

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Cory Bailey, Regulatory Policy Advocate, Lt. Governor's Office

DATE: April 4, 2016

RE: **CSI Review – Solid Waste Transfer Facility (OAC § 3745-27-21; 3745-27-22; 3745-27-23; 3745-27-24; 3745-500-02; 3745-500-03; 3745-500-120; 3745-500-210; 3745-555-01; 3745-555-02; 3745-555-10; 3745-555-20; 3745-555-100; 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; 3745-512-01; 3745-512-02; 3745-512-17; 3745-512-30; 3745-512-50; 3745-512-51; 3745-512-55; 3745-512-60; 3745-512-450; 3745-512-460)**

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) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC § 107.54.

Analysis

On March 28, 2014, the Ohio Environmental Protection Agency (OEPA) submitted a draft rule package consisting of 46 rules – 38 new, 4 amended, and 4 rescinded – to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on June 30, 2014 with five comments submitted.

The draft rule package regulates solid waste transfer facilities through the solid waste transfer facility program and contains rules for new transfer facility construction. Currently, solid waste transfer facility rules are found in OAC § 3745-27-21 through 3745-27-24. OEPA is proposing to rescind those provisions and reorganize the content into 38 new rules through the creation of OAC Chapters 3745-555 and 3745-512. Additionally, four rules in OAC Chapter 3745-500, which are referenced in the new chapters, are being amended.

As OEPA describes in the BIA, transfer facilities play an important role in the management of solid waste. In order to make use of distant landfills economically viable, waste must be delivered by garbage trucks to a centralized location so long-haul semi-trucks can transfer it. The facilities where the solid waste is stored must be regulated in order to prevent litter, odor, attraction of vectors such as insects or rats, and uncontrolled leachate that can affect surface and ground water.

The new rules cover a wide range of requirements. OAC Chapter 3745-555 creates the solid waste transfer facility program and includes general obligations for owners and operators, licensing and permit requirements, operational procedures, and standards for the closure of a transfer facility. The chapter also covers more specific topics. For instance, transfer facilities may not be placed too close to certain areas, such as parks, floodplains, or surface waters. A separate chapter, OAC Chapter 3745-512, is a newly proposed chapter with rules pertaining to the construction of new transfer facilities. While many of the current requirements remain in the new rules, there are also several proposed changes, some of which create more flexibility for the impacted businesses.

The CSI public comment period expired on April 28, 2014, but was extended to June 30, 2014. Comments were submitted by the Sierra Club, Solid Waste Authority of Central Ohio (SWACO), Construction and Demolition Association of Ohio (CDAO), Montgomery County Environmental Services, and National Waste & Recycling Association (NWRA). After receiving the comments, OEPA conducted a thorough process to address any concerns with the rules, including reaching out to stakeholders individually. On January 15, 2016, OEPA sent the CSI Office a copy of the agency's response to the comments, which consists of a breakdown of each suggestion made by stakeholders and OEPA's response. A number of changes were made to address policy concerns and clarify the intent of the rules. In the case that a suggestion could not be incorporated, OEPA provided an explanation. The CSI Office then conducted its own follow-up to ensure that those submitting comments received OEPA's response and were satisfied.

The impacted business community includes all owners and operators of solid waste transfer facilities throughout the state. Among the many adverse impacts to these businesses are design and construction standards, location prohibitions, permit and licensing fees, the time and cost of housekeeping requirements, and financial assurance mandates. OEPA cites a statutory obligation to implement the rules as justification for the adverse impacts. As noted in the BIA, licensing and permitting requirements are found in ORC § 3734.05 and collection of solid waste fees at solid waste transfer facilities are required by ORC § 3734.57(A). Additionally, there is a need to prevent pollution that can result from poorly maintained facilities.

Following review of the draft rules, BIA, and stakeholder outreach, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules and amendments 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 the Ohio Environmental Protection Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.