their 5-year review required under ORC 106.03. The deadline for Ohio EPA's 5-year review determination pursuant to ORC 106.03 is April 2, 2017.

Chapter 3745-500 contains general administrative and procedural rules for solid waste facilities. Eleven of the rules in Chapter 3745-500 are due for their 5-year review required under ORC 106.03. Ohio EPA's 5-year review determination for eight of these eleven rules is to retain the rule without change. Three of these eleven rules are to be amended to add composting definitions to 3745-500-02, update the incorporation by reference documentation in 3745-500-03, and to make a grammatical change to 3745-500-35. The deadline for Ohio EPA's 5-year review determination pursuant to ORC 106.03 is April 2, 2017. While there are three rules in Chapter 3745-500 with 5-year review deadlines in 2022, Ohio EPA has determined that two of these three rules [Rule 3745-500-02: General administration – definitions, and 3745-500-03: Incorporation by reference] need to be amended in this rule package.

Rule Number	Chapter 3745-500 Rule Title	Action
3745-500-01	General administration - applicability.	No Change
3745-500-02	General administration - definitions.	Amend
3745-500-03	Incorporation by reference.	Amend
3745-500-35	Relationships among authorizing documents, rules, and the authority of the director and board of health.	Amend
3745-500-50	Signatures.	No Change
3745-500-130	Retention and distribution of authorizing documents - procedures for boards of health and Ohio EPA.	No Change
3745-500-150	Alteration to a solid waste permit to install.	No Change
3745-500-220	Exemptions from solid waste requirements.	No Change
3745-500-330	Termination of a permit to install issued under Chapter 3734. of the Revised Code.	No Change
3745-500-350	Causes for revoking a permit to install issued under Chapter 3734. of the Revised Code.	No Change
3745-500-360	Administrative change to a permit to install.	No Change

Chapter 3745-501 contains procedural rules pertaining to annual licensing of solid waste facilities. Ohio EPA's 5-year review determination pursuant to ORC 106.03 is to retain all eight rules in Chapter 3745-501 without change.

Rule Number	Chapter 3745-501 Rule Title	Action
3745-501-01	Licensing - applicability.	No Change
3745-501-02	Licensing - definitions.	No Change
3745-501-05	Licenses required for solid waste facilities.	No Change
3745-501-10	License applications, application procedures, and remittal of fees after license issuance.	No Change
3745-501-15	Criteria for issuing or denying facility licenses.	No Change
3745-501-20	Procedures for the licensing authority for reviewing and considering license applications.	No Change
3745-501-35	Transfer of licenses.	No Change
3745-501-40	Suspension or revocation of a license.	No Change

Chapter 3745-503 contains rules pertaining to financial assurance mechanisms and procedures for the estimated cost of closure and post-closure of solid waste facilities. Ohio EPA's 5-year review determination pursuant to ORC 106.03 is to retain three of the four rules in Chapter 3745-503 without change. Rule 3745-503-05 is to be amended to update a publication reference.

Rule Number	Chapter 3745-503 Rule Title	Action
3745-503-01	Financial assurance - applicability.	No Change
3745-503-02	Financial assurance – definitions.	No Change
3745-503-05	Financial assurance for closure.	Amend
3745-503-20	Wording of financial assurance instruments.	No Change

Chapter 3745-560 is the composting program chapter containing rules specific to the regulation of solid waste composting facilities. The forty rules in Chapter 3745-560 are due for their 5-year review required under ORC 106.03. Ohio EPA's 5-year review determination for eighteen of these forty rules is to retain the rule without change. Twenty-four of these forty rules are to be amended. Significant amendments to these rules include:

- The rules establish a composting facility design capacity and facility operational capacity in the class I permit and class II facility registration. The owner or operator would have the option of establishing an operational capacity less than the facility design capacity. The operational capacity would be the amount of material managed in the materials placement area. The owner or operator can adjust the operational capacity and the size of the materials placement area by submitting an updated registration including a new closure cost estimate based upon the operational capacity. This is intended to provide the owner and operator of a class I and class II composting facility with a means to better tailor closure cost estimates and financial assurance to the materials actually managed on the facility if less than the facility's design capacity.

