



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. 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):

Solid Waste Disposal Fees

Rule Number(s): Ohio Administrative Code (OAC) 3745-502-01, 3745-502-02, 3745-502-03, 3745-502-04, 3745-502-05

Date of Submission for CSI Review: 11/23/21

Public Comment Period End Date: 12/23/21

Rule Type/Number of Rules:

☒ New/ 3 rules

☒ No Change/ 1 rules (FYR? y)

☒ Amended/ 1 rules (FYR? y)

☒ Rescinded/ 3 rules (FYR? y)

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.

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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 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.

The solid waste disposal fee rules were first promulgated in 1988 but have not been substantially updated since 2009. These rules prescribe the requirements for collecting, remitting, and reporting fees for generating and disposing of solid waste at solid waste facilities. DMWM is proposing to update the rule to be compliant with Legislative Service Commission and Ohio EPA rule writing standards. The content of the rule has been reorganized for better clarity, removes redundant language, and includes minimal programmatic changes. Changes to the rule include the following:

- Addition of an exclusion from the district generation fees for yard waste delivered to a solid waste composting facility for processing or to a solid waste transfer facility.
- Addition of an exclusion from the fee requirements for solid waste the director has approved for use as alternative daily cover in accordance with rules adopted under section 3734.02 of the Revised Code and that is used as alternative daily cover in accordance with those rules.
- Removal of duplicative definitions for terms that are defined the same in the multi-program definitions rule, OAC 3745-500-02.
- Amended 3745-502-04 to add flexibility for local jurisdictions when adopting host community fees at a solid waste landfill that is located in more than one municipality or township.

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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.**

This regulation is authorized under Ohio Revised Code (ORC) sections 3734.57, 3734.573, and 3714.07.

- 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.

No.

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

Not applicable.

- 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 public purpose of these regulations is to clarify the statutorily required fees on the transfer and disposal of waste in Ohio. Charging a fee on disposal aids in the promotion of waste diversion efforts like composting and recycling. Revenues generated from the fees help to fund Ohio EPA programs that ensure the protection of public health, safety, and the environment.

- 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 continued compliance with the fee rules and an increase in community waste diversion efforts.

- 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 Agency contacted stakeholders from the solid waste industry notifying them of the 5-year rule review process and requesting input on rescinding the rules. The early stakeholder comment period began on November 6, 2019 and ended on December 6, 2019.

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

During the ESO period, DMWM received one letter from the National Waste and Recycling Association (NWRA). DMWM amended one exclusion regarding solid waste approved as daily cover in accordance with the input provided by the NWRA.

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?

These rules primarily clarify the fees on the transfer and disposal of waste pursuant to Chapter 3734. and Chapter 3714. of the Ohio Revised Code. Due to the procedural nature of the rules, scientific data was not utilized in the initial development of the regulations.

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?

The Agency did not consider regulatory alternatives because the statute establishes the fees. The rules in Ohio Administrative Code 3745-502 serve as an amplification of the statutory requirements.

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 process of collecting and remitting fees on the transfer and disposal of waste is specifically outlined in statute. The Agency did not consider performance-based regulations, rather, amplified the statutory requirements in the Administrative Code.

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

Ohio EPA reviewed our own regulations and performed a search of regulations from other agencies to determine if there was duplication with existing regulations. These rules did not duplicate an existing Ohio regulation.

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 focus on the continuation of current efforts to ensure consistent and predictable rule implementation, which includes educating stakeholders on the amendments to the rule.

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

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- 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.

The impacted business community includes owners and operators of municipal solid waste landfills and solid waste transfer facilities. The nature of the adverse impact imposed by OAC Chapter 3745-502 includes fees on the transfer or disposal of waste in Ohio, which are outlined in sections 3734.57 and 3714.07 of the Revised Code. The state fees are required to be remitted to the State Treasury Fund. Solid waste management district disposal and generation fees are credited to a fund that is exclusive to the solid waste management district, and host community fees are paid into the general fund of the municipal corporation or township.

The state fee outlined in 3745-502-02 is assessed on the transfer or disposal of solid waste and amounts to four dollars and seventy-five cents per ton. Fees on construction and demolition debris disposed at a municipal solid waste landfill facility equal thirty cents per cubic yard or sixty cents per ton.

District fees outlined in 3745-502-03 are variable and can range from:

- One to two dollars per ton for solid waste generated within the boundaries of the district and disposed at a solid waste disposal facility located within the boundaries of the district.
- Two to four dollars per ton for solid waste generated outside the boundaries of the district but within this state and disposed at a solid waste disposal facility located within the boundaries of the district.
- One to two dollars per ton for solid waste generated outside the boundaries of this state and disposed at a solid waste disposal facility located within the boundaries of the district. The disposal fee levied on solid waste generated outside the boundaries of this state shall not be more than the disposal fee levied on solid waste generated within the district.

Host community fees outlined in 3745-502-04 are not more than twenty-five cents per ton.

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 the requirement for fees and the amount are mandated by sections 3734.57, 3734.573, and 3714.07 of the Ohio Revised Code.

Regulatory Flexibility

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

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ORC 3734.57 contains exemption provisions specifically for collecting and remitting fees on the disposal of waste. Additionally, an owner or operator of a solid waste landfill or transfer facility subject to the regulations contained in Ohio Administrative Code 3745-502 is also required to comply with 3734.02(G) of the Ohio Revised Code. This section pertains to exemptions and variations that also allow for alternative means of compliance.

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 solid waste facilities regulated under OAC Chapter 3745-502 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, a plain-English publications library, and assistance in completing permit application forms. Additional information is available at: <http://epa.ohio.gov>.