



## Common Sense Initiative

**Mike DeWine**, Governor  
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### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency (OEPA)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

ISW/RSW Landfill Rules

Rule Number(s): Ohio Administrative Code (OAC) 3745-27-15, 3745-27-16, 3745-29-01,

3745-29-02, 3745-29-06, 3745-29-07, 3745-29-08, 3745-29-10, 3745-29-11, 3745-29-14,

3745-29-19, 3745-30-01, 3745-30-02, 3745-30-03, 3745-30-04, 3745-30-05, 3745-30-06,

3745-30-07, 3745-30-08, 3745-30-09, 3745-30-10, 3745-30-14, 3745-30-15

Date of Submission for CSI Review: \_\_\_\_\_

Public Comment Period End Date: January 21, 2020

Rule Type/Number of Rules:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> New/____ rules                 | <input type="checkbox"/> No Change/____ rules (FYR? ____)            |
| <input checked="" type="checkbox"/> Amended/____ rules (FYR? ____) | <input checked="" type="checkbox"/> Rescinded/____ rules (FYR? ____) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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**regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.**

### **Reason for Submission**

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- ✓ **a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- ✓ **b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ✓ **c. Requires specific expenditures or the report of information as a condition of compliance.**
- **d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

- 2. Please briefly describe the draft regulation in plain language.**

***Please include the key provisions of the regulation as well as any proposed amendments.***

These regulations govern industrial and residual landfills in Ohio. The two programs, OAC Chapter 3745-29 (industrial waste landfills) and OAC Chapter 3745-30 (residual waste landfills) are being combined into OAC Chapter 3745-30. The combined waste streams will be referred to as industrial and manufacturing waste (IMW) and the two classes of landfills will be referred to as industrial landfills (currently the more stringently regulated of the programs) and residual landfills (currently less stringently regulated of the programs). Pursuant to ORC 106.03, Ohio EPA has determined that these rules need additional updates such as adjusting siting criteria to apply to pollution sources rather than the entire facility, revising the cap and liner designs, improving construction quality assurance, streamlining administrative processes, and reducing the post-closure care period from 30 years to 15 years unless putrescible waste was disposed. Two rules from OAC Chapter 3745-27 addressing financial assurance are also included to remove citations to Chapter 3745-29.

A determination that these ISW/RSW landfill rules are to be amended, rescinded, or adopted as new is to be filed with the Joint Agency on Rule Review (JCARR).

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- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

These regulations are authorized under Ohio Revised Code (ORC) 3734.02 and 3734.12.

- 4. 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. The federal requirements for regulating coal combustion residuals [40 CFR Part 257] was not included in this package. Six facilities will continue to be dual-regulated on the state and federal levels.

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

With the exception of regulation of coal combustion residuals (CCRs), there are no federal regulations for ISW/RSW landfills. Compared to the federal CCR regulations, there are many areas where the state program differs. A major item is liner design. The ISW/RSW program has two levels of liner design. All the CCR facilities (6) meet the less stringent state level criteria, which is less stringent than the federal requirement. As a consequence, these facilities will need to install the more stringent federal liner. Should a future CCR facility need to meet the more stringent state level of liner design, it is more stringent than the federal requirement.

- 6. 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 ISW/RSW landfill rules is to fulfill the requirements of ORC 3734.02 which require the director to adopt rules governing solid waste facilities to ensure that the facilities will be located, maintained, and operated, and will undergo closure and post-closure care, in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, or create a health hazard.

- 7. 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 ISW/RSW landfill rules in this package, and minimal occurrences of nuisance, fire or health hazards, or air or water pollution resulting from the operation of solid waste landfills.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

None of the proposed rules contained in this package are being submitted pursuant to any of the above sections of the Ohio Revised Code.

