

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio EPA

Regulation/Package Title: Solid Waste Transfer Facility

Rule Number(s): Propose to rescind 3745-27-21, 3745-27-22, 3745-27-23, and 3745-27-24 .

Propose new rules in Chapter 3745-555 and 3745-512 to replace rescinded rules (see Attachment A for specific rule numbers).

Propose amendments to 3745-500-02, 3745-500-03, 3745-500-120, and 3745-500-210.

Date: _____

Rule Type:

- New
- Amended

- 5-Year Review
- Rescinded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.

The four effective solid waste transfer facility rules found in Chapter 3745-27 are overdue for their 5-year review required under ORC 119.032. Ohio EPA's 5-year review determination pursuant to ORC 119.032 is to propose rescission of these four Chapter 3745-27 solid waste transfer facility rules and replace those rescinded rules with new rules in a dedicated solid waste transfer facility program

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Chapter 3745-555 and new transfer facility construction Chapter 3745-512. This package also includes proposed amendments to existing administrative rules in Chapter 3745-500 that are referenced in the proposed solid waste transfer facility program Chapter 3745-555.

The proposed new and proposed amended regulations in this package retain but reorganize the four effective Chapter 3745-27 rules to be rescinded. This rule package addresses the siting, design, permitting, licensing, construction, operation, and closure of solid waste transfer facilities. This reorganization of the transfer facility rules into a proposed new solid waste transfer facility program Chapter 3745-555 will include some changes from effective rules, including the following:

- Yard waste management requirements are streamlined.
- Liquids and semi-solids acceptance prohibition to include exceptions for certain circumstances (food scraps, used oil, or authorized through a modification PTI)
- Newly permitted transfer facilities must transfer waste in a building (not outside).
- In accordance with the State Solid Waste Management Plan, the siting criterion regarding the “regulatory floodplain” is changed to be consistent with “100-year floodplain.”
- To provide more flexibility, the contingency plan is no longer part of the permit and is now addressed as an operational requirement. The contingency plan will also address more operational problems. Existing facilities will be able to update the contingency plans to meet the new rule requirement through a permit alteration.
- Alternative daily log forms are allowed.
- Scales shall be used by transfer facilities to weigh incoming and outgoing loads. However, scales are not required to be located at the transfer facility.
- To facilitate food composting operations, provisions are added to address acceptance of food scraps, including liquids.
- There is no longer a deadline to submit the closure certification report when converting a transfer facility to a recycling facility.
- A proposed change would no longer require financial assurance if cost for closure is \$5,500 or less (very small facilities) since the cost of maintaining a financial assurance instrument may approach or exceed this amount.
- The proposed solid waste transfer facility program Chapter 3745-555 will include reference to the existing licensing Chapter 3745-501 (no proposed changes to Chapter 3745-501 rules are in this package).

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

ORC 3734.02 and 3734.12

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.

The regulations do not implement a federal requirement.

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

The regulations do not implement a federal requirement but are necessary to fulfill the requirements of Ohio law.

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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)?

The regulations are adopted to fulfill the statutory obligations of ORC 3734.02(A). Several provisions of Ohio law establish regulatory requirements on the transfer of solid wastes. Licensing and permitting requirements are found in ORC 3734.05 and collection of state solid waste fees at solid waste transfer facilities are required by ORC 3734.57(A).

The use of transfer facilities is an important component in the management of solid waste. Transferring waste from many smaller route garbage trucks at a centralized location to fewer and larger long-haul semi-trucks makes it economically feasible for Ohio communities and businesses to use distant landfills. Ohio EPA's experience has demonstrated that unregulated waste transfer locations have a potential to accumulate large volumes of waste, create public nuisances, and in some instances be abandoned or file bankruptcy leaving local communities to face clean-up costs.

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

The continued need for solid waste transfer facilities as a means of cost effective load consolidation and transport of solid waste to regional landfills and recycling facilities is measured by the number of licensed transfer facilities and the quantity of wastes received and transferred. Success of these regulations can be determined by the number and degree of public complaints and extent of facility compliance with these rules.

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.

Solid waste transfer facility operators were informed of an early stakeholder outreach (February 22, 2012 to March 17, 2012). A fact sheet was distributed describing the process and the changes being contemplated.