- OAC rule 3745-560-01 exempts persons composting certain feedstocks within an aggregate area not greater than 300 square feet from compliance with Chapter 3745-560 so long as the operations do not create a nuisance or cause a health hazard. Revisions to OAC Rule 3745-560-01 in this package increase that exemption from 300 square feet to 500 square feet.
- OAC Chapter 3745-560 contains a provision that does not require a class I or class II composting facility with a closure cost estimate of \$3,500 or less to establish financial assurance. Revisions in this package increase that exemption to \$5,500.
- The rules add acidic anaerobic fermentation as a method of composting. The intent is to allow consideration of this method of composting and acknowledge the resulting material as compost.
- Revisions to the title and content of rules 3745-560-202, 3745-560-302, and 3745-560-402 to address design and construction associated with the commencement of facility operations. The intent is to clarify what facility design and construction needs to be completed prior to commencement of facility operations.
- Revised language regarding leachate management and control of surface water of run-on and runoff. See rules 3745-560-02 for definitions for run-on and runoff. The intent is to clarify the requirements specific to run-on, runoff, and leachate.
- Revised rules 3745-560-130, 3745-560-230, and 3745-560-330 regarding compost quality standards and updated the tables. The intent is to update the various listed preparation and analytical methods.

Rule Number	Chapter 3745-560 Rule Title	Action
3745-560-01	Composting facilities - applicability.	Amend
3745-560-02	Composting facilities - definitions.	Amend
3745-560-03	Plan view drawing update for class IV composting facilities.	Amend
3745-560-04	Composting - log of operations and annual report forms.	Amend
3745-560-05	Composting - closure cost estimate.	Amend
3745-560-100	Class I composting facility establishment.	Amend
3745-560-101	Criteria and procedures for approval, termination, revocation, and administrative change of a class I composting facility permit to install.	No Change
3745-560-102	Procedures for commencement of operations at class I composting facilities.	No Change
3745-560-105	Alternative materials request for class I composting facilities.	Amend
3745-560-110	Operational requirements for class I composting facilities.	Amend
3745-560-115	Record keeping requirements for class I composting facilities.	No Change
3745-560-120	Compost distribution requirements for class I composting facilities.	No Change
3745-560-125	Compost sampling and testing requirements for class I composting facilities.	No Change

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3745-560-130	Compost quality standards for class I composting facilities.	Amend
3745-560-135	Closure requirements for class I composting facilities.	No Change
3745-560-200	Class II composting facility establishment.	Amend
3745-560-201	Criteria for approval and termination of a class II composting facility registration.	Amend
3745-560-202	Construction and commencement of operations at class II composting facilities.	Amend
3745-560-205	Alternative materials request for class II composting facilities.	No Change
3745-560-210	Operational requirements for class II composting facilities.	Amend
3745-560-215	Record keeping requirements for class II composting facilities.	No Change
3745-560-220	Compost distribution requirements for class II composting facilities.	Amend
3745-560-225	Compost sampling and testing requirements for class II composting facilities.	No Change
3745-560-230	Compost quality standards for class II composting facilities.	Amend
3745-560-235	Closure requirements for class II composting facilities.	No Change
3745-560-300	Class III composting facility establishment.	Amend
3745-560-301	Criteria for approval and termination of a class III composting facility registration.	No Change
3745-560-302	Construction and commencement of operations at class III composting facilities.	Amend
3745-560-310	Operational requirements for class III composting facilities.	Amend
3745-560-315	Record keeping requirements for class III composting facilities.	No Change
3745-560-320	Compost distribution requirements for class III composting facilities.	Amend
3745-560-325	Compost sampling and testing requirements for class III composting facilities.	No Change
3745-560-330	Compost quality standards for class III composting facilities.	Amend
3745-560-335	Closure requirements for class III composting facilities.	Amend
3745-560-400	Class IV composting facility establishment.	Amend
3745-560-401	Criteria for approval and termination of a class IV composting facility registration.	No Change
3745-560-402	Construction and commencement of operations at class IV composting facilities.	Amend
3745-560-410	Operational requirements for class IV composting facilities.	Amend
3745-560-415	Record keeping requirements for class IV composting facilities.	No Change
3745-560-435	Closure requirements for class IV composting facilities.	No Change

