

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

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

DATE: April 28, 2016

RE: **CSI Review – Beneficial Use Rules (OAC § 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)**

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 May 14, 2015, the Ohio Environmental Protection Agency (OEPA) submitted a draft rule package consisting of 23 new rules to the CSI Office for review. The official public comment period closed on June 22, 2015 with 14 comments submitted.

The draft rule package creates a new regulatory framework for the use of industrial byproducts. Currently the use of these byproducts requires a land application management permit (LAMP) or approval of an integrated alternative waste management plan (IAWMP). The rules establish an authorization for beneficial use that is more specifically tailored to current practices. Under the proposed system, a permit will be obtained for authorized use of approved materials, with standards for characterizing the materials and sampling for compliance purposes. The rules also directly authorize use of certain materials without a permit, primarily for construction.

The approved materials include foundry sands, material resulting from the treatment of a water supply, waste used as fuel in a combustion unit, and dredged material from harbor or navigation maintenance activities. The rules apply to these materials when placed on the ground or burned.

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According to the BIA, the approved materials in the rules were chosen because they possess a consensus of approval among stakeholders.

There were 14 comments submitted during the CSI public comment period, which was preceded by multiple rounds of early stakeholder outreach. The commenting stakeholders represent a range of companies, associations, and government entities. On April 12, 2016, OEPA provided a document summarizing its response to each individual concern and in many cases described changes to the rules in response to the comments. For instance, after a stakeholder pointed out the discrepancy between the effort required to review a general permit relative to an individual permit, OEPA lowered the permit fee for a general permit from \$350 to \$200.

A broad array of businesses are impacted by the rules, from those creating the material to those seeking to use it. The adverse impacts include permit applications, fees, limits on authorized use, time committed to a characterization plan, and compliance sampling. OEPA feels that these rules will be less onerous than the current LAMP or IAWMP requirements. Those programs are designed to satisfy certain statutory obligations, which the proposed rules will also satisfy but in a more efficient way.

The draft rules are intended to make industrial wastes more accessible for beneficial use, which will benefit many businesses. The requirements to ensure that the right materials are used in a proper way are within reason. Additionally, it is clear that OEPA has taken stakeholder input seriously and included as much flexibility in the rules as possible. 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 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.