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

The early stakeholder outreach garnered one response from the National Solid Waste Management Association (NSWMA) in favor of the proposed changes, except for institution of the multi-program format, and with suggestions to allow outdoor storage of scrap tires and yard waste, and concerns regarding how the rules could affect multi-purpose facilities and how the 'facility' will be defined.

Several proposed changes will provide more flexibility and clarity for transfer facilities to function as a multi-use facility and as a staging area for materials sent for composting and recycling. The rules now incorporate outdoor storage of scrap tires and yard waste.

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?

The proposed new and amended rules retain the majority of proposed rescinded transfer facility Chapter 3745-27 requirements with some changes. The existing siting criteria, design, and operational requirements have proven successful in minimizing complaints and violations. The proposed new rules retain these requirements. Permits for future and expanding facilities would require indoor operation to minimize further the incidents of blowing litter, odors, noise, attracting vectors, and leachate leakage onto the ground. Established public health principles demonstrate that incidents of vectors, odors, leachate, and other nuisances may be more easily controlled by minimizing the exposure of putrescible wastes to weather and access by vectors. Leachate sampling data demonstrates the potential for uncontrolled leachate to release contaminants to surface water and ground water.

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 considered the suggestions provided during early stakeholder outreach and considered how the regulations may be changed to accommodate multi-purpose transfer facilities. Several proposed changes provide more flexibility and clarity for transfer facilities to function as a multi-use facility as a staging area for materials sent for composting and recycling.

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.*

Performance-based regulations were considered for siting criteria, design standards, and construction specifications. General performance-based criteria are used in the design standards for the building, waste handling floor, leachate management piping and tanks. Performance-based standards are utilized in many of the operational requirements to provide operational flexibility.

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 regulations 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's plan for implementation will focus on educating stakeholders on the new organization of proposed Chapters 3745-555, 3745-512, and amended Chapter 3745-500 and highlighting changes in requirements. The Agency will offer web-based access to revised guidance documents and training for transfer facility operators and Agency and local health department inspectors. The selection of rule effective dates will allow time for these implementation activities. Considerations

include preparations by existing facilities to update the contingency plan and to arrange for the use of scales. Siting and design requirements are implemented uniformly through the permit process.

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;

The scope of the impacted business community includes all owners and operators of solid waste transfer facilities in the state of Ohio.

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

Proposed Chapters 3745-555, 3745-512, and amended Chapter 3745-500 will retain most of the existing Chapter 3745-27 transfer facility rule requirements (proposed for rescission).

The nature of the adverse impact includes costs and time for compliance with the following:

- For newly permitted facilities, meeting continued and new design and construction standards for floor and leachate collection and management structures. While the majority of existing transfer facilities conduct operations within a building, newly permitted transfer facilities would be required to conduct transfer operations inside a building.
- Continuation of siting to avoid incompatible land uses (e.g. parks, residences, streams).
- Continuation of established statutory cost of permit fees, annual license fees, and possibly fines for non-compliance.
- Continuation of time for recordkeeping for the purpose of collection of disposal fees and demonstrating compliance. Changes in section 3734.57 of the Ohio Revised Code now require the collection of statutory disposal fees by the transfer facility. For transfer facilities that do not utilize scales to determine the weight of incoming and outgoing loads, there will be an additional cost of compliance to arrange for the use of scales. Alternative daily log forms will now be allowed by rule.
- Continuation of waste acceptance restrictions to avoid non-compliance with disposal restrictions (e.g. hazardous waste, yard waste, liquids). Several proposed changes will provide more flexibility and clarity for transfer facilities to function as a multi-use facility and a staging area for materials sent for composting and recycling.
- Continued cost and time for housekeeping to avoid creation of nuisance conditions and preparing contingencies in event of an emergency. Cost of updating existing facility contingency plans to meet revised contingency plan requirements.
- Continued cost to clean up the facility upon closure, including financial assurance so as not to burden the tax payer should the operator fail to conduct facility closure. A proposed change would no longer require financial assurance if cost for closure is \$5,500 or less (very small facilities) since the cost of maintaining a financial assurance instrument may approach or exceed this amount.

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.

Although there is a cost of compliance associated with these rules, Ohio EPA requested from stakeholders but did not receive any compliance cost estimations from representative businesses. Due to this lack of input and the variety of facility sizes and range of specific facility activities, Ohio EPA has been unable to develop a reliable estimate for the cost of compliance. U.S. EPA utilized a general assumption that the cost to build, own, and operate a transfer facility is \$10 per ton of solid waste received in the document “*Waste Transfer Stations: A Manual for Decision-making*”.

