



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 – DERR-Hazardous Waste Review 2021 (OAC 3745-50 through 3745-273)**

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This rule package consists of two new rules, seven no-change rules, seventy-seven amended rules, and one rescinded rule proposed by the Ohio Environmental Protection Agency (OEPA). Sixty-nine of these rules are submitted as part of the statutory five-year review process. This rule package was submitted to the CSI Office on March 21, 2022, and the public comment period was held open through April 20, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on March 21, 2022.

The rules in this package address the management of hazardous waste, including treatment, storage and disposal standards, generator standards, land disposal restrictions, waste management, identification and listing, permit requirements, reporting and record detention requirements, and other related topics. OEPA states in the BIA that the rules are required to match federal counterpart provisions, with the exceptions specifically provided for in the Ohio Revised Code. Amendments to the rules are designed to streamline language and make various non-substantive changes, with the exception of new rule OAC 3745-273-06, which addresses the process by which aerosol cans may become hazardous waste upon being discarded. OEPA notes that the new rule is also identical to its federal counterpart and that OEPA's authorization to continue regulating hazardous waste in Ohio

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

depends on the rules complying with federal requirements.

Ohio Administrative Code (OAC) 3745-50-01 sets forth the purpose of the chapter, while OAC 3745-50-03 specifies the number and gender of terms used. OAC 3745-50-10 defines terms used with respect to the regulation of hazardous waste. OAC 3745-50-11 specifies materials incorporated by reference. OAC 3745-50-19 allows for any person to petition the United States Environmental Protection Agency (USEPA) for an exclusion for waste at a particular generating facility and states that OEPA will recognize any exemption granted, while OAC 3745-50-11 permits the Director of OEPA (Director) to provide state-level exemptions. OAC 3745-50-32 specifies definitions related to hazardous waste facility fees, while OAC 3745-50-33 and 3745-50-34 requires owners or operators of offsite, onsite, or satellite facilities to collect or pay fees for the disposal of hazardous waste and sets forth the fee amounts.

OAC 3745-50-35 specifies fee responsibilities and reporting requirements for hazardous waste treatment facilities. OAC 3745-50-37 requires payment of a permit application fee for a hazardous waste facility installation and operation permit. OAC 3745-50-39 requires a public hearing process regarding the decision to grant a hazardous waste management permit, while 3745-50-43 specifies the content of such permit applications and 3745-50-45 sets forth various exclusions from obtaining a hazardous waste permit as well as inclusions for publicly owned treatment works receiving hazardous waste if certain conditions are met. OAC 3745-50-46 expands and clarifies the conditions for a publicly owned treatment work being deemed to have a hazardous waste permit.

OAC 3745-50-48 specifies additional requirements for reporting and monitoring results for certain permits, while OAC 3745-50-53 authorizes the revocation of a permit based on non-compliance, failure to disclose, or a determination that the permitted activity endangers human health or the environment, or a statutory justification. OAC 3745-50-56 sets forth the requirement to renew a permit upon its expiration and authorizes continued operations if the renewed permit has not been issued through no fault of the applicant. OAC 3745-50-58 sets forth conditions that apply to all hazardous waste permits, including monitoring, testing and recordkeeping responsibilities, reporting requirements, and compliance responsibilities. OAC 3745-51-02 and 3745-51-03 specify definitions for waste, hazardous waste and related substances and provide explanatory tables.

OAC 3745-51-09 defines requirements for universal waste not subject to regulation as hazardous waste and sets forth exceptions that are subject to alternate regulation, such as batteries, pesticides, and aerosol cans. OAC 3745-51-21 sets forth special conditions that apply to ignitable wastes. OAC 3745-51-31 provides a table listing hazardous waste from non-specific sources and their related hazard codes and waste numbers, while OAC 3745-51-32 sets forth the same information for hazardous wastes from specific sources.

OAC 3745-52-11 requires individuals who generate waste to determine if it is hazardous and maintain records that support such determinations or at least three years after the waste was sent to treatment, storage, or disposal. OAC 3745-52-13 specifies categories for entities that generate hazardous waste and sets forth criteria for classifying the entity based on if it generates acute hazardous waste and the quantity of hazardous waste it generates each month, among others. OAC 3745-52-215 exempts unwanted materials that are not hazardous or non-hazardous waste from various rules and regulations. OAC 3745-52-265 requires emergency coordinators to take various actions in imminent or emergency situations, including making an assessment on any released materials, immediately reporting the event to OEPA and/or local authorities, taking reasonable measures to prevent the event from increasing in severity, and filing a written report within fifteen days of the event providing various information to the Director.

