

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Municipal Solid Waste Landfills (MSW) and Scrap Tire Monofill and Monocell (ST) Rules

Rule Number(s): MSW: 3745-27-03, 3745-27-05, 3745-27-06, 3745-27-07, 3745-27-08, 3745-27-09, 3745-27-11, 3745-27-12, 3745-27-13, 3745-27-14

ST: 3745-27-69, 3745-27-70, 3745-27-71, 3745-27-72, 3745-27-73, 3745-27-74, 3745-27-75

Date: January 22, 2014

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 Rescinded |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.

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These regulations govern municipal solid waste (MSW) landfills in Ohio, addressing the siting, design, permitting and licensing, construction, operation, and closure of solid waste landfills.

The scrap tire monofill and monocell rules are the set of regulations that solid waste landfills must follow when disposing of scrap tires. Scrap tires are prohibited from commingled disposal with municipal solid waste at landfills in the state.

Pursuant to ORC 119.032, Ohio EPA has determined that these rules do not need to be amended or rescinded. A determination that these MSW landfill rules and scrap tire monofill and monocell rules are to be retained without change is to be filed with the Joint Agency on Rule Review (JCARR).

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

These regulations are authorized under Ohio Revised Code (ORC) 3734.02, 3734.021, 3734.041, 3734.12, 3734.72, and 3734.77.

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 regulations implement the federal requirement to regulate municipal solid waste landfills.

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

The MSW landfill regulations exceed the federal rules. Under RCRA Subtitle D, USEPA has established baseline minimum standards for Municipal Solid Waste Landfills [40 CFR Part 258]. This rule set is not enforceable by USEPA, and can only be applied to a facility if a citizen-suit is filed in a federal court. Part 258 allows a State program approved by USEPA to create an individualized program for the regulation of municipal solid waste landfills. Once a state's program has been established, the baseline federal rules are no longer enforceable. 40 CFR Part 258 allows a state to adopt or duplicate federal language into their program or create more stringent requirements. Due to the Agency's extensive scientific data used in the creation of these rules, the Agency justified the implementation of regulations stricter than their federal counterparts during the last adoption of these rules in 2003 and 2004. The MSW solid waste industry has been operating effectively under these rules since 1976, when they were first ratified.

The scrap tire monofill and monocell rules do not implement a federal program.

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 purpose of these MSW regulations are to fulfill the requirements of ORC 3734.02 which require the director to adopt rules governing solid waste facilities in order to ensure that the facilities will be located, maintained, and operated, and will undergo closure and post-closure care, in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, or create a health hazard.

The purpose of these scrap tire monofill and monocell landfill regulations is fulfill the requirements of ORC 3734.72 which require the director to adopt rules governing scrap tire monofill and monocell

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facilities in order to ensure that the facilities will be located, maintained, and closed in a manner that does not create a nuisance or a hazard to public health or safety or the environment.

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

The Agency will measure the success of these regulations through the continued compliance with the solid waste landfill and scrap tire monofill and monocell landfill rules in this package, and minimal occurrences of nuisance, fire or health hazards, or air or water pollution resulting from the operation of solid waste landfills.

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.

The Agency contacted stakeholders from the solid waste industry notifying them of the 5-year rule review process and the preliminary determination to retain these rules without change. Ohio EPA subsequently met with members of the Solid Waste Association of North America (SWANA) and National Solid Waste Management Authority (NSWMA) to explain our review timeframe and answer any questions they may have about the review process. Following the meeting on December 6, 2013, the Agency sent industry an email summarizing the meeting and formally giving them the opportunity, in writing, to suggest necessary changes to the rules.

Additionally, on January 10, 2014, the Agency contacted the operators of the two permitted scrap tire monofill and monocell facilities in Ohio to notify them of the 5-year rule review process and the preliminary determination to retain these rules without change and provide them with the same opportunity for early input on this review.

