



# 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 (Ohio EPA)

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

Rule Number(s): Ohio Administrative Code (OAC) 3745-27-04, 3745-27-18, 3745-37-08, 3745-37-09, 3745-37-10, 3745-400-04, 3745-400-05, 3745-400-06, 3745-400-08, 3745-400-09, 3745-400-10, 3745-400-15, 3745-400-21

Date of Submission for CSI Review: June 5, 2024

Public Comment Period End Date: July 5, 2024

**Rule Type/Number of Rules:**

New/     rules

No Change/   2   rules (FYR?   Y  )

Amended/   10   rules (FYR?  Yes )

Rescinded/   1   rules (FYR?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.

### **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?

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**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.*

In a joint rulemaking effort, the Lieutenant Governor's office and Ohio EPA have identified rules that have not been recently filed with the Joint Committee on Agency Rule Review (JCARR). The rules in this package are overdue for their five-year review pursuant to Ohio Revised Code (ORC) 106.03 and cover solid waste, construction and demolition debris (C&DD), and the director's approved list of health districts.

Amendments include those necessary to be consistent with statute, remove regulatory restrictions, and to update formatting to match the Legislative Service Commission's rule drafting standards.

**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 ORC sections 3714.02 and 3734.02. Amplifying statutes include ORC sections 3714.02, 3714.03, 3714.04, 3714.06, 3714.09, 3714.13, 3734.02, 3734.05, 3734.08, 3734.12, 3734.71, 3734.72, 3734.73, and 3734.74.

**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.*

OAC rule 3745-27-18 implements a federal requirement and is needed to maintain approval of the Ohio solid waste landfill program. Financial assurance for corrective measures at solid waste landfills is codified in 40 C.F.R. Part 258.73. The remaining rules in this package 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.**

OAC rule 3745-27-18 clarifies the intent of the federal rule by detailing the circumstances that subject an owner or operator of a solid waste landfill to corrective measures financial assurance, establishing timeframes for submittal of the corrective measures cost estimate, and identifying solid waste landfills that are excluded from the rule. This rule does not exceed the federal 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)?**

The public purpose of the solid waste rules in this package are to fulfill the requirements of ORC section 3734.02, which obligates the director to adopt rules to ensure that solid waste facilities will be located, maintained, operated, and will undergo closure and post-closure care, in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, or create a health hazard.

The public purpose of the C&DD rules in this package is to fulfill the requirements of ORC section 3714.02, which obligates the director to adopt rules to ensure that C&DD facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution.

ORC sections 3734.08 and 3714.09 allow the director to establish an approved list of health districts and authorize those health districts to administer the solid waste and C&DD programs on behalf of Ohio EPA.

- 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 compliance with rules in this package.

- 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 landfill operators, C&DD landfill operators, and approved health department stakeholders were informed of the early stakeholder outreach (ESO) period and that the

agency was seeking input on the proposed review of the rules in this package. All parties were notified via the agency listserv system and were provided thirty days (September 19, 2023, to October 19, 2023) 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 during the ESO period. The commenter was supportive of the rules package and requested to work with the agency during the review of additional regulations in future rulemaking efforts.

**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?**

Scientific data was not used in this review because it was determined that significant amendments to the rules were not needed at this time. Therefore, changes were limited to those necessary to fulfill the requirements of ORC 106.03.

**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.*

Because this rulemaking is a direct result of the collaborative initiative between Ohio EPA and the CSIO, the agency did not consider alternative regulations. OAC rule 3745-27-04 does provide specifications for solid waste landfills that are eligible to comply with OAC Chapter 3745-30 in lieu of OAC Chapter 3745-27, offering an alternative means of compliance.

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

Ohio EPA reviewed its own regulations and performed a search of regulations from other agencies to determine if there was duplication with existing regulations. To our knowledge, 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 landfills, owners and operators of C&DD landfills, and local health districts. The nature of the adverse impact is variable and is dependent on the specific requirements of the individual rule identified in this package.

- Corrective measures financial assurance expenditures are based on the instrument and financial institution selected by the owner or operator 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. Owners and operators of solid waste landfills are only subject to the financial assurance costs incurred by this rule in the event that they must enter into corrective measures to remedy a release to groundwater. The types of financial assurance mechanisms specified for corrective measures are readily available from financial institutions and are currently used by owners and operators of solid waste landfills to comply with existing rules.
- Owners and operators of C&DD landfills incur a cost of compliance that must account for a range of significant variables. The cost will naturally vary depending on the landfill size, design, location, and underlying geology. It is important to note that many of these costs are incurred over the life of the facility, which is determined by the owner and operator depending on operational practices and landfill capacity and is dependent upon the owner and operator's need to expand or modify the facility. Notable costs include the following:
  - Expenditures necessary to ensure siting of a C&DD facility is in accordance with ORC section 3714.03(B). Proposed new facilities and expansions of licensed C&DD facilities will incur costs to demonstrate that the C&DD facility will not be located in a one hundred year floodplain or sole-source aquifer. Cost estimates from the municipal solid

- waste industry include setback determination costs of around five hundred dollars per acre.
  - Expenditures incurred with the creation of the construction certification report.
  - Ground water monitoring expenditures. Cost estimates from the municipal solid waste industry include installing wells, sampling, monitoring, and statistics and reporting. Upfront costs include well installation ranging from \$5,000 to \$10,000 per well, and background sampling and reporting ranging from \$5,000 to \$10,000 per well based on eight sampling rounds. Routine costs include annual sampling and reporting costs ranging from \$1,200 to \$2,500 per well, \$3,500 per well for wells in assessment monitoring, and additional costs for miscellaneous plan revisions.
  - Preparation of a license application to modify a C&DD disposal facility including expenditures for site evaluation, facility design, and design and implementation of a ground water monitoring system. The higher range of potential costs may approach \$750,000 to \$1,000,000 for engineering and \$250,000 to \$1,000,000 for hydrogeological investigations.
- Local health districts are impacted by these rules but there are no expenditures incurred and therefore no cost of compliance.

**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 amendments to these rules focused on simplifying and clarifying existing language to improve readability and rule interpretation. The agency did not include any additional changes that would reduce the regulatory burden.

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

The agency has determined that the regulatory intent justifies the adverse impact because these rules are necessary to fulfill the statutory obligations of ORC Chapters 3714 and 3734.

**Regulatory Flexibility**

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

Owners and operators of solid waste and C&DD landfills have the option to submit an exemption request in accordance with ORC section 3734.02(G) and ORC section 3714.04, as applicable. These sections pertain to exemptions 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 district will evaluate the applicability of ORC section 119.14 to solid waste landfills and C&DD landfills 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 publication library, and assistance in completing permit application forms. Additional information is available at: <http://epa.ohio.gov>.