



Common Sense Initiative

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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Construction and Demolition Debris Processing Facilities

Rule Number(s): 3745-400-01 amend, 3745-400-02 new, 3745-400-03 rescind/new, 3745-400-13 amend, 3745-400-14 amend, 3745-400-26 amend, 3745-400-50 new, 3745-400-52 new, 3745-400-54 new, 3745-400-56 new, 3745-400-58 new, 3745-400-60 new; Amending the following: 3745-500-01, 3745-500-02, 3745-500-120, 3745-500-150, 3745-500-220, 3745-500-360, 3745-501-02, 3745-501-05, 3745-501-10, 3745-501-15, 3745-501-20, 3745-501-25, 3745-501-35

Date of Submission for CSI Review: June 25, 2020

Public Comment Period End Date: _____

Rule Type/Number of Rules:

- | | |
|--|---|
| <input checked="" type="checkbox"/> New/ <u>7</u> rules | <input type="checkbox"/> No Change/ _____ rules (FYR? _____) |
| <input checked="" type="checkbox"/> Amended/ <u>17</u> rules (FYR? <u>No</u>) | <input checked="" type="checkbox"/> Rescinded/ <u>1</u> rules (FYR? <u>no</u>) |

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

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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.

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):

- ✓ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- ✓ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ✓ **Requires specific expenditures or the report of information as a condition of compliance.**
- ✓ **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.

Ohio Administrative Code (OAC) Chapter 3745-400 includes regulations pertaining to construction and demolition debris (C&DD) landfills and C&DD processing facilities. Under section 3714.022 of the Revised Code, the director of the Ohio EPA has the obligation to adopt rules governing C&DD processing facilities to ensure that the processing facilities will not create a nuisance, fire hazard, or health hazard, or cause or contribute to air or water pollution.

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3745-400-01 Definitions.

Changes to this rule include the addition of new definitions for processing facilities and associated processing facility operations. Existing definitions were amended to make the definitions applicable to C&DD processing regulations.

3745-400-02 General obligations.

This rule is new and establishes general obligations related to C&DD disposal and processing.

3745-400-03 Facility and processing facility exclusions.

Changes to this rule include amending existing disposal exclusions to incorporate C&DD processing regulations. More than 50% of this rule has been amended, therefore the current rule will be rescinded and a new rule promulgated.

3745-400-13 Financial assurance for construction and demolition debris facility and construction and demolition debris processing facility final closure.

Changes to this rule were made to incorporate C&DD processing facilities and to refer to rule 3745-400-56, as necessary.

3745-400-14 Wording of the financial assurance instruments.

Changes to this rule were made to incorporate C&DD processing facilities into the financial assurance instruments.

3745-400-26 Operator certification.

Changes to this rule include amendments to existing requirements to incorporate C&DD processing regulations.

3745-400-50 Processing facility permit to install.

This rule is new and establishes requirements for C&DD processing facility permit to install applications and permit to install procedures.

3745-400-52 Processing facility design requirements.

This rule is new and establishes requirements for C&DD processing facility design plan drawings and calculations.

3745-400-54 Criteria and procedures for processing facility permits to install.

This rule is new and establishes requirements for taking actions on a C&DD processing facility permit to install.

3745-400-56 Financial assurance for final closure of processing facilities.

This rule is new and establishes procedures for C&DD processing facilities to follow when calculating the amount of financial assurance that will be required for final closure of the C&DD processing facility.

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3745-400-58 Processing facility operations.

This rule is new and establishes construction requirements and operational requirements for C&DD processing facilities.

3745-400-60 Final closure of a processing facility.

This rule is new and establishes requirements for final closure of C&DD processing facilities

The following regulations are being amended to make them applicable to C&DD processing facilities:

3745-500-01 General administration - applicability.

3745-500-02 General administration - definitions.

3745-500-120 Procedures for issuing, denying, modifying, transferring, and revoking licenses and permits to install.

3745-500-150 Alteration to a permit to install.

3745-500-220 Exemptions from the requirements of Chapter 3714. and 3734. of the Revised Code.

3745-500-360 Administrative change to a permit to install.

3745-501-02 Licensing - definitions.

3745-501-05 Licensing requirements.

3745-501-10 License applications and application procedures.

3745-501-15 Criteria for issuing or denying facility licenses.

3745-501-20 Procedures for the licensing authority for reviewing and considering license applications.

3745-501-25 Remittance of fees after license issuance.

3745-501-35 Transfer of licenses.

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.