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

On January 6 and January 8, 2014, the Agency received emails from SWANA and NSWMA concurring with the Agency's position to file the determination to retain these MSW landfill rules without change. One of the two scrap tire monofill and monocell owners also replied to the Agency on January 14, 2014 supporting the determination to retain the scrap tire monofill and monocell landfill rules without change.

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?

Pursuant to ORC 119.032, Ohio EPA has determined that these rules do not need to be amended or rescinded. A determination that these MSW landfill rules and scrap tire monofill and monocell rules are to be retained without change is to be filed with the Joint Agency on Rule Review (JCARR). Given that no rule amendments are being proposed, no scientific data was considered.

The consideration of scientific and engineering data supporting the municipal solid waste and scrap tire monofill and monocell rules last occurred during the previous adoption of these rules in 2003 and 2004.

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 regulatory alternatives since the Agency has determined in accordance with ORC 119.032 that these rules do not need to be amended or rescinded.

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 did not consider performance-based regulations since the Agency has determined in accordance with ORC 119.032 that these rules do not need to be amended or rescinded.

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.

Because these rules are already effective and Ohio EPA is to file a determination to retain these rules without change, the Agency plans to continue the current efforts to ensure consistent and predictable rule implementation.

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.

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An Ohio industry choosing to establish and operate a municipal solid waste (MSW) landfill or scrap tire monofill or monocell can anticipate an initial cost associated with the rules. Although a cost of compliance exists with these rules, any estimate must account for a range of significant variables. The cost will naturally vary depending on the landfill size, design, location, and underlying geology. Many of the costs associated with scrap tire monofill and monocells would be very similar to the costs associated with MSW landfills but the overall cost of compliance will be less due to lesser requirements and smaller facility size. The following information is based upon estimates provided by an Ohio municipal solid waste industry association.

Permit costs for developing an engineering package for a lateral expansion range from \$750,000 to \$1,000,000 excluding hydrogeological investigations. Hydrogeological investigations add an additional \$50,000 - \$250,000 for a simple vertical expansion, \$250,000 to \$1,000,000 for a simple lateral expansion or new facility, and \$2,000,000 for a complex lateral expansion with complex hydrogeological/siting criteria issues. Setback demonstrations for the demonstration that the facility meets the siting criteria are around \$500 per acre. Construction costs for a sanitary landfill facility range from \$250,000 to \$1,000,000 per acre, with an average of \$400,000 acre.

Additional costs are incurred for the monitoring of ground water at the facility. Initial well installation ranges from \$5,000 to \$10,000 per well. Background sampling, analytical analysis, and reporting also runs about \$5,000 to \$10,000 per well. Routine costs, including annual sampling, statistics, and associated reporting costs around \$1,200 to \$2,500 per well, while wells in assessment monitoring can be up to \$3,500 per well. Miscellaneous plan revisions, demonstrations, re-sampling, and Agency correspondence ranges from \$2000 to \$10,000 per year. Finally, assessment plans, investigations, reports, and corrective measures plans can cost from \$50,000 to \$100,000.

It is important to note that many of these costs are incurred over the life of the facility which is determined by the owner and operator of the industrial landfill depending on operational practices and landfill capacity. Beyond the permit necessary to establish the industrial landfill, the costs associated with subsequent permit applications is dependent upon the owner and operator's need to expand or modify the facility.

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 to the regulated business community because regulations for the safe disposal of municipal solid waste are mandated by U. S. EPA and section 3734.02 of the Ohio Revised Code. Sections 3734.72 and 3734.77 of the Ohio Revised Code solid waste rules and permits for scrap tire monofill and monocells.

Regulatory Flexibility

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

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An owner or operator of a municipal solid waste landfill or scrap tire monofill or monocell facility subject to the regulations contained in Ohio Administrative Code 3745-27 are also required to comply with 3734.02(G) of the Ohio Revised Code. This section pertains to exemptions and variations that allow for 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 or the approved health department will evaluate the applicability of ORC section 119.14 to solid waste facilities regulated under OAC Chapter 3745-27 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 both 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>.