For newly permitted transfer facilities, the cost of building construction should be in the range of small to large warehouse sized industrial building with an all-weather floor and large access doors. The requirement for leachate conveyance and storage (as necessary) would be an additional cost.

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

ORC 3734.02 requires the Director of Ohio EPA to draft rules for solid waste facilities that ensure that the facilities will be located, maintained, and operated, and will undergo closure, in a sanitary manner so as not to create a nuisance or cause or contribute to pollution of the land, water, or air. Several provisions of Ohio law establish specific regulatory requirements on the transfer of solid wastes. Licensing and permitting requirements are found in ORC 3734.05 and collection of state solid waste fees at solid waste transfer facilities are required by ORC 3734.57(A).

Regulatory Flexibility

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

Proposed OAC Chapter 3745-555 includes performance-based criteria that provides the owner or operator of a solid waste transfer facility the flexibility to determine the facility design and operations and vary those operations as circumstances may dictate to achieve operational performance standards. The proposed rule 3745-555-20 identifies available mechanisms to establish alternative means of compliance (variances, exemptions, alternatives, alterations, and administrative changes).

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 or the approved health department will evaluate the applicability of ORC section 119.14 to solid waste facilities regulated under OAC Chapter 3745-555 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?

Ohio EPA's Division of Materials and Waste Management (DMWM) and approved local health departments offer general solid waste management regulatory assistance. DMWM staff offer technical assistance to permit applicants and facility operators. DMWM maintains numerous documents and resources through an extensive DMWM website.

In addition, 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://epa.ohio.gov>.

ATTACHMENT A: Solid Waste Transfer Facility Rule Package

Rule Number	Rule Title	Action
3745-555-01	Solid waste transfer facility – applicability	New
3745-555-02	Solid waste transfer facility - definitions	New
3745-555-10	General obligations for owners, operators, and applicants	New
3745-555-20	Variances, exemptions, alternatives, alterations, and administrative changes	New
3745-555-110	Parks	New
3745-555-120	Natural areas	New
3745-555-130	Domiciles	New
3745-555-140	Floodplains	New
3745-555-150	Surface waters	New
3745-555-200	Engineered components	New
3745-555-210	Waste handling floor design	New
3745-555-215	Conveyance pipes	New
3745-555-216	Leachate holding tanks	New
3745-555-300	Permit to install application procedures and requirements	New
3745-555-310	Transfer facility permit to install application	New
3745-555-320	Permit to install issuance	New
3745-555-400	License application requirements and procedures	New
3745-555-500	Construction and construction certification requirements	New
3745-555-510	Waste handling floor construction	New
3745-555-520	Building to enclose waste handling area	New
3745-555-610	Operation of a solid waste transfer facility – general requirements	New
3745-555-615	Maintaining a log of operations	New
3745-555-620	Access	New
3745-555-650	Waste handling	New
3745-555-670	Annual report	New
3745-555-690	Operations of a transfer facility that accepts exclusively source-separated yard waste	New
3745-555-700	Closure of a transfer facility	New
3745-500-02	General administration - definitions	Amend
3745-500-03	Incorporation by reference	Amend
3745-500-120	Procedures for issuing, denying, modifying, transferring, and revoking licenses and permits to install	Amend
3745-500-210	Variances for solid waste facilities	Amend
3745-512-01	Construction - applicability	New
3745-512-02	Construction - definitions	New
3745-512-17	Alternative construction materials evaluation and reporting	New
3745-512-30	Construction activities – general requirements	New
3745-512-50	Construction certification	New
3745-512-51	Procedure for concurrence of construction certification	New
3745-512-55	Failed tests and alterations	New
3745-512-60	Repair of damaged or failed engineered components	New
3745-512-450	Conveyance pipes	New
3745-512-460	Tanks	New
3745-27-21	Solid waste transfer facility permit to install application	Rescind
3745-27-22	Additional criteria for approval of solid waste transfer facility permit to install application	Rescind
3745-27-23	Operation of solid waste transfer facilities	Rescind
3745-27-24	Final closure of solid waste transfer facilities	Rescind