



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

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

DERR-Hazardous Waste Review 2020

Rule Number(s): 91 rules in OAC Chapters 3745-50 to 3745-279

Date of Submittal to CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 2 rules (FYR: 2)

Amended/ 89 rules (FYR: 74)

Rescinded/ 0 rules (FYR: 0)

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 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 Submittal

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.

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**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.

This rule package includes 91 hazardous waste management rules regarding general requirements and permitting (Chapter 3745-50); identification and listing of hazardous waste (Chapter 3745-51); generator standards (Chapter 3745-52); transporter standards (Chapter 3745-53); treatment, storage, and disposal standards (Chapters 3745-54 to 3745-57, 3745-65 to 3745-66, 3745-205, and 3745-256); management of specific types of hazardous waste and facilities (Chapter 3745-266); land disposal restrictions (Chapter 3745-270); universal waste management (Chapter 3745-273); and recycled used oil management standards (Chapter 3745-279).

Under Federal and State law, Ohio's hazardous waste rules must match their federal Resource Conservation and Recovery Act (RCRA) counterpart rules. The rules in this package are all part of Ohio EPA's Hazardous Waste Management Program that has been granted authorization (primacy) by U.S. EPA to manage hazardous waste in Ohio. All the rules in this package are proposed to address their 5-year review requirement and/or to correct minor errors that have been identified in the rules.

There are federally-based amendments in one rule, 3745-50-51, that address amendments to its federal counterpart provision, as shown in the following:

| Federal Register subject | Page and date in Federal Register |
|---|-----------------------------------|
| Revisions to procedural rules to clarify practices and procedures applicable in permit appeals pending before the Environmental Appeals Board | 78 FR 5288, 01/25/2013 |

This amendment clarifies in rule a concept in the permit appeal process that is already addressed in Ohio statute; we're not changing anything in how the appeals process works.

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There are no new regulatory requirements in these proposed rules.

This package includes the following rules:

| Rule number | Rule title * means this is the amended title | 5-yr review | Action |
|-------------|--|-------------|-----------|
| 3745-50-20 | Petitions to amend Chapter 3745-273 of the Administrative Code to include additional hazardous wastes | Review | Amend |
| 3745-50-21 | Draft permits | Review | Amend |
| 3745-50-23 | Variances from classification as waste | Review | Amend |
| 3745-50-36 | Annual hazardous waste permit fees | Review | Amend |
| 3745-50-38 | Contents of the "Siting Criteria Document" | Review | Amend |
| 3745-50-40 | Submittal of hazardous waste permit applications | Review | Amend |
| 3745-50-42 | Signatories to permit applications and reports | Review | Amend |
| 3745-50-44 | Contents of "Part B" of the permit application | Review | Amend |
| 3745-50-51 | Permit modifications | Review | Amend |
| 3745-50-52 | Transfer of permits | Review | Amend |
| 3745-50-57 | Emergency permits | Review | No-Change |
| 3745-50-62 | Trial burn | Review | Amend |
| 3745-50-66 | Permits for boilers and industrial furnaces that burn hazardous waste * | Review | Amend |
| 3745-50-235 | Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events | Review | Amend |
| 3745-51-08 | PCB wastes regulated under the Toxic Substances Control Act | Review | Amend |
| 3745-51-10 | Criteria to identify the characteristics of hazardous waste * | Review | Amend |
| 3745-51-20 | Characteristics of hazardous waste- general | Review | Amend |
| 3745-51-21 | Characteristic of ignitability | Review | Amend |
| 3745-51-22 | Characteristic of corrosivity | Review | Amend |
| 3745-51-24 | Toxicity characteristic | Review | Amend |
| 3745-51-100 | Financial assurance for seventy-two hour recyclers | Review | Amend |
| 3745-52-21 | Manifest tracking numbers, manifest printing, and obtaining manifests | Review | Amend |

