

**MEMORANDUM**

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: August 30, 2016

RE: **CSI Review – 2016 Cessation of Regulated Operations (OAC 3745-352-01, 3745-352-05, 3745-352-10, 3745-352-15, 3745-352-20, 3745-352-25, 3745-352-30, 3745-352-35, 3745-352-40)**

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 nine rules—one amended and eight no-change—being proposed by the Ohio Environmental Protection Agency (Ohio EPA) for review under the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on July 18, 2016, and the comment period was held open until August 15, 2016.

These nine rules comprise the Cessation of Regulated Operations (CRO) Program, which provides requirements for facilities that cease regulated operations. It requires regulated entities to secure abandoned sites until all regulated substances, namely chemicals and wastes, are properly removed. The program includes nine rules to address incorporation by reference; definitions; applicability of the program; descriptions of who must comply; responsibilities of owners or operators of facilities that cease regulated operations; responsibilities of holders of a first mortgage on real property, fiduciaries, indentured trustees for debt securities, or receivers; security requirements; requirements for designating a contact person; and methods for obtaining waivers from compliance. All rules remain unchanged, except for "Incorporated by reference" (3745-352-01), for which amendments have been proposed to update website addresses and dated references, and to make some minor stylistic corrections.

These rules impact owners or operators—as well as holders of a first mortgage on real property, fiduciaries, indentured trustees, or receivers appointed under Chapter 2735. of the ORC—for facilities subject to the “CRO rules.” The BIA lists some adverse impacts of the rules, while others were gleaned from the rules during the CSI review process. Each adverse impact that follows impacts employers through time spent on compliance. Within 30 days of permanent cessation of regulated operations, a regulated entity must submit notice to the Director, the local emergency planning committee, and the fire department, as well as designate the facility’s contact person. They must also secure the facility with entry barriers, post warning signs, and maintain all security measures.

Within 90 days of permanent cessation, a regulated entity must submit a chemical inventory report, a current hazardous chemicals list, and a description of the location of, and type of contamination within, each vessel being left. They must also remove all regulated substances from the vessels, as well as any contaminated containers or equipment from the facility; certify that all regulated substances have been removed; and create a log detailing methods used to remove contaminants. Finally, there is a potential for fines and penalties in the event of noncompliance; however, Ohio EPA will first work with regulated entities on a facility-specific basis to identify options and acceptable timeframes to increase the probability of achieving compliance. These adverse impacts are directly influenced by the amounts of regulated substances at a facility, choices made regarding substance removal, and the manner in which regulated entities secure facilities and post signs. The BIA explains that these impacts are justified because compliance with the CRO Program will minimize occurrences of hazards to public health, safety, and the environment in Ohio at abandoned facilities where regulated substances were produced, used, stored, treated, or handled.

During early stakeholder outreach, Ohio EPA posted a request for comment on its website. It also sent approximately 2,000 emails to various interested stakeholders representing regulated entities, professional associations, environmental groups, consultants, and attorneys, inviting their participation in the review and comment process. From these distributions, the Agency received no feedback. Additionally, no comments were received during the CSI public comment period indicating that the rules are overly burdensome. Ohio EPA submitted a revised BIA to CSI on August 30 to clarify one inconsistency between the BIA and the rules, but no other issues were identified. The CSI Office has determined the purpose of the rules to be 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.

cc: Mark Hamlin, Lt. Governor’s Office