

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Standards for solid waste management districts

Rule Number(s): 3745-27-90

Date: December 10, 2013

**Rule Type:**

New

5-Year Review

Amended

Rescinded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.*

Rule 3745-27-90 of the Ohio Administrative Code (OAC) titled "Standards for solid waste management districts" exists for the purpose of codifying the goals established in the "State Solid

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

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

Waste Management Plan" and the performance standards that were later developed as required by the plan.

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

Ohio Revised Code 3734.50.

**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.**

No. Not applicable.

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

Not applicable.

**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)?**

Ohio Revised Code 3734.50 requires the director of environmental protection, with the advice of the statutorily established solid waste management advisory council, to prepare a state solid waste management plan. The statute directs the director to adopt rules establishing the objectives and restrictions of the state plan, and schedules for implementing them as mandatory elements of the solid waste management plans of county and joint solid waste management districts. This regulation fulfills this statutory requirement to codify in rule the goals set in Ohio's State Plan to ensure standards are met across the state.

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

Triennially, the director, with the advice of the advisory council, conducts a thorough review of the progress made toward achieving the goals. The Agency will also measure success of this regulation through the achievement of recycling and waste reduction goals outlined in the State Plan and this rule.

**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.*

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

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

The Agency contacted representatives from each of the state's solid waste management districts via a listserv email sent on October 24, 2013. The Early Stakeholder Outreach notification was also posted on the Agency's website.

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

The Agency received no feedback from stakeholders during the Early Stakeholder Outreach period.

**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?**

Rule 3745-27-90 primarily incorporates the goals of the state solid waste management plan into the Ohio Administrative Code and broadly defines what solid waste management districts have to do to meet those goals. Ohio EPA reviewed available solid waste management district reported data on recycling, waste diversion, and disposal, other Ohio recycling and disposal data sources, and benchmarked with other states and the federal government in the establishment of State Plan goals codified in this rule.

**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?**

The Agency did not consider alternative regulations because the purpose of this rule is primarily to codify the ratified State Solid Waste Management Plan and the rule offers alternative provisions to help solid waste management districts achieve and maintain compliance. The rule allows significant flexibility to solid waste management districts on how to create and manage programs for each district.

**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.***

The Agency included performance-based regulation in this rule. Rule 3745-27-90 codifies the requirements set forth in the State Plan. These requirements consist of recycling and waste reduction strategies that may be used individually or combined with additional strategies to attain the goals outlined in the solid waste management district's plan. The rule allows significant flexibility to solid waste management districts on how to create and manage programs for each district.

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

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another

existing Ohio regulation.

**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.**

The Agency has and will continue to do outreach to solid waste management districts to make them aware of the rule amendments.

**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;**

This rule has no direct impact on the business community. The rule establishes requirements for “solid waste management districts”, which are statutorily created governmental entities whose purpose is to develop and implement solid waste management plans.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The rule has no direct impact on the business community. Solid waste management districts must spend money on the development of their individual plans, and incur costs implementing those programs selected by the solid waste management district to fulfill the requirements in their plan and this rule.

**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.*

The rule has no direct impact on the business community. The cost for solid waste management districts to prepare a solid waste management district plan depends upon the size of the solid waste management district and whether the district prepares the plan itself or hires a consultant. Ohio EPA does not have information for the solid waste management districts that prepare their own plans; however, plans recently created using a consultant range from \$22,985 to \$140,000, with an average cost of \$55,928.

It should be noted that solid waste management districts are statutorily created governmental entities whose statutorily defined purpose is to develop and implement solid waste management plans. The requirement to develop and implement those plans is

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

**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

specified in statute, not this rule. Furthermore, the Ohio Revised Code 3745.57 provides solid waste management districts the capability to establish various revenue sources, including local solid waste management district fees on disposal of solid waste and district fees on the generation of solid waste. The solid waste management district may utilize these fees for the cost to prepare a solid waste management district plan.

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

The Agency determined that the regulatory intent justifies the adverse impact in order to continue towards the State's goal of waste reduction and to decrease the reliance on landfills. This Agency goal is a requirement of section 3734.50 of the Ohio Revised Code.

**Regulatory Flexibility**

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

This rule does not apply to business entities (large or small). The rule applies to solid waste management districts, which are statutorily created governmental entities. While the rule does not contain specific alternatives for small solid waste management districts, the rule does provide a great deal of flexibility in how solid waste management districts achieve the goals specified in the rule. In addition, solid waste management districts subject to the regulations contained in rule 3745-27-90 are also subject to 3734.02(G) of the Ohio Revised Code. This section provides the director of Ohio EPA the authority to issue exemptions and allows the establishment of alternative means of compliance.

**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 director will evaluate the applicability of ORC section 119.14 to solid waste management districts regulated under rule 3745-27-90 when assessing fines and penalties for paperwork violations and first-time offenders.

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

The rule does not apply to businesses in Ohio (large or small). Ohio EPA provides a great deal of technical assistance to solid waste management districts that are subject to this rule, including specialists who are available to provide technical assistance, on-site assistance, presentations, etc. In addition, Ohio EPA maintains resources and guidance on a web page dedicated to providing information and technical assistance to solid waste management districts.

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

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

Additionally, 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 all environmental regulations administered by Ohio EPA. 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://epa.ohio.gov>.