

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Natural Resources- Division of Forestry

Regulation/Package Title: Silvicultural Pollution Abatement Rules (Set 2)

Rule Number(s): 1501:3-12-01, 1501:3-12-02, 1501:3-12-03, 1501:3-12-04

1501:3-12-05, 1501:3-12-06, 1501:3-12-07, 1501:3-12-08

Date: August 3, 2018

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☒ Rescinded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.

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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.

The proposed rules establish the pollution abatement standards to help decrease the degradation of water sources by soil erosion during silvicultural practices. They also establish the criteria of the acceptability of such standards and the administrative process of investigating and determining when a violation against these standards has occurred.

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

1503.51

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. However, landowners and operators who comply with the Ohio rules for forestry pollution will likely be found in compliance with Section 319 of the U.S. Clean Water Act.

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

The proposed rules are consistent with Section 319 of the U.S. Clean Water Act and contains no provisions that substantively exceed 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)?

This program was previously managed by another ODNR sister division, Soil and Water Resources and has been in place since 1992. The rules establish the minimum standards necessary to protect waters of the state from excessive soil erosion from silvicultural practices including, but not limited to, logging operations.

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

Outcomes will be documented by the Division of Forestry and Soil and Water Conservation Districts in a common electronic records system. The system can be queried to determine the number of resolved and unresolved cases and to gather statistics on the program.

Development of the Regulation

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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.

For the initial review of the proposed rules, the Agency sought input from the following via email on December 8, 2017. The Agency gave the stakeholders from then until January 5, 2018 to review and provide any comments to the Agency.

Ohio Tree Farm Committee

Ohio Federation of Soil and Water Conservation (SWCD) Districts

Ohio Environmental Protection Agency

Ohio Department of Agriculture – Division of Soil & Water Conservation

Ohio Forestry Association

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

Regarding the input from the Ohio Tree Farm Committee: Dean Berry questioned the phrase “the SWCD must approve or disprove the filed Timber Harvest Notice form”, and whether this now required the district boards to require them to take an action on each form. Furthermore, would the district then provide a notification of approval, and if disapproved, an explanation to the requestor as to why it was denied. Bob Mulligan (Forest Hydrology Manager who oversees the Silvicultural Pollution Abatement Program) answered these questions by letting Mr. Berry know that the approval or disapproval of Timber Harvest Notice forms has always been a legal requirement and is not new. Bob also addressed Mr. Berry’s second questions by replying that SWCDs are required to notify the requestor of the approval status, and if it was disapproved, an explanation to document why and what changes that would need to be made for the SWCD to approve.

Regarding the input from the Ohio Federation of Soil and Water Conservation (SWCD) Districts: Mindy Bankey questioned Bob Mulligan about the availability of the referenced material in the proposed rules, “BMP For Erosion Control for Logging Practices in Ohio”, for SWCDs to keep in their offices. Bob Mulligan replied by that a free PDF file of the referenced material is on the Division of Forestry’s website for all to access.

Regarding the input from the Ohio Environmental Protection Agency: Laura Factor provided grammar and formatting edits for the rule language. Ms. Factor also suggested a definition for the “primary contact recreation resource water” should be included in our rules since the term is used in 1501:3-12-07. The Agency has fixed the grammar and formatting errors provided by Ms. Factor and also added the definition of “primary contact recreation resource water” to 1501:3-12-01.

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Regarding the input provided by the Ohio Department of Agriculture- Division of Soil & Water Conservation: Bob Mulligan, Cotton Randall (Cooperative Forestry Administrator), Dan Balser (Assistant Chief), and Liz Roberto (Administrative Professional) from the Agency held a meeting on January 11, 2018 with Kirk Hines (Chief of the Division of Soil & Water Conservation section of ODA) and Matt Lane (State Conservation Technical Services Manager) to review comments. Most of the comments related to grammatical and formatting errors that the Agency has corrected. In Rule 1501:3-1204, it was suggested to remove the words “administrative”, “budgeting” and “staffing” from the rule because it may create confusions for the SWCDs since ODA provides guidance with hiring and budgets. The Agency has since removed these terms. Finally, ODA suggested that the Agency clarify that Timber Harvest Plans are to only be approved in SWCD Board Executive Sessions. It was decided by the Agency to address this concern in its Standard Operating Procedures because this would allow each District the flexibility to meet this confidentiality rule as they best see fit.

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 require landowners and operators to abate forestry pollution by utilizing best management practices as described in the book BMPs for Erosion Control for Logging Practices in Ohio. This book contains management practices and erosion control measures that are widely accepted by the scientific community to abate water pollution from soil sediment. A very large number of research studies have been completed and publications developed to document the effectiveness of these practices:

<https://owpubauthor.epa.gov/polwaste/nps/czara/ch3-4.cfm>

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?

First, the proposed rules are consistent with Section 319 of the U.S. Clean Water Act and contains no provisions that substantively exceed federal requirements. Additionally, the rules establish the minimum standards necessary to protect waters of the state from excessive soil erosion from silvicultural practices including, but not limited to, logging operations. These minimum standards are important to ensuring clean and healthy waterways.

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, however, the proposed rules do provide the opportunity for landowners and operators to use alternative methods if prior approval of the Chief of the Division of Forestry is obtained.

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

Since this program was recently as a result of H.B. 64 in 2016, we ensure that this regulation is not duplicated.

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 proposed administrative code language will allow Soil and Water Conservation Districts in all 88 counties to assist in compliance investigations and the resolution process. The Division of Forestry will develop Standard Operating Procedures (SOP) and provide training to District boards and staff on the steps necessary to administer the program consistently and predictably statewide.

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;

No negative impacts to the business community are anticipated. The proposed Ohio regulations will not exceed existing Federal or State regulations and standard.

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

No licenses or fees will be required. No additional employer time for compliance is anticipated due to these proposed rule changes.

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.

No adverse impacts are anticipated. The proposed rule changes are necessary due to the transfer of authority from the ODNR Division of Soil and Water to the ODNR Division of Forestry.

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

The technical requirements of the program will be consistent with the practice standards of other states within the region and existing Ohio standards. The best management practices required by the rules are common to the industry and are widely recognized as effective by agencies such as the U.S. Forest Service, U.S. EPA and The Ohio State University Extension.

Regulatory Flexibility

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

The rules provide the opportunity for landowners and operators to propose alternative best management practices and management methods to the Chief for his review and approval. This creates the opportunity for small businesses to propose lower cost alternatives.

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?

Landowners and operators may voluntarily file Timber Harvest Plans with the Division of Forestry or the county Soil and Water Conservation District in the county where logging is to occur. This process is voluntary and therefore there is no penalty or fines associated with a failure to submit this paperwork.

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

Free technical assistance is available to all landowners and operators through the Division of Forestry and county Soil and Water Conservation Districts. Staff can assist in the development and documentation of all required best management practices that are needed to achieve compliance. The rules also contain references to a new Forestry Pollution Abatement Fund that may be able to provide financial assistance in certain circumstances