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| Rule number | Rule title * means this is the amended title | 5-yr review | Action |
|-------------|---|-------------|--------|
| 3745-52-42 | Exception report for small quantity generators and large quantity generators * | Exempt | Amend |
| 3745-52-43 | Additional reports for small quantity generators and large quantity generators * | Exempt | Amend |
| 3745-52-206 | Labeling and management standards for containers of unwanted material in the laboratory | Review | Amend |
| 3745-53-30 | Immediate action | Review | Amend |
| 3745-54-13 | General waste analysis | Review | Amend |
| 3745-54-18 | Location standards | Review | Amend |
| 3745-54-53 | Copies of contingency plan | Review | Amend |
| 3745-54-54 | Amendment of contingency plan | Review | Amend |
| 3745-54-56 | Emergency procedures | Review | Amend |
| 3745-54-72 | Manifest discrepancies | Exempt | Amend |
| 3745-54-73 | Operating record | Review | Amend |
| 3745-55-18 | Post-closure plan and amendment of post-closure plan | Review | Amend |
| 3745-55-42 | Cost estimate for closure | Review | Amend |
| 3745-55-43 | Financial assurance for facility closure | Review | Amend |
| 3745-55-44 | Cost estimate for post-closure care | Review | Amend |
| 3745-55-45 | Financial assurance for post-closure care | Review | Amend |
| 3745-55-47 | Liability requirements | Review | Amend |
| 3745-55-75 | Containment- containers * | Exempt | Amend |
| 3745-55-96 | Response to leaks or spills and disposition of leaking or unfit-for-use tank systems * | Review | Amend |
| 3745-57-43 | Performance standards- incinerators * | Exempt | Amend |
| 3745-57-72 | Corrective action management units (CAMUs) | Exempt | Amend |
| 3745-65-13 | General waste analysis | Review | Amend |
| 3745-65-19 | Construction quality assurance (CQA) program | Exempt | Amend |
| 3745-65-53 | Copies of contingency plan | Review | Amend |
| 3745-65-56 | Emergency procedures | Review | Amend |
| 3745-65-72 | Manifest discrepancies | Exempt | Amend |
| 3745-65-73 | Operating record | Review | Amend |
| 3745-66-18 | Post-closure plan and amendment of post-closure plan * | Exempt | Amend |

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| Rule number | Rule title * means this is the amended title | 5-yr review | Action |
|--------------|--|-------------|-----------|
| 3745-66-42 | Cost estimate for closure | Review | Amend |
| 3745-66-43 | Financial assurance for facility closure | Review | Amend |
| 3745-66-44 | Cost estimate for post-closure care | Review | Amend |
| 3745-66-45 | Financial assurance for post-closure care | Review | Amend |
| 3745-66-47 | Liability requirements | Review | Amend |
| 3745-66-95 | Inspections- tank systems | Review | Amend |
| 3745-66-96 | Response to leaks or spills and disposition of leaking or unfit-for-use tank systems * | Review | Amend |
| 3745-205-100 | Applicability- containment buildings | Review | Amend |
| 3745-205-101 | Design and operating standards for containment buildings | Review | Amend |
| 3745-256-100 | Applicability- containment buildings | Review | Amend |
| 3745-256-101 | Design and operating standards for containment buildings | Review | Amend |
| 3745-266-23 | Standards for users of materials that are used in a manner that constitutes disposal * | Review | Amend |
| 3745-266-100 | Applicability- boilers and industrial furnaces | Review | Amend |
| 3745-266-101 | Management prior to burning | Review | Amend |
| 3745-266-102 | Permit standards for burners | Review | Amend |
| 3745-266-103 | Interim standards for burners | Review | Amend |
| 3745-266-104 | Standards to control organic emissions | Review | Amend |
| 3745-266-105 | Standards to control particulate matter | Review | Amend |
| 3745-266-106 | Standards to control metals emissions | Review | Amend |
| 3745-266-107 | Standards to control hydrogen chloride and chlorine gas emissions | Review | Amend |
| 3745-266-200 | Applicability- military munitions | Review | No-change |
| 3745-266-201 | Definitions- military munitions | Review | Amend |
| 3745-266-202 | Definition of waste for purposes of military munitions * | Review | Amend |
| 3745-266-203 | Standards for the transportation of waste military munitions * | Review | Amend |
| 3745-266-205 | Standards for the storage of waste military munitions * | Review | Amend |
| 3745-266-206 | Standards for the treatment and disposal of waste military munitions * | Exempt | Amend |
| 3745-266-210 | Definitions- conditional exemption for LLMW storage and disposal | Review | Amend |

