



# 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):

Solid Waste Transfer Facility Rules

Rule Number(s): 3745-555-01, 3745-555-02, 3745-555-10, 3745-555-20, 3745-555-110, 3745-555-120, 3745-555-130, 3745-555-140, 3745-555-150, 3745-555-200, 3745-555-210, 3745-555-215, 3745-555-216, 3745-555-300, 3745-555-310, 3745-555-320, 3745-555-400, 3745-555-500, 3745-555-510, 3745-555-520, 3745-555-610, 3745-555-615, 3745-555-620, 3745-555-650, 3745-555-670, 3745-555-690, 3745-555-700

Date of Submission for CSI Review: 10/2/2023

Public Comment Period End Date: 11/1/2023

Rule Type/Number of Rules:

New/      rules

No Change/ 12 rules (FYR? 12 )

Amended/ 14 rules (FYR? 14 )

Rescinded/      rules (FYR?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.*

The solid waste transfer facility rules are up for their five-year review pursuant to ORC section 106.03. After a preliminary review, DMWM is proposing limited amendments to Ohio Administrative Code (OAC) Chapter 3745-555. Notable amendments include the following:

- Removing the requirement for a notarized signature from the certification statement whereby each landowner where the solid waste transfer facility is located acknowledges the applicant is submitting a permit to install application for the solid waste transfer facility.
- Amending the existing requirement for an operator to be on site when the facility is in operation to be less stringent and consistent with the municipal solid waste landfill rules. The rule will now require knowledgeable staff to supervise the unloading areas.
- Adding a requirement for a person meeting the definition of operator to be familiar with the transfer facility's operating procedures and authorizations.
- Removing the requirement to post yard waste restrictions at the facility entrance.
- Removing the requirement to report site weather conditions and observations of nuisance conditions in the annual report.
- Broadening the one hundred-year floodplain siting prohibition to include access roads.
- Adding language to address legitimate recycling facilities, including definitions adopted with the passage of House Bill 33.

- 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 regulations are authorized under ORC sections 3734.02.

- 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.**

These regulations do not implement a federal requirement.

- 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.**

The regulations do not implement a federal requirement but are necessary to fulfill the requirements of Ohio law.

- 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 regulations are adopted to fulfill the statutory obligations of ORC 3734.02(A). Several provisions of Ohio law establish regulatory requirements on the transfer of solid wastes. Licensing and permitting requirements are found in ORC 3734.05 and collection of state solid waste fees at solid waste transfer facilities are required by ORC 3734.57(A).

The use of transfer facilities is an important component in the management of solid waste. Transferring waste from many smaller route garbage trucks at a centralized location to fewer and larger long-haul semi-trucks makes it economically feasible for Ohio communities and businesses to use distant landfills. Ohio EPA's experience has demonstrated that unregulated waste transfer locations have a potential to accumulate large volumes of waste, create public nuisances, and in some instances be abandoned or file bankruptcy leaving local communities to face clean-up costs.

- 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 compliance with the solid waste transfer facility rules in this package, and minimal occurrences of nuisance, fire or health hazards, or air or water pollution resulting from the operation of solid waste transfer facilities.

Success of these regulations will also be determined by the number and degree of public complaints associated with facilities subject to the rules.

- 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, not applicable.

## **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 stakeholders were informed of the early stakeholder outreach period and were provided thirty days (March 24, 2022, to April 25, 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 one comment from Hamilton County Public Health (HCPH) that focused on one aspect of transfer facility operations. Ohio EPA did not make a subsequent rule change but contacted HCPH to discuss their comments. HCPH has given their consensus on moving forward with an interested party draft.

- 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 have a scientific basis that reflects industry standards and the statutory requirements of ORC Chapter 3734. In the initial development of the rules, Ohio EPA considered and adopted provisions consistent with recommendations contained in the United States Environmental Protection Agency (US EPA) publication, “Waste Transfer Stations: A Manual for Decision-Making.”

- 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.*

The agency is proposing minimal changes to these rules and did not consider alternative regulations base on feedback from stakeholders from the early stakeholder outreach period.

- 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 solid waste transfer facilities. The nature of the adverse impacts includes those necessary to prepare and submit a permit to install, which includes siting and design specifications, and a license application. Financial assurance must also be established prior to receipt of a license and the instrument must be executed and funded prior to waste acceptance.

Permit fees include an application fee of \$400 and an issuance fee of \$2500 due within thirty days of receipt of the permit to install. License expenditures include a \$100 application fee and a license issuance fee of \$750 due thirty days after receipt of the license. Both the permit application fee and the license application fee are credited towards the issuance fee upon approval of the authorization.

Financial assurance costs are calculated based on the cost to close the facility and remove the maximum amount of solid waste permitted to be stored in the waste handling area and containers within the facility boundary. These expenditures 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. 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. If the cost estimate for the facility is less than \$5,500, no financial assurance is required.

After receipt of a permit to install, the owner or operator of the transfer facility will incur costs for construction of the facility building and the waste handling floor, general operation expenditures and employee time to operate the facility, as well as costs to prepare and implement a contingency plan, complete the daily log of operations, and prepare and submit the annual report. Finally, the owner or operator can expect to incur costs when closing the facility, including those necessary to clean equipment and the

waste handling floor, properly manage and dispose of leachate, post signs, and remove or seal the leachate collection system.

Data on the cost of permitting, operating, and closing a solid waste transfer facility is limited. U.S. EPA utilized a general assumption that the cost to build, own, and operate a transfer facility is \$10 per ton of solid waste received in the document “Waste Transfer Stations: A Manual for Decision-Making.”

**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*).**

Ohio EPA is proposing three small changes that would slightly reduce the regulatory burden including changing the requirement for an operator to be on site at all times when a facility is in operation to be consistent with the municipal solid waste landfill rules that require certain areas of the facility to be supervised by knowledgeable staff, the removal of the requirement to report site weather conditions and observations of nuisance conditions on the annual report, and the removal of the requirement to post yard waste restrictions at the facility entrance.

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

ORC 3734.02 requires the Director of Ohio EPA to draft rules for solid waste facilities that ensure that the facilities will be located, maintained, and operated, and will undergo closure, in a sanitary manner so as not to create a nuisance or cause or contribute to pollution of the land, water, or air. Several provisions of Ohio law establish specific regulatory requirements on the transfer of solid wastes. Licensing and permitting requirements are found in ORC 3734.05 and collection of state solid waste fees at solid waste transfer facilities are required by ORC 3734.57(A).

### **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 transfer facility subject to the regulations contained in Ohio Administrative Code 3745-555 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 transfer facilities regulated under OAC Chapter 3745-555 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>.