



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 2021

Rule Number(s): Rules in Chapters 3745-50 to 3745-273 (see question #2 below).

Date of Submittal to CSI Review: March 21, 2022

Public Comment Period End Date: April 20, 2022

Rule Type/Number of Rules:

New/ 2 rules

No Change/ 7 rules (FYR: 7)

Amended/ 77 rules (FYR: 61)

Rescinded/ 1 rules (FYR: 1)

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 79 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); treatment, storage, and disposal standards (Chapters 3745-54, 3745-55, 3745-57, 3745-65, 3745-66, 3745-67, 3745-68, and 3745-69); land disposal restrictions (Chapter 3745-270); and universal waste management (Chapter 3745-273).

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, with the exception of new rule 3745-273-06. 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.

As shown in the following table, in this rules package there are both federally-based amendments in rules that address amendments to their federal counterpart provision, and amendments that arise from the review of rules, correction amendments to exempt rules, and submittal of no-change rules:

Federal Register subject	Date and Page in Federal Register	OAC Rules
Increasing recycling: adding aerosol cans to the universal waste regulations (aka: Aerosol Cans Rule)	84 FR 67202, 12/09/2019	3745-50-10, 3745-50-45, 3745-51-09, 3745-54-01, 3745-65-01, 3745-270-01, 3745-273-01, 3745-273-03, 3745-273-06 new, 3745-273-09, 3745-273-13, 3745-273-14, 3745-273-32, 3745-273-33, 3745-273-34. Housekeeping: 3745-50-10, 3745-50-45, 3745-51-09, 3745-54-01, 3745-65-01, 3745-270-01, 3745-273-01, 3745-273-09,

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		3745-273-13, 3745-273-14, 3745-273-15, 3745-273-32, 3745-273-33, 3745-273-34, 3745-273-35, 3745-273-39, 3745-273-62, 3745-273-89.
Modernizing ignitable liquids determination	85 FR 40594, 07/07/2020	3745-50-11, 3745-51-21. Housekeeping: 3745-50-11.
No-change rules:	N/A	3745-50-01, 3745-50-19, 3745-50-32, 3745-50-33, 3745-50-35, 3745-50-56, 3745-65-77.
Housekeeping. Amendments not directly related to these FRs, including 5-year review amendments and amendments to 5-year review-exempt rules	N/A	3745-50-03, 3745-50-10, 3745-50-11, 3745-50-31, 3745-50-34, 3745-50-37, 3745-50-39, 3745-50-41, 3745-50-43, 3745-50-45, 3745-50-46, 3745-50-48, 3745-50-53, 3745-50-58, 3754-51-02, 3745-51-03, 3745-51-06, 3745-51-09, 3745-51-21, 3745-51-31, 3745-51-32, 3745-52-11, 3745-52-13, 3745-52-215, 3745-52-265, 3745-54-01, 3745-54-16, 3745-54-77, 3745-54-93, 3745-54-94, 3745-55-12, 3745-55-73, 3745-55-95, 3745-55-98, 3745-57-74, 3745-57-83, 3745-57-91, 3745-65-01, 3745-65-14, 3745-65-16, 3745-65-33, 3745-65-90, 3745-65-92, 3745-65-93, 3745-66-12, 3745-66-19, 3745-66-73, 3745-66-92, 3745-66-98, 3745-67-24, 3745-67-59, 3745-68-03, 3745-69-30rescind, 3745-69-30new, 3745-270-01, 3745-270-09, 3745-270-42, 3745-273-01, 3745-273-03, 3745-273-09, 3745-273-13, 3745-273-14, 3745-273-15, 3745-273-17, 3745-273-20, 3745-273-32, 3745-273-33, 3745-273-34, 3745-273-35, 3745-273-37, 3745-273-39, 3745-273-40, 3745-273-54, 3745-273-56, 3745-273-60, 3745-273-62, 3745-273-70, and 3745-273-89.

There are no new regulatory requirements in these proposed rules except rule 3745-273-06, a new federally-based rule.