### **Development of the Regulation**

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**9. 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.*

The Agency contacted stakeholders from the solid waste industry notifying them of the 5-year rule review process and requesting input on changes, including merging the ISW and RSW programs, odors, and new technologies. The Agency subsequently conducted a webinar on November 19, 2018 to address the significant changes anticipated for the ISW/RSW programs: merging the programs, new approach for calculating financial assurance, and new liner design options.

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

In response to the early stakeholder outreach, a comment was received from the American Petroleum Institute to not add any additional TENORM (technologically enhanced naturally occurring radioactive material) requirements. No additional requirements are incorporated.

**11. 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 reviewed various published papers and reports and attended training on the topics of liner performance, electrical leak location technology, the consequences of liner wrinkles, and seismic stability.

**12. 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?**

DMWM considered aligning the ISW/RSW rules with the federal coal combustion residual (CCR) requirements to alleviate some of the dual regulation (liner and ground water monitoring). DMWM determined that existing mechanisms (alterations, and potentially variances) are adequate to address discrepancies between state and federal requirements without having to incorporate exceptions into the state rule for the CCR facilities or upgrading all ISW/RSW facilities to meet the CCR liner requirements. The rules do add three ground water parameters on the federal list that were missing on the state list.

**13. 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 did not specifically consider performance-based regulations during the review of these rules.

**14. 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.

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**15. 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.

**Adverse Impact to Business**

**16. 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; and**
- b. Identify the nature of all adverse impact (e.g., 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.*

An Ohio industry choosing to establish and operate an industrial landfill or a residual landfill facility can anticipate an initial cost associated with the rules. Although a cost of compliance exists with these rules, any estimate must account for a range of significant variables. The cost will naturally vary depending on the landfill size, design, location, and underlying geology.

Based on information by an Ohio municipal solid waste industry association (2014), costs for developing a permit ranges from \$1,000,000 to \$3,000,000 for more elaborate permits and less than \$750,000 for simpler modifications. Construction costs range from \$250,000 to \$1,000,000 per acre.

Based on cost estimates received by the Agency, closure costs for ISW/RSW landfill facilities range from \$46,000 to \$189,000 per acre. Post-closure care costs for ISW/RSW landfill facilities range from \$540 to \$6,700 per acre per year.

It is important to note that many of these costs are incurred over the life of the facility which is determined by the owner and operator of the landfill facility depending on operational practices and landfill capacity. Beyond the permit necessary to establish the landfill facility, the costs associated with subsequent permit applications is dependent upon the owner and operator's need to expand or modify the facility.

Changes made to the rules that reduce costs to the impacted community are: applying siting criteria to the sources of pollution, streamlining the process for alternatives, relaxing some of the design requirements (factor of safety for static slope stability for undrained conditions, allowing deformation in seismic slope stability calculations), removal of a conditional requirement, reducing the minimum number of survey marks, revising construction standards to avoid major reconstruction if construction fails to meet the standard, reduced liner thickness for an industrial landfill, reduction of some testing requirements, conflating similar components to meet a single standard, replacing the QA/QC plan with a table identifying testing parameters and acceptance criteria, and simplifying closure and post-closure care cost estimates by using formulas developed from current cost estimate data and a new

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definition of worst case scenario. Some of the reduced costs are difficult to quantify (saving time, allowing more options).

Changes made to the rules that increase costs to the impacted community are: adding analysis for piping failures due to seepage forces, adding flexible membrane installation and quality assurance standards, and upgrading the cap design to include a flexible membrane liner to reduce infiltration into waste.

**17. 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 are mandated by U. S. EPA and section 3734.02 of the Ohio Revised Code.

**Regulatory Flexibility**

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

An owner or operator of an ISW/RSW landfill facility subject to the regulations contained in Ohio Administrative Code 3745-30 is also required to comply with 3734.02(G) of the Ohio Revised Code. This section pertains to exemptions and variations that allow for alternative means of compliance. OAC rule 3745-30-15 is a rule specifically addressing the variance provision.

**19. 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 3745-30 when assessing fines and penalties for paperwork violations and first-time offenders.

**20. 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>.