



## MEMORANDUM

**TO:** Amanda Payton, Ohio Environmental Protection Agency

**FROM:** Mark Hamlin, Director of Regulatory Policy

**DATE:** March 4, 2015

**RE:** **CSI Review – Hazardous Waste Rules “Set L” (OAC Chapters 3745-50 to 3745-57, 3745-65, 3745-66, 3745-69, 3745-256, 3745-266, 3745-270, 3745-273, and 3745-279)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office’s comments to the Agency as provided for in ORC 107.54.

### Analysis

This rule package consists of 112 rules – one new, one rescinded, one no-change, and 109 amended<sup>1</sup> – submitted by the Ohio EPA for review. The rule package represents a significant portion of Ohio’s regulation of hazardous wastes under federal regulations developed under the Resource Conservation and Recovery Act (RCRA). Collectively, the package is known as the “Set L” rules.

In its BIA, Ohio EPA explains that the rules are necessary for the agency to be able to regulate hazardous waste in Ohio, and while the rules are required to be functionally equivalent to the federal RCRA requirements, they do not exceed the federal requirements. Ohio EPA has grouped the proposed amendments into three categories – 1) those required to comply with changes to the federal requirements, 2) minor changes identified during the statutorily-required five-year review

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<sup>1</sup> Rules 3745-50-30 and 3745-51-38 are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule numbers. In its BIA, Ohio EPA presented each rule action for these two rules (i.e., two rescissions and two new rules) as separate rules, which accounts for the BIA identifying 114 rules in the package.

of the rules, and 3) state-initiated changes. The state-initiated changes generally implement recent legislation and reflect Ohio EPA division names and contact information changes. The new rule 3745-51-100 is the result of a need to rewrite financial assurance requirements for Ohio's 72-hour recyclers.

Although the requirements imposed on Ohio businesses who handle hazardous waste can be significant, the BIA notes that because the rules are aligned with the federal RCRA regulations, the impacts to businesses would be similar with or without these rules. The Ohio EPA rules ensure that the regulation can be conducted at the state level. Moreover, Ohio EPA did not identify any new impacts from the changes being proposed in the rule package. During the review period, the CSI Office did request a revised BIA to provide more context to the proposed rules and additional explanation of the adverse impacts from the existing rules. The revised BIA was provided on January 28, 2015.

Given the voluminous nature of the rule package and the significant impacts of the requirements, the CSI Office proactively reached out to several of the affected industries to ensure they were aware of the rule submission and were comfortable with the proposals. With the exception of one request to see the entire rule package together instead of the separate links initially provided (Ohio EPA staff subsequently accommodated this request), no concerns were raised about the rules. Therefore, the CSI Office believes that the rules and the changes proposed by Ohio EPA are justified.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that Ohio EPA should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.