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This package includes the following rules:

Rule number	Rule title * means this is the amended title	5-yr review	Action
3745-50-01	General information	Review	No-Change
3745-50-03	Use of number and gender	Review	No-Change
3745-50-10	Definitions and computation of time	Review	Amend
3745-50-11	Incorporated by reference-	Review	Amend
3745-50-19	Petitions to amend rules 3745-51-30 to 3745-51-35 of the Administrative Code to exclude a waste generated at a particular facility	Review	No-Change
3745-50-31	Exemptions	Review	Amend
3745-50-32	Definitions- fee rules	Review	No-Change
3745-50-33	Fees for the off-site disposal of hazardous waste	Review	No-Change
3745-50-34	Fees for on-site or satellite disposal of hazardous waste	Review	Amend
3745-50-35	Fees for the treatment of hazardous waste	Review	No-Change
3745-50-37	Permit application fee	Review	Amend
3745-50-39	Specific public notice procedures applicable to hazardous waste management permits	Review	Amend
3745-50-41	Application for a permit	Review	Amend
3745-50-43	Contents of "Part A" of the permit application	Review	Amend
3745-50-45	Special inclusions and exclusions for hazardous waste permits	Review	Amend
3745-50-46	Permits by rule	Review	Amend
3745-50-48	Requirements for recording and reporting of monitoring results	Review	Amend
3745-50-53	Permit revocation	Review	Amend
3745-50-56	Continuation of expiring permits	Review	No-Change
3745-50-58	Conditions applicable to all permits	Review	Amend
3745-51-02	Definition of waste	Review	Amend
3745-51-03	Definition of hazardous waste	Review	Amend
3745-51-06	Requirements for recyclable materials	Review	Amend
3745-51-09	Requirements for universal waste	Review	Amend
3745-51-21	Characteristic of ignitability	Exempt	Amend
3745-51-31	Hazardous waste from non-specific sources	Review	Amend
3745-51-32	Hazardous waste from specific sources	Review	Amend
3745-52-11	Hazardous waste determination and recordkeeping	Review	Amend
3745-52-13	Generator category determinations	Exempt	Amend
3745-52-215	Unwanted material that is not waste or hazardous waste	Review	Amend

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Rule number	Rule title * means this is the amended title	5-yr review	Action
3745-52-265	Emergency procedures- preparedness, prevention, and emergency procedures for large quantity generators	Exempt	Amend
3745-54-01	Purpose, scope, and applicability of Chapters 3745-54 to 3745-57 and 3745-205 of the Administrative Code	Review	Amend
3745-54-16	Personnel training	Review	Amend
3745-54-77	Additional reports	Review	Amend
3745-54-93	Hazardous constituents	Review	Amend
3745-54-94	Concentration limits	Review	Amend
3745-55-12	Closure plan and amendment of closure plan *	Exempt	Amend
3745-55-73	Management of containers	Exempt	Amend
3745-55-95	Inspections - tank systems	Review	Amend
3745-55-98	Special requirements for ignitable waste or reactive waste - tank systems	Review	Amend
3745-57-74	Staging piles	Review	Amend
3745-57-83	Design and operating requirements for drip pads	Review	Amend
3745-57-91	Environmental performance standards - miscellaneous units	Review	Amend
3745-65-01	Purpose, scope, and applicability of Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code	Review	Amend
3745-65-14	Security	Exempt	Amend
3745-65-16	Personnel training	Review	Amend
3745-65-33	Testing and maintenance of equipment	Review	Amend
3745-65-77	Additional reports	Review	No-Change
3745-65-90	Applicability - ground water monitoring	Review	Amend
3745-65-92	Sampling and analysis	Review	Amend
3745-65-93	Preparation, evaluation, and response Appendix	Review	Amend
3745-66-12	Closure plan and amendment of closure plan	Review	Amend
3745-66-19	Post-closure notices	Exempt	Amend
3745-66-73	Management of containers	Exempt	Amend
3745-66-92	Design and installation of new tank systems or components	Exempt	Amend
3745-66-98	Special requirements for ignitable waste or reactive waste - tank systems	Review	Amend
3745-67-24	Response actions - surface impoundments	Review	Amend
3745-67-59	Response actions - waste piles	Review	Amend
3745-68-03	Response actions - landfills	Review	Amend