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

The Ohio statute authorizing the adoption of these regulations include:

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- ORC 3734.02, including 3734.02(N)(3) specific to solid waste composting facility rules.
- ORC 3734.028 regarding quality standards for compost products.
- ORC 3734.029 regarding application of quality standards to composting of dead animals.
- ORC 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.

The regulations do not implement a federal requirement.

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

The regulations do not implement a federal requirement but are necessary to fulfill the requirements of Ohio law.

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 regulations are necessary to fulfill several provisions of Ohio law, including the statutory obligations of ORC 3734.02(A). Licensing and permit requirements are found in ORC 3734.05. Pursuant to ORC 3734.02(N)(3), OAC Chapter 3745-560 establishes alternative registration requirements in lieu of the ORC 3734.05 requirements for a license and permit. ORC 3734.028 requires the director to establish requirements regarding quality standards for compost products.

ORC 3743.50 requires the Director of Ohio EPA to prepare a State solid waste management plan to reduce reliance on the use of landfills for management of solid wastes. Management of solid waste by acceptable methods of composting is an important alternative to solid waste landfill disposal.

The improper operation of solid waste composting facilities may have the potential to create nuisances, attract vectors, create odors, impact public health, and impact waters of the state. Adoption of appropriate regulations are necessary to ensure the responsible establishment, operation, and closure of solid waste composting facilities. The establishment of appropriate compost quality standards are necessary to ensure that the use of compost produced by facilities is in accordance with accepted agricultural or horticultural practices and does not pose a threat to public health or safety or the environment.

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

The continued and expanded use of solid waste composting facilities as an available and reliable alternative to solid waste landfilling is a key strategy of Ohio's State Solid Waste Management Plan. Tracking the amount of solid waste diverted from landfilling to composting facilities and the production of quality compost is an important measure of this strategy's success. Success of these regulations can be determined by the number of composting facilities and their successful operation as well as by the number and degree of public complaints and extent of facility compliance with these rules.

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.

Solid waste composting facility stakeholders were informed of the early stakeholder outreach period and were provided thirty days (September 19, 2016 to October 19, 2016) to comment on the initial concepts being considered in this review. A webinar was conducted on September 29, 2016, to answer questions regarding early stakeholder outreach on these rules, the general rule-making process, the opportunities for stakeholder involvement, and to listen to stakeholder suggestions.

DMWM also met with stakeholders during the interested party period

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

The early stakeholder outreach garnered several responses and suggestions from the Ohio Organics Association, owners and operators of composting facilities, compost vendors, and citizens. Several proposed changes will provide more operational flexibility and clarity for composting facilities.

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?

This rule package consists of sixty-three existing rules in four OAC Chapters. Ohio EPA's 5-year review determination is to retain thirty-seven of these rules without change. Ohio EPA's 5-year review determination is to amend twenty-six of the sixty-three rules. The majority of these amendments are to update references, make format and grammatical improvements for clarity, and to add operational flexibility. These rules were previously adopted in April 2012 based on a scientific data and the amendments pertaining to compost testing requirements and acidic anaerobic fermentation are consistent with industry standards.

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?

The Agency considered the suggestions provided during early stakeholder outreach and considered how the regulations may be changed to provide greater operational flexibility. The establishment of a rule regarding composting facility design capacity and facility operational capacity will allow the owner or operator to adjust the facility's operational capacity in the registration as the basis for the closure cost estimate. This is intended to provide the owner and operator both operational flexibility and a means to better tailor the closure cost estimate and financial assurance to the materials actually managed on the facility if less than the facility's design capacity.

