

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):
Updating Outdated Modes of Communication - Permit to Install Program

Rule Number(s): 3745-42-01

Date of Submission for CSI Review: 7/16/2021

Public Comment Period End Date: 8/13/2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___1___ rules (FYR? _No_)

Rescinded/___ rules (FYR? ___)

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.

Ohio EPA Division of Surface Water's Permit to Install program permits the design and technical requirements of wastewater collection and treatment systems prior to their construction. This rulemaking involves a minor change to one existing permit to install program rule in Chapter 3745-42 of the Ohio Administrative Code (OAC).

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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 rules for CSI review.**

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

The rule:

- ☐ 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.**

These rules do not have an adverse impact on business as defined in Section 107.52 of the Revised Code. It is the practice of the Ohio Environmental Protection Agency to file all rules with the Common Sense Initiative Office for evaluation under this statute.

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.

Rule 3745-42-01 contains the definitions used throughout 3745-42. Only one draft revision to this rule is proposed; the removal of a fax number in one of the references contained in the rule.

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

The Ohio statute authorizing these rules is Ohio Revised Code 6111.03

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?**

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If yes, please briefly explain the source and substance of the federal requirement.

Not applicable for the Permit to Install program rules. There are no federal counterpart regulations for permitting the design and installation of wastewater collection and treatment systems.

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

The Permit to Install program rules are based on state statute. Please see the response to Item 2 above.

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 over encompassing purpose of the Permit to Install program is to assist in protecting public health and the environment from untreated/poorly managed sewage and industrial waste as well as assisting in supporting the wise use of public funds. Ohio EPA, Division of Surface Water reviews design and construction plans for items like sanitary sewers, onsite sewage treatment systems, sanitary and industrial wastewater treatment plants and land application of treated wastewater systems. The review of plans aims to ensure that drinking water is protected, NPDES permit effluent limits are considered in the design of discharging treatment plants, Ohio's Antidegradation rule and Section 208 Plans are considered, and that planning and future projects are considered in sewage management.

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

Ohio EPA, Division of Surface Water can measure the success of the Permit to Program in the following ways: reduction in number of unsanitary areas throughout the State, increased receipt of complete PTI permit applications, faster PTI application review and processing times, fewer PTI application denials, and fewer wastewater treatment plants in noncompliance with NPDES permit requirements due to design flaws.

- 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.

No.

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.

The early stakeholder outreach comment period was waived for this rulemaking. The rules were submitted directly to the Lieutenant Governor's office for distribution to interested parties to comment on. Stakeholders were notified of Ohio EPA's plans to revise these rules on July 16, 2021. The interested party review period for these rules will be from July 16 to August 13, 2021.

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

Ohio EPA will be collecting input during the interested party review period from July 16^h to August 13th and will adjust the drafted rules accordingly.

- 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?**

Where applicable, wastewater treatment system design guidance documents, such as Ohio EPA's *Design Standards: Wastewater Treatment Plants & Collection Systems ≤ 100,000 gpd* (2013) and the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers' *Recommended Standards for Wastewater Facilities* (2014) were used to develop the rule requirements along with standard specifications from the American Association of State Highway and Transportation Officials and the American Society for Testing and Materials.

- 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?**

This rule revision removes reference to a fax number in one of the references listed (OAC 3745-42-01(H)(3)).

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 Permit to Install program rules are performance-based. The rules specify what must be considered in the design of a wastewater treatment facility but do not require specific treatment technologies to be used, that is left to the applicant and design engineer to select.

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

Ohio EPA is the only Agency with the statutory authority to review and issue permits to installs for wastewater collection and treatment systems for any facility except a one, two or three family dwelling. Only a review of existing Ohio EPA rules was necessary and no duplication was found.

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 will continue to implement the rules through current practices.

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;**
- 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.

Overall, the expected adverse impact from the Permit to Install program includes: the cost and time involved in development of a Permit to Install application (this cost varies widely based on type of project and volume of sanitary or industrial waste to be treated), a total permit to install application fee of: \$100 application fee + \$100 plan review fee + construction/installation cost multiplies by 0.0065 (not to exceed a total cost of \$15,100.00), and cost and time involved in responding to Agency comments/requested revisions on the permit application. If a management plan is

required, the adverse impact may include cost of compliance with the plan and time of any required record keeping and reporting.

No new costs will be incurred as a result of the draft revision in this rulemaking.

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

The Division's regulatory intent is to protect human health and the environment. Revisions to the draft rules in this rulemaking have no additional impact on the business community.

Regulatory Flexibility

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

The Permit to Install program, in general, allows small systems that can be supported by onlot soil absorption based treatment systems serving a business, commercial or residential project to be regulated by the local health department and their applicable rules, streamlining the process for the applicant.

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 failure to get a permit under this Chapter is not considered a paperwork violation and would not fall under the scope of ORC 119.14. However, the Agency uses enforcement discretion and first-time violations of reporting requirements, if included in the permit to install, are typically waived.

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

The following resources are available:

- Ohio EPA Division of Environmental and Financial Assistance'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,

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plain-English publications library and assistance in completing permit application forms. Additional information is available at:

<http://epa.ohio.gov/ocapp/ComplianceAssistanceandPollutionPrevention.aspx>.

- Ohio EPA also has a Customer Support Center web page (<https://ohioepa.custhelp.com/app/home/session/L3RpbWUvMTQ0NTg2NTYzNi9zaWQvX1hTRkZWem0%3D>) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Frequently Asked Questions (FAQ), training and subscription to various program listservs.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- Ohio EPA's Compliance Assistance Unit provides technical support to small (less than 0.5 million gallons per day) wastewater treatment plants. Additional information is available at: http://www.epa.ohio.gov/dsw/compl_assist/compasst.aspx.
- 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 800-368-5888.
- Ohio EPA's Permit to Install Program Supervisor, Mark Stump, is available to answer questions by calling 614-644-2028 and email at mark.stump@epa.ohio.gov.
- Ohio EPA's Permit to Install Program web page (<http://www.epa.ohio.gov/dsw/pti/index.aspx>) contains guidance documents, fact sheets, forms, and answers to frequently asked questions regarding the program.