



## Common Sense Initiative

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

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### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information: Amanda Payton, Ohio Environmental Protection Agency

Regulation/Package Title: Underground Injection Control- Amendments 2019

Rule Number(s): 3745-34-09, 3745-34-21 and 3745-34-63

Date of Submission for CSI Review: 09/12/2019

Public Comment Period End Date: 10/15/2019

**Rule Type/Number of Rules:**

New/ \_\_\_ rules

No Change/ \_\_\_ rules (FYR? \_\_\_)

Amended/ x rules (FYR? x)

Rescinded/ \_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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## **Reason for Submission**

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a.  Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b.  Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c.  Requires specific expenditures or the report of information as a condition of compliance.**
- d.  Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

## **Regulatory Intent**

- 2. Please briefly describe the draft regulation in plain language.**

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

Rules in Chapter 3745-34 of the Ohio Administrative Code (OAC) establishes requirements for construction, permitting, maintenance, operations and closure of underground injection wells. These rules have been reviewed pursuant to the five-year rule requirements set forth in section 106.03 of the Ohio Revised Code and the division is proposing the following revisions:

OAC Rule 3745-34-09: Including rule citations for closure and post closure requirements for wells injecting hazardous wastes.

OAC Rule 3745-34-21: Clarifying the duration for permit to drill to be consistent with section 6111.043(B)(1) of the Ohio Revised Code.

OAC Rule 3745-34-63: Correcting information on the transfer of funds from "Underground Injection Control Fund" to the "Geologic Mapping Fund" in accordance with section 1505.09 of the Ohio Revised Code.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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Division (B) of section 6111.043 of the Revised Code authorizes Ohio EPA to adopt these regulations. It states “the director of environmental protection, in consultation with the director of natural resources, shall adopt rules governing the injection of sewage, industrial waste, hazardous waste and other wastes into wells.

**4. 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.*

Yes, these regulations enable Ohio EPA to administer regulations that improve and maintain the quality of waters of the state for the purpose of protecting the public health and welfare, and to enable the planned use of such waters for public water supplies, industrial and agricultural needs, propagation of fish, aquatic life, wildlife, and recreational use. These rules determine compliance with the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority from the Federal Government. The federal counterpart to these rules can be found in Title 40 of the Code of Federal Regulations (C.F.R.), Parts 144 (Underground Injection Control Program) and 146 (Underground Injection Control Program: Criteria and Standards).

OAC Rule 3745-34-63 does not have a federal counterpart. The costs are based on sections 6111.046 and 6111.047 of the Revised Code, and include the annual permit fee, which is the cost for disposing of hazardous and non-hazardous waste generated on site, or hazardous waste generated off site.

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

3745-34-21: Ohio requires most facilities with underground injection wells to renew their permits more frequently in order to meet provisions previously established in Section 6111.043 of the Revised Code.

**6. 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 Ohio-specific public policy goals (as stated in Ohio Revised Code section 6111.043) are to establish a program for regulation of the injection of sewage, industrial waste, hazardous waste, and other wastes into wells in order to control pollution of the waters of the state, to prevent contamination of underground sources of drinking water, and to satisfy all requirements of the Safe Drinking Water Act (SDWA). These rules are required for Ohio to maintain SDWA primary enforcement authority. In addition, the rules aim to prevent the migration of contamination into underground sources of drinking water via underground injection and are, therefore, protective of human health.

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

The Agency will base success of all of the rules in this package on compliance rates within the underground injection control program. Compliance is determined through plan review, inventory records, anonymous complaints and inspections of facilities with underground injection control wells.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No

**Development of the Regulation**

**9. 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.*

Stakeholders include underground injection control owners and operators, consultants, environmental organizations, other state agencies and the general public. The only measure someone has to take to be notified of DDAGW's potential rule activity is to request to be added to our electronic or hard-copy mailing list. Stakeholders can also sign themselves up for this notification directly from Ohio EPA's website.

Stakeholders were first notified of DDAGW's plans to review these rules on August 13, 2018 by electronic or regular mail in accordance with their preference. The rules were placed as "no change" rules during early stakeholder outreach however, upon review the agency is proposing minor revisions. The rules will be placed into interested party review period to allow stakeholders to comment on the draft rule changes.

