

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Rule 13

Rule Number(s): Ohio Administrative Code (OAC) 3745-27-13, 3745-513-01, 3745-513-02, 3745-513-05, 3745-513-20, 3745-513-300, 3745-513-350, 3745-513-370, 3745-513-400, 3745-513-450, 3745-513-470

Date: _____

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☒ Rescinded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.

OAC rule 3745-27-13 was first promulgated in 1988 and governs any person proposing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated. The Agency calls these authorizations "Rule 13 authorizations."

Projects on sites where solid or hazardous waste facilities were operated can have a wide-ranging level of complexity, from exploratory boring and sampling to redevelopment for industrial, commercial,

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or residential use. The proposed activities may be non-intrusive to the emplaced waste and associated environmental safeguards and controls or may result in extensive excavation and re-location of waste materials and destruction of final cover and other control systems, such as leachate management and explosive gas controls. The result of such projects can be as modest as a hiking or biking trail placed on top of a closed, undisturbed landfill or as vast as a full-scale commercial and residential re-development, including large-scale waste relocation and construction of occupied structures like apartments and stores, underground utilities, roads, parking lots, and other appurtenances.

Amendments include the re-organization of OAC rule 3745-27-13 into its own program chapter, OAC 3745-513. This change would allow the rules to utilize the new multi-program rules and create a more user-friendly and intuitive structure. OAC 3745-513 also clarifies administrative requirements and environmental safeguards to ensure adequate protection under a director's authorization.

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

These regulations are authorized under ORC section 3734.02.

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.

These 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 purpose of these rules is to fulfill the requirements of ORC 3734.02(H) which require the director to adopt rules governing procedures for granting authorizations to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or a solid waste facility, was operated.

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 continued compliance with the effective version of OAC 3745-27-13, the authorizations issued pursuant to the rule, and minimal occurrences of nuisance, health hazards, or pollution resulting from the filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated.

Development of the Regulation

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

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

Stakeholders were notified via email of the early stakeholder outreach period and were provided almost eight weeks (May 18, 2017 to July 10, 2017) to comment on the initial concepts being considered. The Agency granted additional time over the standard thirty-day comment period to ensure that a complete technical evaluation of the proposed changes in the ESO could be accomplished.

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

The Agency received comments from five interested parties, Ohio Environmental Services Industries, SCS Engineers, The National Waste & Recycling Association (NW&RA), Ross Environmental Services, and Hull & Associates. Comments supported the idea of re-organizing the current rule to provide more clarity. "Rule 13 authorizations" are very technical, complex, and depending on the nature of the project, can require a lengthy review by the Agency. In the ESO, Ohio EPA proposed a rule-based fee to help cover the cost of review for more complex projects. In response to comments, the fee was not included in the draft rules.

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 Agency has been issuing these authorizations for over thirty years and has substantial data used in the evaluation of an application to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated. Ohio EPA considered both scientific data and programmatic knowledge in the review of the existing rule and the creation of OAC Chapter 3745-513.

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 did not consider alternative regulations in this review. ORC 3734.02 requires Ohio EPA to promulgate rules to establish procedures for authorizing the filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated. These rules fulfill the statutory requirements.

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.*

The Agency considers these rules to be performance-based. OAC Chapter 3745-513 is written such that anyone proposing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated may submit an application for an authorization. It is within the application where the applicant identifies the details of the proposal, including all necessary information prescribed by the rules. If the proposal demonstrates to the satisfaction of the director that the activities will not result in violation of applicable laws and regulations, will not create a nuisance, and will not adversely affect the public health or safety or the environment, then the director may issue the authorization. However, Ohio EPA is adopting an even more streamlined approach for a person proposing to engage in filling, grading, excavating, building,

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drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated for the purposes of sampling, testing, or delineating the limits of waste placement. Such a person may begin activities upon receipt of an acknowledgment letter from Ohio EPA or on the fifteenth day after submittal of the application, whichever occurs first, unless the applicant is otherwise notified by Ohio EPA.

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

The Agency reviewed its own regulations to determine if duplication was being made. To our knowledge, these rules are 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 plans to continue the current efforts to ensure consistent and predictable rule implementation, including providing technical support to stakeholders applying for “Rule 13 authorizations” and education regarding the re-organization of the rules. The selection of rule effective dates will allow time for a smooth transition from OAC Chapter 3745-27 to OAC Chapter 3745-513.

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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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 rules apply to a person proposing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated.

The nature of the adverse impact includes the cost to prepare and submit an application for authorization to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated. The Agency was given data from consultants that suggest preparation of a “Rule 13 request” would require four billable hours on average. Preparation of a certification report could take anywhere from four to eight billable hours at a rate of anywhere from \$125-\$170 per hour.

A person choosing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated can anticipate an initial cost

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associated with the rules. Although a cost of compliance exists with these rules, any estimate must account for a range of significant variables including the geology, type of waste disposed of at the site, and the complexity of the proposed activities. Completion of an exploratory or sampling project may cost a few thousand dollars, while a complete redevelopment of the site for industrial, commercial, or residential use could total into the hundreds of thousands or millions of dollars.

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

The Agency determined that the regulatory intent justifies the adverse impact to the regulated business community because regulations for the safe disposal of solid waste and hazardous waste are mandated by section 3734.02 of the Ohio Revised Code. Further, compliance with these rules is limited to only those proposing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated.

Regulatory Flexibility

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

A person proposing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or a solid waste facility, was operated subject to these rules are also required to comply with ORC 3734.02(G). This section pertains to exemptions and variations that allow for 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 3745-513 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>.