



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Joseph Baker, Business Advocate

DATE: May 16, 2022

RE: **CSI Review – 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, and 3745-352-40)**

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 eight no-change rules and one amended rule from the Ohio Environmental Protection Agency (OEPA). This rule package was submitted to the CSI Office on March 18, 2022, and the public comment period was held open through April 18, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on March 18, 2022.

Ohio Administrative Code (OAC) 3745-352-01 specifies materials incorporated by reference with respect to closure procedures for facilities that store, use, or treat regulated substances. The rule is amended to update document references and dates. OAC 3745-352-05 specifies definitions for purposes of regulating the closure of such facilities. OAC 3745-352-10 sets forth the purpose and scope of the Cessation of Regulated Operations (CRO) program, which is to prevent the abandonment of facilities that store, use or treat regulated substances. OAC 3745-352-15 delineates who is responsible to comply with the rules, including facility owners and operators, mortgage holders, fiduciaries, trustees, or receivers of such facilities. OAC 3745-352-20 describes the responsibilities of an owner or operator after ceasing or temporarily discontinuing operations,

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including notifying the Director of the EPA (Director), local emergency planning committee and fire department, securing the facility, designating a contact person, submitting a copy of the chemical inventory report, hazardous chemicals list and certain other records to the Director, draining or removing all regulated substances, and other related responsibilities. OAC 3745-352-25 specifies responsibilities for mortgage holders, fiduciaries, trustees, or receivers for such facilities.

OAC 3745-352-30 specifies security standards for facilities that are contaminated with or contain regulated substances, including signage and entry barrier requirements. OAC 3745-352-35 provides guidance for designating a facility contact person to serve as the contact for emergencies or other facility issues and the duration for which the contact person must be designated. OAC 3745-352-40 permits the facility owner or operator to request a waiver by applying to OEPA and sets forth the information that must be submitted on the waiver application.

During early stakeholder outreach, the Division provided the rules to approximately 1,500 stakeholders (including regulated entities, professional associations, environmental groups and others) electronically. No comments were received in response to the request for feedback. One comment was received during the CSI public comment period seeking clarification regarding the types of entities required to comply with the rules. The Division responded to the comment stating that the rules apply to hazardous substance reporting facilities, as defined in OAC 3750-352-05.

The business community impacted by the rules includes entities that store, use or treat regulated substances. While OEPA states that there is no adverse impact to business created by the changes to these rules, the CSI office identified adverse impacts associated with the costs and time required for regulated facilities to provide various inventories and records to OEPA, inform various authorities regarding the discontinuance of operations at the facility, hire or designate a contact person, fulfill various signage and entry barrier requirements for the facility, and dispose of regulated substances at the facility within certain timeframes. OEPA states that the adverse impacts created by the rules are necessary to ensure compliance with Ohio statute and that regulated substances do not threaten human health and the environment.

Recommendations

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

Conclusion

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