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

Stakeholders did not provide any comments during early stakeholder outreach, held from August 13 – September 13, 2018. Ohio EPA is proposing these rules with minor revisions.

**11. 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?**

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The rules in this chapter are based on 40 C.F.R. Parts 144 and 146, which are the Federal Underground Injection Control Program Rules. The federal counterparts are the foundation for these rules.

OAC Rule 3745-34-63 does not have a federal counterpart. The costs are based on sections 6111.046 and 6111.047 of the Revised Code, and include the annual permit fee, which is the cost for disposing of hazardous and non-hazardous waste generated on site, or hazardous waste generated off site.

**12. 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?**

In order to retain primary enforcement authority, Ohio EPA is required to adopt the federal counterparts of rules. Therefore, Ohio EPA could not consider alternatives to rules in OAC Chapter 3745-34.

**13. 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 rules in this package are performance-based and will demonstrate the overall effectiveness of properly constructed and maintained underground injection control wells at preventing the migration of contaminants into underground sources of drinking water.

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

Ohio EPA has reviewed internal regulations and determined there are no duplications.

**15. 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.**

Ohio EPA implementation of this rule includes the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing rule amendments.
- Working with the stakeholders to develop appropriate notification templates and language.
- Conducting staff training throughout the state before and continuing after the rule becomes effective.
- Developing internal procedures and guidance documents for staff to use in implementing rules.

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## **Adverse Impact to Business**

**16. 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 cost of compliance of all rules in this rules package would fall upon facilities with underground injection wells.

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

Rules in Chapter 3745-34 will affect facilities with UIC wells and include costs of compliance with records keeping requirements, applying for permits, monitoring and reporting requirements, and the development and implementation of well closure plan.

**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.*

**OAC Rule 3745-34-09:** This rule references several hazardous waste rules of the Administrative Code. The cost of the rule is accounted for in other rules however, Ohio EPA cannot develop an accurate cost of compliance estimate due to the number of variables involved. The variables include the amount and types of hazardous waste that are managed, and the methods used to manage them. This amendment does not have an impact on the cost of the rule.

**OAC Rule 3745-34-21:** The cost of the rule depends on the frequency a facility has to obtain a permit. The cost for applicants to reapply, obtain new permits and complete permit applications has been accounted for in other section of OAC Chapter 3745-34. This amendment does not have an impact on the cost of the rule.

**OAC Rule 3745-34-63\*:** The cost of compliance with this rule was estimated for class I injection wells. The costs are based on sections 6111.046 and 6111.047 of the Revised Code, and include the annual permit fee, which is the cost for disposing of hazardous and non-hazardous waste generated on site, or hazardous waste generated off site. The estimate also includes the actual disposal cost, which is the dollar per ton disposed. The

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total estimated cost of compliance with this rule is between \$49,229.66 and \$78,188.28. This amendment does not have an impact on the cost of the rule.

\* U.S. Department of Labor, Bureau of Labor Statistics Inflation Calculator used to account for inflation from 2014 - 2019.

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

The Agency considers the overall cost for complying with these regulations to be minor in comparison with ensuring that underground sources of drinking water are protected for public consumption.

**Regulatory Flexibility**

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

No exemptions or alternative means of compliance for small businesses have been written into this rules package.

**19. 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?**

Ohio EPA does not assign fines and penalties for first-time offenders and prefers to obtain compliance through outreach first and if needed, written notice of violations prior to any type of formal enforcement.

**20. 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.
- Facilities can contact members of Ohio EPA's Division of Drinking and Ground Waters' Underground Injection Control (UIC) Unit for technical assistance. They

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can be reached by calling 614-644-2752. The UIC Unit also maintains a website which includes answers to many commonly asked questions (<http://epa.ohio.gov/ddagw/uic.aspx>).

- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 pm and a permit assistance webpage ([https://www.epa.ohio.gov/dir/permit\\_assistance](https://www.epa.ohio.gov/dir/permit_assistance)) 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.

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