

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Rules 3745-76-01 to 3745-76-04 and 3745-76-06 to 3745-76-15, Control of Non-Methane Organic Emissions from Existing Landfills

Rule Number(s): OAC Rules 3745-76-01 to 3745-76-04, and 3745-76-06 to 3745-76-15

Date: November 20, 2015

Rule Type:

- | | |
|----------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 3745-76 of the Ohio Administrative Code (OAC) contains the requirements for the control on non-methane organic compound (NMOC) emissions from existing landfills. An existing landfill is any landfill that was in operation on or before May 30, 1991 which has not, through construction, reconstruction, or modification has not increased the disposal capacity of the landfill. These rules are part of Ohio's plan to control NMOC emissions from these landfills under the Clean Air Act Section 111(d) and 40 CFR part 60, subpart Cc. Ohio's plan is codified in the Code of Federal Regulations (CFR) in 40 CFR 62.8870.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule Number	Authorizing Statute	Proposed Action
3745-76-01	3704.03(E)	No-Change
3745-76-02	3704.03(E)	No-Change
3745-76-03	3704.03(E)	No-Change
3745-76-04	3704.03(E)	No-Change
3745-76-06	3704.03(E)	No-Change
3745-76-07	3704.03(E)	No-Change
3745-76-08	3704.03(E)	No-Change
3745-76-09	3704.03(E)	No-Change
3745-76-10	3704.03(E)	No-Change
3745-76-11	3704.03(E)	No-Change
3745-76-12	3704.03(E)	No-Change
3745-76-13	3704.03(E)	No-Change
3745-76-14	3704.03(E)	No-Change
3745-76-15	3704.03(E)	No-Change

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

These rules are part of Ohio's plan to control NMOC emissions from landfills under the Clean Air Act Section 111(d) and 40 CFR part 60, subpart Cc. Ohio's plan is codified in the Code of Federal Regulations (CFR) in 40 CFR 62.8870

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

These rules mirror the federal language in 40 CFR part 60, subpart Cc and do not exceed any of the limits set in the federal rules.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

As mentioned above, the rules in this chapter are part of Ohio's plan for controlling NMOC emissions from landfills as required under section 111 of the Clean Air Act.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These rules set limits on the emission of organic compounds from existing landfills. Organic compounds are precursors to criteria pollutants like ozone for which national ambient air quality standards have been established. Ohio EPA considers these rules successful in that Ohio continues to progress towards, attain and maintain the various standards established by USEPA.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio EPA established an initial 30-day public comment period ending November 10, 2015. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,300+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication. Ohio EPA received one set of comments in support of our anticipated rulemaking path for these rules during the comment period.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Ohio EPA received one set of comments from Waste management, Inc.. Waste Management operates several of the landfills which are still subject to the rules in this chapter. Waste Management agreed with Ohio EPA's approach on these rules, namely that OEPA should complete the 5-year review of these rules on schedule as "No-Change" and then do additional rulemaking in a year to 18 months after the new federal rules are finalized.

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9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

These rules were developed in the 1990's and are only applicable to facilities that were in operation and have not expanded or modified since May 30, 1991. These facilities must begin monitoring for NMOC's when they close and must install a gas collection system if they exceed certain maximum gas emission levels. There are only 7 facilities in Ohio still subject to these rules and they have long since installed their monitoring and/or gas collection systems.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

These rules are based on federal regulations in 40 CFR part 60, subpart Cc. There are no alternative regulations to consider.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Ohio EPA considers these rules performance based. The rules set monitoring criteria and emission limits. The facilities are free to design their own collection and monitoring systems as long as they can meet the criteria.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio EPA performed a review of our internal regulations as well as rules of other OEPA divisions and outside agencies. These rules do not duplicate any other state rules.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

As mentioned, these rules were originally promulgated in the 1990's and the facilities that are still subject have long since installed monitoring and/or gas collection systems. The installation and operation of the systems are placed as a requirement in the facilities permit-to-install and permit-to-install and operate.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**
- a. Identify the scope of the impacted business community;**
 - b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
 - c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

These rules have been in existence since the 1990’s and are only applicable for facilities that were in operation on May 30, 1991 and have not expanded or modified their landfills. Facilities subject to these rules have long since installed their monitoring and collections systems and because the rules do not apply to new facilities, Ohio EPA does not anticipate any facilities to incur new costs for installation of these systems.

The existing facilities identified by Ohio EPA that are still subject to these rules are all closed, therefore, there are no reporting or recordkeeping requirements. The majority of these facilities maintain their gas collection systems and use the gas to power generators and other equipment as part of an energy recovery system.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

These rules fulfill federal requirements under federal regulations in 40 CFR part 60, subpart Cc. Ohio EPA was required to adopt these rules in the 1990’s under Section 111 of the Clean Air Act. Ohio’s plan is codified in the Code of Federal Regulations (CFR) in 40 CFR 62.8870.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Because of the date limitations and other factors, Ohio EPA does not expect any new facilities to be identified that are affected by these rules. The 7 facilities that still meet the requirements of these rules have long since installed their collection and monitoring systems and are complying with these rules as part of their operating permits.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Ohio EPA uses enforcement discretion regarding fines and penalties for facilities committing a first-time reporting violation. In many cases, penalties are waived.

18. What resources are available to assist small businesses with compliance of the regulation?

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.
- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.