



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Joseph Baker, CSI Director

DATE: December 28, 2022

RE: **CSI Review – Scrap Tire Rules (OAC 3745-27-02, 3745-27-55 (rescinded), 3745-27-56 (rescinded), 3745-27-57 (rescinded), 3745-27-60 (rescinded), 3745-27-61 (rescinded), 3745-27-62 (rescinded), 3745-27-63 (rescinded), 3745-27-65 (rescinded), 3745-27-66 (rescinded), 3745-27-67 (rescinded), 3745-27-69 (rescinded), 3745-27-70 (rescinded), 3745-27-71 (rescinded), 3745-27-72 (rescinded), 3745-27-73 (rescinded), 3745-27-74 (rescinded), 3745-27-75 (rescinded), 3745-27-78 (rescinded), 3745-27-79 (rescinded), 3745-27-54, 3745-27-56, 3745-27-60, 3745-27-61, 3745-27-63, 3745-27-65, 3745-27-66, 3745-27-70, 3745-27-72, 3745-27-73, 3745-27-74, 3745-27-78, 3745-27-79, 3745-500-02, 3745-503-02, 3745-503-10, 3745-580-01, 3745-580-02, 3745-580-04, 3745-580-05, 3745-580-06, 3745-580-07, 3745-580-08, 3745-580-09, 3745-580-12, 3745-580-20, 3745-580-22, 3745-580-23, 3745-580-24, 3745-580-30, 3745-580-31, 3745-580-100, 3745-580-101, 3745-580-103, 3745-580-105, 3745-580-110, 3745-580-111, 3745-580-115, 3745-580-125, 3745-580-200, 3745-580-201, 3745-580-203, 3745-580-205, 3745-580-210, 3745-580-215, 3745-580-225, 3745-580-300, 3745-580-301, 3745-580-303, 3745-580-305, 3745-580-310, 3745-580-315, 3745-580-325, 3745-580-400, 3745-580-401, 3745-580-403, 3745-580-405, 3745-580-410, 3745-580-415, 3745-580-425, 3745-580-500, 3745-580-501, 3745-580-503, 3745-580-504, 3745-580-510, 3745-580-515, 3745, 580-525, 3745-580-600, 3745-580-700, 3745-580-703, 3745-580-705, 3745-580-710, 3745-580-715, 3745-580-725, 3745-580-726, 3745-580-800, 3745-580-801, 3745-580-802, 3745-580-803, 3745-580-805, and 3745-580-810)**

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.

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Analysis

This rule package consists of seventy-nine new, two amended, and twenty rescinded rules from the Ohio Environmental Protection Agency (OEPA). This rule package was submitted to the CSI Office on August 16, 2022, and the public comment period was held open through September 23, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 16, 2022.

The rules in this section set forth scrap tire management requirements. Ohio Administrative Code (OAC) 3745-27-02 establishes general definitions and permit requirements for solid waste facilities and infectious waste treatment facilities. The rule has been amended to remove references to scrap tire management facilities permitting requirements and related responsibilities due to proposed adoption of new rules addressing these topics in 3745-580. OEPA also proposes to rescind existing scrap tire rules in Ohio Administrative Code (OAC) 3745-27 and reorganize the requirements into OAC 3745-580. OEPA reports that the new rules have been updated to comply with rule writing standards and adopt various policy updates described below. Specifically, OEPA proposes to rescind OAC 3745-27-55, 3745-27-56, 3745-27-57, 3745-27-60, 3745-27-61, 3745-27-62, 3745-27-63, 3745-27-65, 3745-27-66, 3745-27-67, 3745-27-69, 3745-27-70, 3745-27-71, 3745-27-72, 3745-27-73, 3745-27-74, 3745-27-75, 3745-27-78, and 3745-27-79, as the contents of those rules have also been shifted into OAC 3745-580. OEPA also proposes new rules for 3745-27-54, 3745-27-56, 3745-27-60, 3745-27-61, 3745-27-63, 3745-27-65, 3745-27-66, 3745-27-70, 3745-27-72, 3745-27-73, 3745-27-74, 3745-27-78, and 3745-27-79 for purposes of redirecting references in rules not included in this package to the appropriate new rules in OAC 3745-580.

