



# Common Sense Initiative

Mike DeWine, *Governor*  
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

## MEMORANDUM

**TO:** Mandi Payton, Ohio Environmental Protection Agency

**FROM:** Caleb White, Business Advocate

**DATE:** December 20, 2023

**RE:** CSI Review – Solid Waste Transfer Facility Rules (OAC 3745-555-01, 3745-555-02, 3745-555-10, 3745-555-20, 3745-555-110, 3745-555-120, 3745-555-130, 3745-555-140, 3745-555-150, 3745-555-200, 3745-555-210, 3745-555-215, 3745-555-216, 3745-555-300, 3745-555-310, 3745-555-320, 3745-555-400, 3745-555-500, 3745-555-510, 3745-555-520, 3745-555-610, 3745-555-615, 3745-555-620, 3745-555-650, 3745-555-670, 3745-555-690, and 3745-555-700)

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 fourteen amended and twelve no-change rules from the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on October 2, 2023, and the public comment period was held open through November 2, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 2, 2023, with the exception of Ohio Administrative Code (OAC) 3745-500-02, which was later removed by the OEPA and included in another package filed with the CSI Office.

This package consists of OAC Chapter 3745-555 which outlines the requirements for solid waste transfer facilities. OAC 3745-555-01 establishes the applicability and outlines by reference the OAC rules applicable to this chapter. This rule is amended to adopt OAC 3745-500-02 by reference as applicable to this chapter. OAC 3745-555-02 outlines the definitions used in this chapter. OAC 3745-

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555-10 establishes the obligations for the owners and operators of solid waste transfer facilities. This rule is amended to add a requirement for recycling facilities which recycle less than sixty per cent of the weight of solid waste received in a nine-month period, or no longer meets the definition of a legitimate recycling facility to submit a written notification to the OEPA of the intent to submit a permit to install an application for a solid waste transfer facility within ninety days. This amendment does allow for an exemption from this requirement if the owner or operator of the recycling facility ceases to accept waste and disposes of all waste within ninety days. OAC 3745-555-20 establishes how an individual may apply for a variance to a provision in this chapter, apply for an exemption to a provision in this chapter, request to use an alternative construction material, request an alteration to an authorizing document, or request an administrative change to a permit.

OAC 3745-555-110 prohibits a solid waste transfer facility from being located in a park. OAC 3745-555-120 prohibits the waste handling area of a solid waste transfer facility from being located within five hundred feet of a natural area. OAC 3745-555-130 prohibits the waste handling area of a solid waste transfer facility from being located within two hundred and fifty feet of a domicile. OAC 3745-555-140 prohibits the waste handling area and access roads of a solid waste transfer facility from being located within a one-hundred-year floodplain. This rule is amended to make a grammatical edit. OAC 3745-555-150 prohibits the waste handling area of solid waste transfer facility from being located within two hundred feet of any surface waters.

OAC 3745-555-200 outlines the engineered components a waste transfer facility is required to have when modifying or constructing a facility. OAC 3745-555-210, 3745-555-215, and 3745-555-216 establish the design standards for waste handling floors, conveyance pipes, and leachate holding tanks. OAC 3745-555-300 outlines the application process for a permit to install when an individual seeks to establish or modify a solid waste transfer facility. This rule is amended to clarify that the applicant is to submit the application to the board of health of the health district in which the facility is located. OAC 3745-555-310 outlines what should be included in a permit to install application. This rule is amended to eliminate a requirement to have a notarized written statement from each person who holds title to the land on which the transfer facility is located acknowledging they are aware of the application as well as to make minor clarifying and grammatical changes. OAC 3745-555-320 governs the issuance of a permit to install including the criteria for the issuance, how it is issued, and when the application is considered acted upon. OAC 3745-555-400 sets forth the requirements and procedures related to license application. This rule is amended to streamline the rule's language.