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| Rule number | Rule title * means this is the amended title | 5-yr review | Action |
|--------------|---|-------------|--------|
| 3745-266-240 | Loss of conditional exemption for LLMW | Exempt | Amend |
| 3745-266-260 | LLMW storage unit closure | Review | Amend |
| 3745-270-02 | Definitions- land disposal restrictions * | Exempt | Amend |
| 3745-270-03 | Dilution prohibited as a substitute for treatment | Exempt | Amend |
| 3745-270-04 | Treatment surface impoundment exemption | Exempt | Amend |
| 3745-270-31 | Waste specific prohibitions- dioxin-containing wastes | Exempt | Amend |
| 3745-270-40 | Applicability- treatment standards | Exempt | Amend |
| 3745-273-03 | Applicability- management standards for universal waste- pesticides | Exempt | Amend |
| 3745-279-42 | Notification by used oil transporters | Review | Amend |
| 3745-279-43 | Used oil transportation | Review | Amend |
| 3745-279-51 | Notification by used oil processors and re-refiners | Review | Amend |
| 3745-279-52 | General facility standards for used oil processors and re-refiners | Review | Amend |
| 3745-279-62 | Notification by used oil burners | Review | Amend |
| 3745-279-73 | Notification by a used oil fuel marketer | Review | Amend |

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.

Ohio Revised Code (ORC) 3734.02, 3734.05, 3734.12, and 3734.18, provide the authority for these rules. ORC 3734.02, 3734.05, 3734.12, and 3734.18 are amplified by these rules.

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.

Ohio hazardous waste management rules are required to be consistent with and equivalent to their federal counterpart provisions, with exceptions provided in the Ohio Revised Code.

These rules meet that requirement. The amendments to these rules are non-substantive corrections, stylistic and word choice changes, and typo corrections. There are no federally-based amendments in these rules; this package is proposed to address the 5-year review requirements in Ohio statute, and to correct typos that have been identified in some exempt rules. These rules are required in order to maintain the authorized federally-based hazardous waste management program.

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

None of the proposed changes exceed the federal requirements, except as discussed here. All the rules in this package have been determined to be equivalent to their federal counterpart provisions, with the exception of the first 3 rules below that have no federal equivalent rule:

-Rule 3745-50-36 is based on Ohio statute (ORC 3734.02) and not federal regulation. This is the permit application fee rule, and its amendments are non-substantive; we are not changing any fees in this rules package.

-Rule 3745-50-38 is the siting criteria document rule, which is also based on Ohio statute (ORC 3734.05) and not federal regulation. Its amendments are non-substantive; we are not changing any siting criteria in this rules package.

-Rule 3745-51-100 is not based on a specific federal regulation or and specific statutory provision, but is designed to collect the financial assurance provisions for 72-hour recyclers (only) into one rule that is clearer than having the various provisions located among multiple other rules.

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)?

In order for Ohio EPA to maintain authorization to regulate hazardous waste in Ohio, the Agency must adopt rules that meet the federal requirements. The proposed rules are part of that authorized program, and must remain effective to maintain Ohio's authorization. The proposed changes do not add regulatory requirements, they are non-substantive corrections.

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 degree of compliance with these regulations by the regulated community, the minimal occurrences of hazards to public health, safety and the environment, and continuation of the Agency's federal authorization to regulate hazardous waste in Ohio.

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 submittal, and a detailed explanation.

None of the proposed rules are being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931.

Development of the Regulation

- 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.***

These rules were sent out for a 30-day Early Stakeholder Outreach on January 28, 2019 via the Agencies website and listserv. The hazardous waste rule listserv is an email list comprised of various interested stakeholders representing regulated entities, professional associations, environmental groups, consultants, and attorneys.

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

Ohio EPA received one comment during the ESO comment period, and it was about a rule (3745-50-10, Definitions) that is not in this rules package. That comment was considered in the rules package that contained that rule (Set Gen); it did not affect any of the rules in this proposal package.

- 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 Ohio hazardous waste rules are required by state and federal law to be equivalent to the federal counterpart rules.

- 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?**

Alternative provisions would not be appropriate for these rules. The Ohio hazardous waste rules are required by state and federal law to be equivalent to the federal rules.

- 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.***

No. The Ohio hazardous waste rules are required by state and federal law to be equivalent to their federal counterpart rules.