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.*

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Performance-based standards are utilized in many of the operational requirements to provide operational flexibility, specifically in the design and operational standards for surface water control and leachate management.

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 other agency regulations to identify any duplication. To our knowledge, the rules do not duplicate 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's plan for implementation will focus on educating stakeholders on the amendments to Chapters 3745-500, 3745-503, and Chapter 3745-560. The Agency will offer web-based access to revised guidance documents and training for composting facility operators and Agency and local health department inspectors. The selection of rule effective dates will allow time for implementation of required activities.

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 383 Class II, Class III, and Class IV composting facilities in Ohio.

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

Class I composting facilities, which accept mixed municipal solid waste from residential and commercial sources, are required to obtain a solid waste permit, a license, and provide financial assurance for the estimated cost of facility closure. There are currently no class I facilities in Ohio.

Class II composting facilities, which accept select types of solid waste, are required to obtain a registration, a license, and provide financial assurance for the estimated cost of facility closure. The amendments proposed to the rules in this package will lessen the adverse impact by allowing an owner or operator to tailor their cost estimate to reflect the amount of materials actually managed on site. Class III and IV composting facilities, which accept select materials and yard waste, are required to have only a registration.

Class I, II and III composting facilities are required to test all compost produced according to the standards established in rule. The testing requirements mirror the requirements

recommended by the national composting industry association. However, the rules only require the minimum number of tests necessary to ensure the safety of the public and the environment.

Employer time for compliance will vary per facility. The agency has worked closely with the industry to ensure the regulations set operational performance standards that provide value and reflect best management practices. Recordkeeping and annual reports have been streamlined to provide the necessary information that facilities can easily collect or are already collecting. The rules also provide flexibility to facilities for customizing the data gathering to their convenience.

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.

These limited amendments are not anticipated to increase the adverse impact of the existing rules. The amendments would provide the owner or operator of composting facilities with greater flexibility and clarity intended to allow a lessening of the regulatory burden associated with closure cost estimates and financial assurance.

The cost of compliance with these rules will vary significantly with the class and size of the composting facility. The rules provide significant operational flexibility as to the method of composting and the nature and type of materials to be composted. The owner and operator's selection of facility class, method of composting, and design and operational manner to achieve the rule's various performance standards will determine the cost of compliance. In general, costs of compliance include:

- An Ohio EPA authorization (permit or registration). Permit fees are established in Ohio statute. There are no registration fees, and the cost of preparing a registration varies depending on the class of facility, location, compost method, and size.
- An annual license required for a class I and II composting facility is established in Ohio statute and based on maximum daily waste receipt.
- Class I, II and III composting facilities face a cost associated with compost testing. Testing costs are anticipated to be approximately \$400 for up to 10,000 cubic yards of compost depending on the selection of testing laboratory and amount of compost tested.
- Class I, II and III composting facilities face financial assurance costs which are calculated based on the estimated cost to close the facility, including the removal of composting materials and cleaning the facility. The rule requires the closure cost estimate be based on \$2.50 per cubic yard or \$8.00 per cubic yard for alternative materials.

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

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The regulations have been adopted to fulfill the statutory obligations of ORC 3734.02, ORC 3734.028, and ORC 3734.029 regarding permitting and licensure of composting facilities and establishment of compost quality standards. Ohio EPA has utilized the rule authority provided in ORC 3734.02(N)(3) to establish an alternative registration requirement in lieu of the ORC 3734.05 requirements for a license and permit. These varying composting facility classes and regulatory requirements are based upon the potential for composting operations to create nuisances, attract vectors, create odors, impact public health, and impact waters of the state. The Agency has determined with input from stakeholders that these requirements reasonably justify the adverse impact to the regulated business community.

Regulatory Flexibility

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

Yes. 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 composting 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 Division of Materials and Waste Management (DMWM) and approved local health departments offer general solid waste management regulatory assistance. DMWM staff offer technical assistance to permit/registration applicants and facility operators. DMWM maintains numerous documents and resources through an extensive DMWM website.

In addition, 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>.