



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Solid Waste Composting Facility Rules

Rule Number(s): Ohio Administrative Code (OAC) 3745-560-100, 3745-560-200, 3745-560-300

Date of Submission for CSI Review: 12/9/2022

Public Comment Period End Date: 1/9/2023

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

X Amended/ 3 rules (FYR? No)

Rescinded/\_\_\_ rules (FYR?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 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.*

These rules identify the requirements for establishing a class I, class II, and a class III composting facility. Amendments are limited to clarifications to the siting criteria associated with occupied dwellings. OAC rule 3745-560-200 currently contains two paragraphs with conflicting setback distances from occupied dwellings, one stating the materials placement area cannot be within 250 feet and the other stating the distance cannot be within 500 feet. Ohio EPA is proposing to maintain the 250-foot setback distance that has been in effect since the promulgation of the composting rules in 1992. In addition to this correction, Ohio EPA is amending similar language in OAC rules 3745-560-100 and 3745-560-300 to eliminate redundancy.

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 rules are authorized under Ohio Revised Code (ORC) sections 3734.02 and 3734.12. Statutes that are amplified include ORC sections 3734.02, 3734.05, 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.*

No.

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5. If the regulation implements a federal requirement, but 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 ensure that composting operations are conducted in a manner that is protective of human 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 the updated regulations through easier application of the siting criteria for occupied dwellings. Less confusion allows for better compliance and less time and money spent on establishing the facility.

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.*

Solid waste composting facility stakeholders were informed of the early stakeholder outreach period and were provided thirty days (October 17, 2022, to November 17, 2022) to comment on the changes being considered in this review. Ohio EPA representatives have also had individual conversations regarding these rule changes with some of the stakeholders and plans to hold an informational meeting during the interested party period.

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 four comments from citizens that reside around a proposed class II composting facility in Greene County Ohio. These comments requested Ohio EPA adopt the more stringent setback distance of 500 feet that was added to the rule in error and eliminate the 250-foot criteria. Ohio EPA is proposing to maintain the 250-foot setback distance that has been in effect since the composting rules were first adopted in 1992.

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 purpose of this rulemaking is to correct one error and make two specific clarifications in the rules under review and did not require the use of scientific data by the Agency.

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?

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*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The purpose of this rulemaking is to correct one error and make two specific clarifications in the rules under review. Ohio EPA did not consider alternative regulations.

**13. 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.

**14. 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's plan for implementation will focus on educating stakeholders on the amendments to these rules. The selection of rule effective dates will allow time for implementation and for the Agency to conduct outreach and training, as necessary.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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 scope of the impacted business community includes owners and operators of class I, class II, and class III composting facilities. The nature of the adverse impact includes time to prepare and submit a permit or registration application, as applicable. Additional costs for class I and class II composting facilities include those necessary to prepare and submit a license application and to establish financial assurance.

There are no fees for composting facility registrations. Class I composting facilities are required to obtain a permit to install, which includes an application cost of \$400 that is applied to the permit issuance fee of \$1000. There are currently no class I composting facilities in Ohio.

Class I and class II composting facilities are required to obtain an annual license, which includes a \$100 application fee and a license issuance fee due thirty days after receipt of the license. The license issuance fee is determined based on the maximum amount of material (in tons) authorized to be on site.

Financial assurance costs are subject to several variables including the size of the facility, the owner's or operator's selection of a financial assurance instrument and financial institution, or the financial institution's evaluation of that business's creditworthiness. Class I composting facilities must calculate a closure cost estimate equal to the cost for a third party to close the facility, based on the closure costs at the point in the operating life of the facility when the extent and

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manner of the operation would make the closure the most expensive. For class II composting facilities accepting solid wastes, the closure cost estimate is calculated using a rate of \$2.50 per cubic yard multiplied by the operational capacity of materials placement area. For class II composting facilities accepting alternative materials, the cost estimate is calculated using a rate of \$8.00 per cubic yard or the local disposal rate, whichever is higher, multiplied by the maximum amount of alternative materials authorized to be on site. The cost of a standby trust agreement averages between \$500 to \$3,500.00 depending on the bank, and a funded trust can cost anywhere from 1% of the amount in the trust for deposits of \$250,000.00 or less to .7% of the amount for deposits up to \$1,000,000.00. For surety bonds, costs range from 2% to 4% of the penal sum of the bond depending on the creditworthiness of the applicant. There may be collateral required as well if the company's credit scores are not adequate. For the letter of credit, full collateral is usually required, and some banks may also charge fees. The cost of insurance is variable depending on the insurer and the creditworthiness of the applicant.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

The purpose of this rulemaking is to correct one error and make two specific clarifications in the rules under review. Ohio EPA did not consider any additional changes.

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

The composting regulations in OAC Chapter 3745-560 have been adopted to fulfill the statutory obligations of ORC 3734.02, ORC 3734.028, and ORC 3734.029 regarding permitting and licensure of composting facilities and establishment of compost quality standards. Ohio EPA has utilized the rule authority provided in division (N)(3) of ORC 3734.02 to establish an alternative registration requirement in lieu of the ORC 3734.05 requirements for a license and permit. These varying composting facility classes and regulatory requirements are based upon the potential for composting operations to create nuisances, attract vectors, create odors, impact public health, and impact waters of the state. The Agency has determined, with input from stakeholders, that the existing requirements reasonably justify the adverse impact to the regulated business community.

**Regulatory Flexibility**

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

An owner or operator of a composting facility subject to the regulations contained in Ohio Administrative Code 3745-560 has the option to submit an exemption request in accordance with ORC 3734.02(G). This section pertains to exemptions and variations that allow for alternative means of compliance. There is also an exemption from the requirement to obtain financial assurance for small facilities with a closure cost estimate under \$5,500.

**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 composting facilities regulated under OAC Chapter 3745-560 when assessing fines and penalties for paperwork violations and first-time offenders.

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**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>.