



Common Sense Initiative

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Business Impact Analysis

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

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

Beneficial Use Rules

Rule Number(s): Ohio Administrative Code (OAC) 3745-27-05, 3745-599-01, 3745-599-02, 3745-599-03, 3745-599-05, 3745-599-10, 3745-599-20, 3745-599-25, 3745-599-30, 3745-599-35, 3745-599-60, 3745-599-200, 3745-599-210, 3745-599-220, 3745-599-310, 3745-599-320, 3745-599-330, 3745-599-334, 3745-599-335, 3745-599-340, 3745-599-345, 3745-599-350, 3745-599-360, 3745-599-370, 3745-599-400, and 3745-599-410

Date of Submission for CSI Review: 9/26/2023

Public Comment Period End Date: 10/26/2023

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 13 rules (FYR? Y)

Amended/ 13 rules (FYR? Y)

Rescinded/ 0 rules (FYR?)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.

OAC Chapter 3745-599 contains requirements for beneficial use byproducts and harbor sediment authorizations. As part of the review conducted in accordance with Ohio Revised Code (ORC) section 106.03, Ohio EPA has determined that a few targeted amendments are necessary and that several of the rules can be filed without changes. Significant amendments incorporated into this review include the following:

- Expanding the chapter to allow additional solid waste, industrial waste, or other waste materials eligible for beneficial use authorization.
- The inclusion of a provision that specifies when drinking water treatment material is no longer considered a solid waste.
- Updating the list of materials excluded from regulation under the chapter.
- Expanding the list of testing methods that can be used when characterizing a beneficial use byproduct.

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, 3734.03, 6111.03, 6111.035, 6111.04, 6111.32, and 6111.34. Statutes that are amplified include ORC sections 121.72,

3734.01, 3734.02, 3734.05, 3734.45, 6111.01, 6111.03, 6111.035, 6111.04, 6111.32, 6111.33, and 6111.34.

- 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 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 purpose of these rules is to provide a consistent regulatory program for the beneficial use of materials that would otherwise be considered a solid waste, industrial waste, or other waste.

- 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 continued utilization of the beneficial use program and through the minimal environmental impacts resulting from the use, management, and placement of material authorized for beneficial use.

- 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.

Beneficial use stakeholders were informed of the early stakeholder outreach (ESO) period and that the Agency was seeking input on changes to OAC Chapter 3745-599. All parties were notified via the Agency listserv system and provided thirty days (March 18, 2022 to April 18, 2022) to comment on the changes being considered in this review.

- 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 responses to the ESO from the Ohio section of the American Water Works Association (AWWA), Greater Cincinnati Water Works, City of Fairfield Public Utilities, Kurtz

Bros., Inc., and Verdantas. Commenters requested the Agency evaluate the best management practices in rule and when a beneficial use byproduct is no longer considered a waste. Feedback provided in this outreach period also resulted in the expansion of the chapter to incorporate a broader spectrum of eligible materials for beneficial use.

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 Agency utilized numerous sources of scientific data in the initial development of the beneficial use rules and when considering the proposed amendments. The regulations are based on knowledge of similar authorizations approved through the current Integrated Alternative Waste Management Project (IAWMP) and Land Application Management Plan (LAMP) programs under OAC 3745-27-05. Several USEPA and other industry established scientific representative sampling procedures to assess variability and characteristics of byproducts were evaluated prior to their incorporation into OAC Chapter 3745-599.

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

These regulations are an alternative to the traditional practice of requiring material classified as a solid waste, industrial waste, or other waste be disposed of or managed at an Ohio EPA licensed facility. OAC Chapter 3745-599 provides mechanisms by which the material can be evaluated and beneficially utilized in lieu of disposal.

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 plans to continue the current efforts to ensure consistent and predictable rule implementation, including providing education, outreach, and training for stakeholders. The selection of rule effective dates will allow time for efficient implementation of the rule amendments.

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 any person that wishes to beneficially use a solid waste, industrial waste, or other waste in lieu of disposal. The nature of the adverse impacts includes those necessary to permit the use of those materials, as well as any expenditures to ensure proper storage and management of the beneficial use byproduct. Preparation of an application for authorization is variable and dependent on the type of waste proposed for beneficial use, the complexity or uniformity of the use, and the extent of sampling and characterization required. A \$200 application fee for a general beneficial use permit and \$350 application fee for an individual beneficial use permit must accompany each application. Once a beneficial use permit is issued, costs for recordkeeping and any necessary recharacterization will be incurred. Individual beneficial use permit holders are required to complete an annual compliance demonstration to determine if the material still meets the permit and rule specifications. It is important to note that this is a voluntary program and that costs of compliance are the result of a decision on the part of the person or industry with a waste proposed for beneficial use.

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 Agency expanded the applicability of OAC Chapter 3745-599, therefore allowing more materials to be considered for coverage under a general beneficial permit or individual beneficial use permit.

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

The Agency first promulgated the beneficial use rules in OAC Chapter 3745-599 to establish a consistent process for approving the beneficial use of beneficial use byproducts. This streamlining alleviates the variability that accompanies LAMP or IAWMP authorizations. Ohio EPA has determined that the amendments to OAC 3745-599 do not propose any additional adverse impacts on the regulated community.

Regulatory Flexibility

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

Persons and entities who wish to beneficially use a solid waste in accordance with this chapter and voluntarily choose to be subject to the regulations have 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.

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 those complying with OAC Chapter 3745-599 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>.