OAC 3745-54-01 specifies the purpose and scope of OAC 3745-54 through 3745-57 and 3745-205, which are to establish standards for facilities that treat, store, or dispose of hazardous waste. OAC 3745-54-16 requires hazardous waste facility personnel to complete a program of classroom or on-the-job training on their duties (as well as an annual review), specifies information that must be addressed in the training, and requires the owner or operator to maintain records documenting the instruction that has been provided. OAC 3745-54-77 requires the owner or operator of a hazardous waste to file an additional report to the Director documenting any release of hazardous waste, fires, explosions, facility closures, or various additional events.

OAC 3745-54-93 requires the Director to specify any hazardous constituents for purposes of groundwater protection in the facility's permit and sets forth exemptions and criteria for determining hazardous constituents. OAC 3745-54-94 requires facility permits to specify concentration limits in groundwater for hazardous constituents and allows the Director to establish an alternate threshold if a determination is made that there is no substantial present or potential hazard to human health or the environment if the alternate threshold is met. The rule also sets forth a table of various constituents and maximum concentration thresholds. OAC 3745-55-12 requires owners or operators of hazardous waste management facilities to establish a written closure plan and sets forth the factors that must be included in such a plan.

OAC 3745-55-73 requires containers that hold hazardous waste to be closed during storage, and not opened, handled, or stored in a manner that may rupture the container. OAC 3745-55-95 requires owners or operators to develop and follow a schedule and procedure for inspecting overfill controls and sets forth the frequency and type of inspections that must be conducted. OAC 3745-55-98 establishes special requirements for storing ignitable or reactive waste, including generally prohibiting the storage of such waste in a tank system (except in certain situations). OAC 3745-57-74 sets forth standards for staging piles, including that such piles may only be used to store hazardous waste remediation waste and that the Director must designate a staging pile prior to its use. OAC

3745-57-83 requires drip pads to meet various construction and design specifications. OAC 3745-57-91 requires miscellaneous units to be designed, constructed, operated, maintained, and closed in a manner that protects the environment and sets forth special factors for evaluating the appropriateness of such a unit.

OAC 3745-65-01 specifies the purpose and scope of OAC 3745-65 through 3745-69, as well as OAC 3745-256, which are to establish interim minimum standards for facilities that treat, store, or dispose of hazardous waste and become subject to hazardous waste permitting requirements due to statutory or regulatory changes but were not previously required to obtain a permit. OAC 3745-65-14 requires owners or operators of facilities to secure the facility and prevent unknowing entry or minimize the possibility of unauthorized entry of the facility, maintain surveillance of the facility, and specifies exemptions when such requirements are not necessary. OAC 3745-65-16 requires facility personnel to complete training that ensures the facility's compliance with the requirements for management of hazardous waste, specifies areas of training that must be addressed, requires an annual review of training materials to be conducted, and mandates that the owner and operator maintain documents related to the training.

OAC 3745-65-33 requires facility equipment to be tested and maintained. The rule is amended to remove a requirement that the inspections be logged. OAC 3745-65-77 mandates that owners or operators of such facilities report to the Director regarding any releases of hazardous waste, fires, explosions, groundwater contamination, monitoring data, or facility closure that takes place at the facility. OAC 3745-65-90 requires owners or operators to establish a groundwater monitoring program to prevent contamination, while OAC 3745-65-92 requires analysis of groundwater samples to be conducted and for a plan documenting how such samples are analyzed to be maintained on file. OAC 3745-65-93 requires the owner or operator to prepare an outline of a groundwater quality assessment program that addresses whether hazardous waste has entered groundwater, the rate, extent, and concentration of hazardous waste in groundwater, and mathematical calculations related to determine statistical significance and the severity of such potential contaminations, as well as to maintain the plan at the facility until closure.

OAC 3745-66-12 requires a written closure plan for such facilities to be completed and provided to the Director upon request and specifies the contents of such a closure plan. OAC 3745-66-19 specifies post-closure notice requirements and deadlines for the owner or operator of a closed facility to notify various local authorities, record that the closed property has contained hazardous waste on the deed and submit a certification documenting such information to the Director. OAC 3745-66-73 requires containers that hold hazardous waste to be closed at all times and managed in a way that prevents potential rupture. OAC 3745-66-92 specifies design and construction standards for tanks and components that contain hazardous waste, while OAC 3745-66-98 sets forth additional requirements for containers that hold ignitable or reactive wastes.