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

When they were originally promulgated, Ohio EPA worked with LSC and the regulated community to ensure that these rules did not duplicate any other Ohio rules. These rules and/or other Ohio EPA rules have been amended in the past to eliminate duplicative requirements. Ohio EPA is the only agency that has jurisdiction to adopt regulations governing the management of hazardous wastes.

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.

Ohio EPA implementation of these amended rules will include notifying the regulated community of the rule amendments and providing guidance to the regulated community as needed. Ohio EPA inspectors and field staff will be briefed on these amendments, so they will be well equipped to offer assistance as they interact with the regulated community. Since there are no new regulatory requirements in these rules, implementation of these amendments will not be substantial.

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

The business community impacted by Ohio’s hazardous waste rules consists of the businesses that generate, treat, store, dispose of, or transport hazardous waste.

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

There are no adverse impacts being added to the rules in this rules package. The costs in the Ohio rules that may be above the costs in the corresponding federal regulations are discussed in question 5 above.

During the 5-year review of these rules, Ohio EPA identified several locations where documents are required to be submitted to Ohio EPA “by certified mail” when the federal counterpart provision did not include that requirement. At all such locations, Ohio EPA has removed “by certified mail” in order to reduce the cost of compliance with the rule. These amendments occur in the following draft rules: 3745-55-43, 3745-55-45, 3745-66-43, 3745-66-45, and 3745-66-47.

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.

Ohio EPA has identified no adverse impacts regarding these rule amendments. The rules in this package contain minor corrections that will have no adverse impact on cost of compliance. Most of the rules in this rules package are not being amended to match amended federal counterparts but are in this package to fulfill their five-year review requirement and make minor stylistic amendments. These non-substantive amendments do not impact the stringency or cost of compliance for these rules.

Regarding the rules as they exist, as a Program, for five-year review purposes. Ohio EPA's hazardous waste management rules are required, by federal statute and rule, as well as Ohio statute, to be functionally equivalent to the final federal rules (i.e., there may be text differences from the federal rules, but the resulting requirements must be the same.) Each Ohio rule has a counterpart federal rule (there are a few exceptions to this). If the state hazardous waste rules did not exist, the federal hazardous waste rules would still apply to Ohio businesses, so any costs incurred as a result of compliance with the Ohio rules would also be incurred as a result of compliance with the federal counterpart rules. With the exception of a few Ohio statute-based fee rules, the cost of compliance for state and federal requirements would be similar.

The adverse impact of the hazardous waste management rules (state or federal) varies widely depending on the nature of the management activity being conducted by the regulated community. This can include costs of obtaining a treatment, storage, and disposal permit (which can cost over \$100,000), personnel training, safety equipment, conducting inspections and keeping records, submitting reports to Ohio EPA (electronically in many cases, which incurs a nominal cost), etc.

In promulgating the Ohio hazardous waste rules, Ohio EPA only makes changes necessary to "Ohio-ize" the finalized federal language so that the rules 1) maintain the required equivalence with the federal program, 2) do not create problems (or costs) for the citizens and industries of Ohio that were addressed and resolved during the federal comment-response process and in the federal rule promulgation process, and 3) do not create new problems (or costs) for the citizens and industries of Ohio that were not addressed in that federal comment-response and federal rule promulgation process. Equivalence and state rule stringency is reviewed by U.S. EPA Region 5 via the authorization process that is also a federal requirement (see 40 CFR Part 271).

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

Ohio EPA must promulgate rules that are equivalent to the federal RCRA rules in order to maintain its authorization to regulate hazardous waste in Ohio. Without adoption of these rules, Ohio EPA could lose its ability to regulate hazardous waste in Ohio and the impacted community would be subject to the same rules by U.S. EPA.

Regulatory Flexibility

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

No, a facility's activity regarding hazardous management determines whether they are subject to the hazardous waste management rules (both federal and Ohio rules).

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 will evaluate the applicability of ORC section 119.14 to entities regulated by these rules when assessing fines and penalties for paperwork violations and first-time offenders.

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

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a nonregulatory 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>.
- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 1-800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 1-800-368-5883.
- Ohio EPA's Division of Environmental Response and Revitalization (DERR) Hazardous Waste Program offers free technical assistance to the regulated community.