OAC 3745-555-500 outlines the construction and construction certification requirements of the owner of a solid waste transfer facility. OAC 3745-555-510 sets forth the construction standards and certification requirements of a waste handling floor. OAC 3745-555-520 requires the owner or operator to keep drawings and results of all testing for buildings used to enclose a solid waste transfer

facility area and is amended to correct a spelling error.

OAC 3745-555-610 establishes general requirements for the owner or operator of a solid waste transfer facility. This rule is amended to require operators to be thoroughly familiar with the proper operational procedures, license, permits, and other authorizations of the transfer facility, change an existing requirement for an operator to be one site at all times and add more flexibility by only requiring a waste handling area to be supervised by a person who is knowledgeable in the facility's operations, as well as to update and streamline the rule's language. This rule is also amended to change the timeline for an owner or operator to develop a contingency plan for facilities established prior to the rule's effective date from one hundred and eighty days after the rule's effective date to prior to the facility's acceptance of waste. OAC 3745-555-615 requires an owner or operator to maintain a log of facility operations and establishes what must be included in the log and to whom the log should be available and submitted. This rule is amended to update a term. OAC 3745-555-620 establishes the responsibility of the owner or operator of the facility regarding access. This rule is amended to update a term. OAC 3745-555-650 establishes the responsibilities of a facility owner or operator regarding the handling of waste. This rule is amended to eliminate the specified time frame for requirements surrounding scales and to update and streamline the rule's language.

OAC 3745-555-670 requires the owner or operator of a facility to submit an annual report to the OEPA and outlines what the report should include. This rule is amended to eliminate the requirement for information regarding weather and nuisance conditions to be included in a facility's annual report and update a term. OAC 3745-555-690 outlines the requirements related to the operation of a facility for the owner or operator of a facility that exclusively accepts source-separated yard waste. This rule is amended to update a term. OAC 3745-555-690 outlines the requirements of an owner or operator regarding the closure of a facility. This rule is amended to update a term.

During early stakeholder outreach, the OEPA informed stakeholders of the changes on March 24, 2022, and were provided thirty days to comment on the proposed rules. During this period the OEPA received one comment from Hamilton County Public Health (HCPH) regarding solid waste transfer facility operations. The OEPA did not make a change in response to this comment but did reach out to HCPH to further discuss their comments. Following this discussion, HCPH agreed with moving forward on the proposed rules.

During the CSI public comment period, the OEPA received five comments. The first comment came from the National Waste and Recycling Association and was related to the 365 days a recycling facility is permitted to accept solid waste if it fails to meet the requirement for more than sixty percent of the solid waste received to be recycled. After falling below the sixty percent threshold, the recycling facility must either cease accepting waste or submit within ninety days a written notification to the OEPA regarding the entity's intent to submit a permit to install an application for a solid waste

transfer facility. If the recycling facility submits notification of their intent to submit a permit to install, the facility can continue to accept solid waste for 365 days after falling below the recycling threshold. This commenter requested the 365-day time limit be eliminated as the OEPA can deny an application at any point if they believe the permit to install is not being pursued in a timely manner. This commenter also asked for certain references related to the requirements for recycling facilities that do not meet the requirement for more than sixty percent of the solid waste received to be recycled to be updated. Lastly, this commenter asked for a prohibition which had been added to the rules which prevented the access roads of solid waste transfer facilities being located in a 100-year floodplain to be eliminated as access roads are not defined and it is unclear if this includes in-facility access roads or access roads outside of the facility. The OEPA elected not to make changes to the timeframe requirement as the timeframe is needed to ensure that these facilities either cease operations or obtain a permit to install in a timely manner. OEPA also noted that the agency can extend this timeframe if necessary. The OEPA did, however, make corrections to the referenced provisions and eliminated the prohibition on access roads being located in a 100-year floodplain in response to this comment.