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Rule number	Rule title * means this is the amended title	5-yr review	Action
3745-69-30	Applicability - underground injection	Review	Rescind
3745-69-30	Applicability - underground injection	Exempt	New
3745-69-45	Closure of drip pads	Exempt	Amend
3745-270-01	Purpose, scope, and applicability - land disposal restrictions	Review	Amend
3745-270-09	Special rules regarding wastes that exhibit a characteristic	Review	Amend
3745-270-42	Treatment standards expressed as specified technologies Appendix A Appendix B	Review	Amend
3745-273-01	Scope of management standards for universal waste	Review	Amend
3745-273-03	Applicability - management standards for universal waste – pesticides	Review	Amend
3745-273-06	Applicability- aerosol cans	Exempt	New
3745-273-09	Definitions - management standards for universal waste	Review	Amend
3745-273-13	Waste management - standards for small quantity handlers of universal waste	Review	Amend
3745-273-14	Labeling or marking - standards for small quantity handlers of universal waste	Review	Amend
3745-273-15	Accumulation time limits - standards for small quantity handlers of universal waste	Review	Amend
3745-273-17	Response to releases - standards for small quantity handlers of universal waste	Review	Amend
3745-273-20	Exports - standards for small quantity handlers of universal waste	Review	Amend
3745-273-32	Notification - standards for large quantity handlers of universal waste	Review	Amend
3745-273-33	Waste management - standards for large quantity handlers of universal waste	Review	Amend
3745-273-34	Labeling or marking - standards for large quantity handlers of universal waste	Review	Amend
3745-273-35	Accumulation time limits - standards for large quantity handlers of universal waste	Review	Amend
3745-273-37	Response to releases - standards for large quantity handlers of universal waste	Review	Amend
3745-273-39	Tracking universal waste shipments - standards for large quantity handlers of universal waste	Review	Amend
3745-273-40	Exports - standards for large quantity handlers of universal waste	Review	Amend

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Rule number	Rule title * means this is the amended title	5-yr review	Action
3745-273-54	Response to releases - standards for universal waste transporters	Review	Amend
3745-273-56	Exports - standards for universal waste transporters	Review	Amend
3745-273-60	Applicability - standards for destination facilities	Review	Amend
3745-273-62	Tracking universal waste shipments - standards for destination facilities	Review	Amend
3745-273-70	Imports of universal waste	Review	Amend
3745-273-89	Applicability - management standards for Ohio-specific universal waste	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, 3734.09, 3734.12, 3734.18, and 3734.45 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. Most of the amendments to these rules are non-substantive corrections, stylistic and word choice changes, and typo corrections. This package is proposed to address the 5-year review requirements in Ohio statute, to address the two federally-based concepts identified in the table above, and to correct typos that have been identified in some rules. These rules are required in order to maintain the authorized federally-based hazardous waste management program.

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. All the rules in this package have been determined to be equivalent to their federal counterpart provisions, consistent with their Ohio statutory intent, or consistent with federally-based universal waste management requirements.

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. The only exception is new rule 3745-273-06, which equivalent to its federal counterpart provision (40 CFR 273.6) but is not yet authorized.

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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 December 8, 2020 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. It was in support of one of the federally-based changes addressed in this rules package, and no rule changes were requested.

Another comment was received on a prior rules package that did not contain the rule that was being commented on. That rule does appear in this rules package (rule 3745-50-10, Definitions and computation of time), so we addressed the comment in the Interested Parties DRAFT rule. The requested amendments appear in the draft rule.

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.

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.

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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 waste 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?

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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 <https://epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/compliance-assistance>.
- Ohio EPA also has a permit assistance web page <https://epa.ohio.gov/stay-compliant/get-help/permit-assistance> 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.