

**MEMORANDUM**

**TO:** Michelle Mountjoy, Ohio Environmental Protection Agency

**FROM:** Travis Butchello, Regulatory Policy Advocate

**DATE:** August 8, 2017

**RE:** CSI Review – Solid Waste Composting Facilities (OAC 3745-500-01 to 3745-500-03, 3745-500-35, 3745-500-50, 3745-500-130, 3745-500-150, 3745-500-220, 3745-500-330, 3745-500-350, 3745-500-360, 3745-501-01, 3745-501-02, 3745-501-05, 3745-501-10, 3745-501-15, 3745-501-20, 3745-501-35, 3745-501-40, 3745-503-01 to 3745-503-02, 3745-503-05, 3745-503-20, 3745-560-01 to 3745-560-05, 3745-560-100 to 3745-560-102, 3745-560-105, 3745-560-110, 3745-560-115, 3745-560-120, 3745-560-125, 3745-560-130, 3745-560-135, 3745-560-200 to 3745-560-202, 3745-560-205, 3745-560-210, 3745-560-215, 3745-560-220, 3745-560-225, 3745-560-230, 3745-560-235, 3745-560-300 to 3745-560-302, 3745-560-310, 3745-560-315, 3745-560-320, 3745-560-325, 3745-560-330, 3745-560-335, 3745-560-400 to 3745-560-402, 3745-560-410, 3745-560-415, and 3745-560-435)

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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 sixty-three rules—twenty-nine amended<sup>1</sup> and thirty-four no

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<sup>1</sup> Ohio Administrative Code (OAC) 3745-500-35, 3745-560-05, 3745-560-202, 3745-560-302, and 3745-560-402 are being amended to the extent that the Legislative Service Commission requires the Ohio Environmental Protection Agency rescind the rules and replace them with a new rule of the same rule number.

change— proposed by the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on March 6, 2017 and the public comment period was held open through April 7, 2017. One comment was received during this time and the Agency response was provided on June 5, 2017.

The rules contain general administrative and procedural policies for solid waste facilities, regulation of those facilities, and financial assistance mechanisms and procedures for cost of closure and post-closure. OEPA's proposed amendments include the addition of definitions, term changes, and revisions to cross references to the ORC. Specifically, some of the substantive amendments include adding acidic anaerobic fermentation as a form of composting, establish requirements and specifications as to what facility design and construction needs to be completed prior to the commencement of operations, and updating compost quality tables. The BIA states that the purpose of the rules is to establish clear procedures, guidelines, and requirements regarding quality standards for compost products as required by ORC 3734.028.

OEPA explained in the BIA that stakeholders were provided 30 days to comment on the draft changes to the rules. In addition, OEPA held a webinar to help answer any questions from stakeholders and gauge their opinion of the rules as drafted. During this process, several comments were submitted and OEPA made the requested changes, which will help provide more operational flexibility and clarity for composting facilities.

One comment was received during the CSI public comment period. The first point in the comment requested some additional definitions, which were added by OEPA. A second concern requested the clarification of zoning approval for commercial lots before an operator could submit a registration application for a compost facility. In response, OEPA stated that they would not add the change because individuals must already provide written notice of intent to erect a facility to the local zoning authority under the current rules. A third issue requested OEPA verify all measurements for well distance on the application forms for private wells. The agency responded that they would not adopt the change because it is the responsibility of the applicant to determine well distance and measurements to existing public water supply wells. Lastly, a fourth point discussed the certified operator training program and OEPA replied that the program is under development and stakeholders will be notified when the rules are released for comments.

The rules primarily impact owners and operators of the 383 Class II, Class III, and Class IV composting facilities in the state. Such facilities will be required to abide by testing requirements imposed by OEPA in addition to employer time for compliance with the rules. The nature of the adverse impact to the facilities will vary depending on which class the facility is. OEPA states in the BIA that all facilities will be required to purchase permit and/or registration fees at a cost outlined in statute. In addition, the facilities will be required to pay for testing which OEPA expects to be approximately \$400 for up to 10,000 cubic yards of compost. In their BIA, OEPA contends that the regulatory intent of the rules outweighs any adverse impact to business because they fulfill statutory obligations for the agency to implement rules regarding the permitting and

licensure of composting facilities and the establishment of compost quality standards to ensure the protection of public health and safety.

### **Recommendation**

For the reasons explained above, this office does not have any recommendations regarding 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.