The second comment came from the Cuyahoga County Solid Waste District. This commenter asserted that the rules as amended would remove the requirement to post yard waste restrictions at a transfer station facility entrance and would hamper efforts to reduce reliance on landfills and encourage reducing, reusing, recycling and composting. The District also voiced their support for more signage and enforcement against the collection of source-separated yard waste, which is later mingled with waste either in the back of a vehicle or on a transfer station floor. In response to this comment, the OEPA re-inserted the requirement to post instructions regarding yard waste restrictions at a solid waste transfer facility which had been previously removed.

The next three comments came from individuals who were concerned about solid waste transfer facilities being located too close to residential areas. The OEPA elected not to make changes in response to these comments as the 250-foot separation distance from a domicile has been in effect in the solid waste transfer facility rules since their initial adoption in 1991 and local zoning codes may provide additional guidelines for appropriate siting based on the individual needs of the municipality. Additionally, the OEPA notes that local health departments continue to have the authority to address nuisance conditions that could impact public health. One of these commenters also additionally expressed a desire for facility operators should know the immediate neighbors and be available to them to address problems with odors, vermin and wildlife, pests and bugs, blown trash, run-off, and particulate matter that the facilities inflict on their neighbors and for the requirement for a notarized signature from the certification statement whereby each landowner where the solid waste transfer facility is located acknowledges the applicant is submitting a permit to install application for the solid waste transfer facility to remain in the rules. The OEPA elected not to make either of these changes and stated that they encourage owners and operators of solid waste transfer facilities to work with

their neighbors to address concerns and ensure open lines of communication and that all documents associated with the establishment and operation of a solid waste transfer facility, including those signed by a property owner affirming their knowledge of the proposed facility, and must be certified in accordance with OAC rule 3745-500-50, which affirms the signatory's identity and asserts that all statements and all assertions of fact made in the document are true and accurate to the best of the signatory's knowledge.

The business community impacted by the rules includes the owners and operators of solid waste transfer facilities. The adverse impacts created by the rules include the costs associated with obtaining a permit to install which involves fees and the requirement to obtain a license, the costs associated with the requirement to establish a financial assurance for closure prior to receiving a license, costs related to construction requirements, closure costs, and the costs associated with implementing a contingency plan, keeping a daily log of operations, as well as preparing and submitting an annual report. The permitting fees include an application fee (\$400), an issuance fee (\$2,500), licensing fees which include an application fee (\$100) and issuance fee (\$750). The OEPA notes that both the permitting and license application fees are credited towards their respective insurance fees upon approval. The costs associated with obtaining financial assurance are calculated based on the cost to close the facility and remove the maximum amount of waste the facility is permitted to store in the waste handling area in containers in the facility and can vary based on the size of the facility, what financial instrument is used, and what financial institution is used. The company subject to this requirement must either establish a closure trust fund, obtain a surety bond, obtain a closure letter of credit, obtain closure insurance, or pass a financial test which requires a owner or operator to demonstrate that less than 50% of the gross revenue of either the parent company or the owner or operator are derived from the facility. According to the OEPA, the cost of a standby trust agreement averages between \$500 to \$3,500, and a funded trust can range from 1% of the amount in trust for deposits of \$250,000 or less, to .7% of the amount for deposits of up to \$1,000,000, surety bonds can cost between 2% to 4% of the penal sum of the bond and may require collateral, a letter of credit usually requires full collateral and may also include fees, and the cost of insurance will vary based on the issuer and the applicant's credit. The OEPA also notes that financial assurance is not required if the closure cost estimate for a facility is less than \$5,500. The OEPA notes that the overall costs can vary but states that the cost can be estimated to be around \$10 per ton of solid waste received. The OEPA states that the adverse impacts to business are justified as they are statutorily required to draft rules to ensure all solid waste facilities are located, maintained, operated, and undergo closure in a sanitary manner that does not create a nuisance or cause or contribute to the pollution of the state's land, water, or air.

### **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.