



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: September 12, 2019

RE: CSI Review – Rule 13 (3745-27-13, 3745-513-01, 3745-513-02, 3745-513-05, 3745-513-20, 3745-513-300, 3745-513-350, 3745-513-370, 3745-513-400, 3745-513-450, 3745-513-470)

On behalf of Lt. Governor Jon Husted, 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This rule package consists of one rescinded and ten new rules proposed by the Ohio Environmental Protection Agency (EPA) pursuant to ORC five-year review requirements. The rules were submitted to the CSI Office on June 3, 2019, and the public comment period was open through July 3, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on June 3, 2019.

The proposed rules, as required by statute, address procedures for granting authorizations to “engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated.” The authorizations are known as “Rule 13” authorizations. The proposed rules reorganize one rule, OAC 3745-27-13, into a program chapter, OAC 3745-513. The EPA states that this change will allow for the utilization of multi-program rules and create a user-friendly and intuitive structure. The proposed rule chapter will also clarify administrative requirements and environmental safeguards.

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During the review and development of the rules, the EPA solicited feedback for eight weeks from May to July 2017. Five groups submitted comments during this period (Ohio Environmental Services Industries, SCS Engineers, The National Waste & Recycling Association (NW&RA), Ross Environmental Services, and Hull & Associates). Comments supported the rule reorganization but rejected the initially proposed fee to cover the review cost for more complex projects. EPA removed the proposed fee the draft rules.

During the CSI public comment period, the EPA received comments providing support and requesting clarification for the draft rules. Comments regarding exclusions in OAC 3745-513-05, suggested adding routine or emergency operations, maintenance, and repair of sewers, regulators, and outfall structures. In the response to comments, the EPA clarified that exclusions from compliance were limited to utilities identified in statute. Additional amendments as a result of stakeholder input include the requirement that an updated plat or deed notation is necessary only if activities impact the facility to the point that the existing notation is no longer accurate and clarification of requirements for backfilling in rule 3745-513-450.

The proposed rules apply to any person or group proposing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated. The BIA identifies potential adverse impacts to include any costs associated with preparing and applying for authorization to engage in those activities. The EPA believes that this preparation for a “Rule 13” request would take on average four working hours, and a certification report could take up to eight hours at a rate of \$125-\$170 per hour. The EPA states the regulatory intent is justified because the safe disposal of solid waste and hazardous was are mandated by ORC 3734.02.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the EPA should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.