OAC 3745-500-02 sets forth general definitions and has been amended to incorporate new terms for facility alterations, construction and demolition debris co-located processing facilities, incinerators, portable solid waste containers, solid waste landfills, source-separated yard waste, and tire-derived fuel or chips. OAC 3745-503-02 sets forth financial assurance definitions and has been amended to clarify certain terms. OEPA also proposes a new rule addressing financial assurance requirements and post-closure care responsibilities that may apply to multiple programs if referenced.

OAC 3745-580-01 and OAC 3745-580-02 specify the applicability of and the definitions for the rules of this chapter with regards to scrap tires. The passenger tire equivalent is increased from twenty pounds to twenty-five pounds. OAC 3745-580-04 and OAC 3745-580-05 contain obligations and requirements for any person that generates, stores, or possesses scrap tires. Duplicative storage requirements addressing fire concerns have been removed and new requirements for securing scrap tires on premises are added. Mosquito control requirements have been simplified throughout the rules. OAC 3745-580-06 requires scrap tire shipments to be documented on shipping papers using

forms prescribed by the Director of the OEPA (Director). OAC 3745-580-07 sets forth the fire break widths for scrap tire storage facilities. OAC 3745-580-08 authorizes the Director to require any person storing, generating, or possessing scrap tires to conduct soil, ground water, or surface water sampling for certain contamination parameters. OAC 3745-580-09 specifies the conversion factors that any person who generates, stores, or possesses scrap tires must comply with. OAC 3745-580-12 allows the owner or lessee of a site to dispose of off-the-road construction and mining equipment scrap tires through burial on site if the scrap tires meet certain qualifications. OAC 3745-580-20 allows the owner or operator of a scrap tire facility to request administrative changes, alterations, or modifications to a permit-to-install or a registration and allows any person to request variances or exemptions from the provisions of this chapter. OAC 3745-580-22, OAC 3745-580-23, and OAC 3745-580-24 provide for the closure costs estimate, post-closure cost estimate, and financial assurance pertaining to the closure of scrap tire facilities and scrap tire transporters. OAC 3745-580-30 and OAC 3745-580-30 provide for the response and remediation procedures that must be taken if a fire occurs at a location identified on a scrap tire transporter registration or at a scrap tire facility. There are no longer different requirements based on the number of scrap tires, but remediation is instead based on findings and orders by the Director.

OAC 3745-580-100, OAC 3745-580-101, OAC 3745-580-103, OAC 3745-580-105, OAC 3745-580-110, OAC 3745-580-111, OAC 3745-580-115, and OAC 3745-580-125 outline the requirements and standards for scrap tire transporters, particularly with respect to registration, recordkeeping, reporting information, and closure. New requirements are added to include a plan view drawing and to affix and display a valid OEPA scrap tire transporter decal. There are new exclusions for for-hire motor carriers that transport scrap tires to a location outside of Ohio with written permission from the OEPA, persons transporting scrap tires for a preauthorized beneficial use with written permission from the OEPA, transporting crumb rubber, and transporting burned and partially burned scrap tires for disposal to a sanitary landfill facility. The requirement to obtain standby trust is removed, while only four financial assurance funding mechanisms are allowed unless authorized by the Director. OAC 3745-580-200, OAC 3745-580-201, OAC 3745-580-203, OAC 3745-580-205, OAC 3745-580-210, OAC 3745-580-215, and OAC 3745-580-225 outline the requirements for scrap tire collection facilities, particularly with respect to registration, recordkeeping, reporting information, and closure. A new exclusion is added for construction and demolition debris (C&DD) processing facilities, while the C&DD landfill exclusion is updated to reflect this new exclusion. Additionally, excluded facilities now have a storage limit of 5,000 cubic feet.

OAC 3745-580-300, 3745-580-301, 3745-580-305, 3745-580-310, 3745-580-315, and 3745-580-325 establish requirements for scrap tire storage facilities, including the application and approval process for permits to install and registration certificates, listing the types of businesses excluded from permit requirements, recordkeeping, and requirements for facility operation and closure. OAC 3745-580-400, 3745-580-401, 3745-580-403, 3745-580-405, 3745-580-410, 3745-580-415, and

3745-580-425 set forth requirements for scrap tire recovery facilities, including permitting, facility operation, and closure. OAC 3745-580-500, 3745-580-501, 3745-580-503, 3745-580-504, 3745-580-510, 3745-580-515, and 3745-580-525 concern mobile scrap tire facilities and include requirements for the mobilization and demobilization of mobile scrap tire recovery facilities.