OAC 3745-67-24, 3745-67-59, and 3745-68-03 require owners or operators of surface impoundment units, waste piles, and landfills to develop a response action plan that addresses potential leaks, notify the Director, and submit various information when the unit's leak detection system identifies a leak rate that exceeds the appropriate level, and complete various assessments and analyses when a leak occurs. OEPA proposes to rescind and replace OAC 3745-69-30 with a new rule that exempts certain entities that dispose of hazardous waste by underground injection from various rules for other hazardous waste disposal facilities. OAC 3745-69-45 requires the owner or operator of a drip pad to remove or decontaminate all waste residues, contaminated system components and related equipment and manage them as hazardous waste and specifies related closure processes for drip pads.

OAC 3745-270-01 specifies the purpose and scope of OAC 3745-270, which is to set forth limitations on the land disposal of various forms of hazardous waste and set forth related exceptions and conditions. OAC 3745-270-09 requires generators hazardous waste to determine the related EPA hazardous waste number and specifies notice and certification responsibilities if formerly hazardous waste is determined not to be hazardous any longer. OAC 3745-270-42 specifies specific treatment standards for various types of hazardous wastes. OAC 3745-273-01 sets forth the purpose and scope of OAC 3745-273, which is to establish requirements for the management of batteries, pesticides, mercury containing equipment, lamps, aerosol cans, antifreeze, and paint or paint-related waste. OAC 3745-273-03 and new OAC 3745-273-06 set forth the specific management requirements for pesticides and aerosol cans, while OAC 3745-273-09 establishes definitions for various terms used in the chapter.

OAC 3745-273-13, 3745-273-14, 3745-273-15, 3745-273-17, and 3745-273-20 establish waste management standards, labeling and marking requirements, accumulation time limits, release response standards, and export requirements for small quantity handlers of universal waste. OAC 3745-273-32, 3745-273-33, and 3745-273-34 establish notification responsibilities, waste management standards, labeling and marking requirements, accumulation time limits, release response standards, shipment tracking responsibilities, and export requirements for large quantity handlers of universal waste. Additionally, OAC 3745-273-40 and 3745-273-54 set forth requirements for universal waste transporters to respond to releases of waste as well as the transporter's responsibility to comply with federal regulations regarding shipments of universal waste.

OAC 3745-273-60 states that destination facilities are responsible to comply with various requirements set forth elsewhere in rule, while OAC 3745-273-62 requires such facilities to maintain a record of each shipment of universal waste received at the facility for three years. OAC 3745-273-70 addresses the import of hazardous waste from a foreign country and the applicability of related federal and state regulations. Finally, OAC 3745-273-89 sets forth management standards for Ohio-

specific universal wastes, such as antifreeze and paint-related wastes.

During early stakeholder outreach, OEPA shared the proposed rules with a stakeholder list of regulated entities, professional associations, environmental groups, consultants, and attorneys. One comment was received in support of the proposed changes. OEPA also notes that one change was made to OAC 3745-50-10 in response to a comment previously received on a separate rule package. One comment was received from Ohio Environmental Services Industries during the CSI public comment period sharing general support for the rule but recommending that OEPA revise the definition of hazardous waste treatment in OAC 3745-50-10(T)(13) to better align with the Revised Code definition in ORC 3734.01. In response to the comment, OEPA determined to revise the definition accordingly.

The business community impacted by the rules includes businesses in Ohio that generate, treat, store, dispose of, or transport hazardous waste. The adverse impacts to business created by the rules include time and costs associated with paying fees assessed on the disposal or treatment of hazardous waste (ranging from \$2 per ton for hazardous waste disposed by deep well injection to \$9 per ton for hazardous waste disposed of by landfill), preparing and maintaining records and filing various reports with OEPA, complying with public notice requirements for permit modifications, obtaining various permits and licenses from OEPA, ensuring proper personnel training and qualifications, payment of a \$1,500 application fee for hazardous waste facility initial licensure or renewal, complying with inspection requirements and standards, shutting down operations at licensed facility in compliance with rule requirements, complying with various requirements for the maintenance and securing of hazardous waste and related equipment, developing required response, sampling, action, and emergency plans, properly managing various types of classified waste, and related requirements. OEPA states that the adverse impact to business is justified to ensure Ohio compliance with federal Resource Conservation and Recovery Act standards and minimize hazards to the public health, safety and the environment associated with hazardous waste management.

Recommendations

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

Conclusion

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