OAC 3745-580-600 establishes requirements for a scrap tire monocell facility, including application procedure for permits to install, license renewal, and standards for operation and closure of the facility. OAC 3745-580-700, 3745-580-701, 3745-580-703, 3745-580-705, 3745-580-710, 3745-580-715, 3745-580-725, and 3745-580-726 establish requirements related to scrap tire monofill facilities. The rules set forth additional requirements for post-closure care for monofill facilities, which can include continued operation and maintenance on leachate and surface water systems, preventing physical erosion or disrepair, and conducting quarterly inspections. OAC 3745-580-800, 3745-580-801, 3745-580-802, 3745-580-803, 3745-580-805, and 3745-580-810 concern beneficial use projects for scrap tires, including the criteria for usage, application and approval processes, and standards for tire transport, storage, and mosquito control.

During the early stakeholder review process, OEPA requested feedback from stakeholders by email, held webinars, met with scrap tire facilities, and notified local health departments and scrap tire transporters regarding the proposed rules. Four comments were received in response to the request for feedback, including the Cuyahoga Solid Waste District, Hamilton County Recycling and Solid Waste District, Bowser-Morner, and a consultant. Based on the comments, OEPA determined to adopt changes addressing operating requirements for scrap tire generating businesses and scrap tire transporters and clarifying updates to terms and wording. OEPA also determined to allow construction and demolition debris processing facilities and landfills to store scrap tires received incidentally or direct hauled to the facility in loads of ten or less without being registered as a scrap tire collection or storage facility and to allow local fire departments to determine acceptable tire storage rather than defining fire safety storage standards in rule. During the CSI public comment process, comments were received from the Ohio Tire and Automotive Association (OTAA), a volunteer river clean up nonprofit organization, and Harrison County Public Health. OTAA thanked OEPA for its work clarifying the rules and suggested additional changes including clarification surrounding whether used tires not placed on vehicles or trailers qualify as scrap tires, how determinations of potential fire hazards will be made, and whether entities that process more than 100 tires per week will require a scrap tire permit even if fewer than 100 tires remain on the premises at one time. In response, OEPA clarified that tires not being used for their original purpose qualify as scrap tires, removed the new language regarding fire hazards to instead continue using its normal statutory authority to address these situations, and clarified that entities that do not store more than 100 tires at one time do not require a permit. Harrison County Public Health also complimented OEPA on the new rules and requested clarification regarding registration requirements for scrap tire transporters, which OEPA provided. Finally, the nonprofit organization asked for clarification that volunteer cleanup organizations who collect scrap tires would not be required to obtain a permit. In

response, OEPA adopted new language clarifying that such entities would not be subject to the rules.

The business community impacted by the rules includes owners and operators of scrap tire collection, storage, recovery, mobile recovery, monofill/monocell facilities, scrap tire generating businesses, scrap tire transporters, and entities seeking to use scrap tires for beneficial purposes. Adverse impacts include licensing and registration requirements, permitting and license fees, employee time associated with compliance efforts, operational and closure costs, financial assurance expenses, and potential fines for non-compliance. The costs and time associated with permitting and compliance operations varies based on the type and scale of the entity involved. OEPA notes that a renewal of an existing license may require a few hours of time to complete the required paperwork, while a new application may involve several days for a complex facility application. Annual license and registration fees range from \$300 for scrap tire transporters and \$100 for scrap tire recovery facilities with less than one ton of daily design input capacity to \$5,500 for recovery facilities with a daily design input capacity of 501 tons or more. Entities are also assessed a \$400 permit application fee, though the costs of the application fee are deducted from the permit fee. Scrap tire monofill or monocell facilities are required to pay an annual license fee of between \$5,000 to \$60,000. The annual license fee for a storage facility is between \$1,000 to \$3,000 depending on the acreage of the facility, while the annual licensing fee for a scrap tire collection facility is \$200. Lastly, OEPA notes that there are costs associated with complying with requirements to prevent mosquito breeding in scrap tires estimated at approximately \$65 per quarter acre. OEPA states that the adverse impacts created by the rules are necessary to ensure the safe disposal of scrap tires, prevent known breeding sites for disease-carrying mosquitoes and prevent significant fire hazards associated with scrap tire accumulations.

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.