Ohio EPA has the authority for this rulemaking through ORC 3714.02, 3714.022, 3734.02, and 3734.12. The statutes that amplify that authority are 3714.01, 3714.02, 3714.022,

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3714.051, 3714.06, 3714.062, 3714.07, 3734.01, 3734.02, 3734.03, 3734.05, 3734.06, 3734.07, 3734.09, 3734.12, 3734.40, and 3734.44.

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.

No. Federal laws and regulations are different than Ohio law and regulation regarding construction and demolition debris. Under federal law, construction and demolition debris is included in the federal definition of solid waste. While U.S. EPA has not adopted federal requirements specific to construction and demolition debris landfills, there is a federal prohibition against open dumping and federal minimum standards for solid waste disposal facilities, which includes construction and demolition debris landfills.

There are no federal requirements for states to adopt or to enforce in the federal *Criteria for Classification of Solid Waste Disposal Facilities and Practices* (40 CFR part 257) under the authority of sections 1008(a)(3) and 4004(a) of subtitle D of Resource Conservation and Recovery Act (RCRA). Title 40 of the CFR part 257 establishes overall regulatory direction by providing minimum nationwide standards for protecting human health and the environment and provides technical standards to states for planning and developing their own environmentally sound waste management practices. Title 40 of the CFR part 257 is enforced by means of federal citizen suit.

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

Not applicable. There are no federal requirements for states to adopt or to enforce in the federal *Criteria for Classification of Solid Waste Disposal Facilities and Practices* (40 CFR part 257) under the authority of sections 1008(a)(3) and 4004(a) of subtitle D of Resource Conservation and Recovery Act (RCRA).

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)?

Ohio EPA has a statutory obligation to regulate C&DD processing facilities in accordance with Ohio Revised Code Chapter 3714. The public purpose of this rulemaking expressed in ORC Chapter 3714 includes adoption of rules governing construction and demolition debris

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processing facilities and the inspection of and issuance of permits to install and licenses for those facilities. The rules are required to ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution.

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

The Agency will measure success of the regulations through compliance with the rules and by the maintenance of public health and safety, and protection of the environment.

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.

Ohio EPA outlined the new rule review process, and which rules were under review, during the Division of Materials and Waste Management's (DMWM) preliminary meetings with representatives of the C&DD industry and approved health departments during December 2017, and January, March, and November 2018. On May 12, 2017, Ohio EPA posted an Early Stakeholder Outreach outlining the preliminary determinations and established a 30-day period seeking stakeholder input. Email notice of the availability of this Early Stakeholder Outreach was provided to stakeholders who subscribe to Ohio EPA'S electronic Interested Parties C&DD listserv.

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

DMWM received suggestions and comments from the Construction and Demolition Association of Ohio, along with representatives from the National Waste and Recycling Association, and the Ohio Environmental Health Association. These comments were discussed with representatives of these different organizations and incorporated into the interested party draft rules where appropriate. The Agency will continue to consider stakeholder input throughout the rulemaking process.

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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?

Scientific data was used to develop these rules, including but not limited to C&DD composition data, historic leachate and groundwater quality data from C&DD landfills, and analytical data collected from recovered screen material. This scientific data was utilized to help ensure these rules are protective of human health, safety, and the environment as well as to assist in determining what design, construction, and operational standards should be required to prevent health hazards, air pollution, and water pollution.

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?

The Agency did not consider alternative regulations in this review. ORC 3714.022 requires Ohio EPA to promulgate rules governing C&DD processing facilities. These rules fulfill the statutory requirements.

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 Agency considers these rules to be performance-based. The rules are written such that anyone proposing to own or operate a C&DD processing facility may submit an application for authorization. It is within the application where the applicant identifies the details of the proposed processing facility, including all necessary information prescribed by the rules. If the application demonstrates to the satisfaction of the director or the approved board of health that the processing facility will not result in violation of applicable laws and regulations, will not create a nuisance or fire hazard, and will not adversely affect the public health or safety or the environment, then the authorization may be issued. The design, construction, and operation regulations are also performance based by establishing a regulatory framework and do not specifically dictate to a processing facility owner or operator how to design, construct, or operate a processing facility.

14. 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 the Agency's knowledge, Ohio EPA is not duplicating another existing Ohio regulation. Ohio EPA included a number of

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amendments to rules included in this rule package to better clarify and ensure consistency between rules.

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 will provide notice of the new rules and rule amendments to stakeholders, facility operators, and Ohio EPA-approved local health departments responsible for issuing permits to install, issuing annual licenses, and inspecting C&DD processing facilities. This notice will invite questions and provide contacts. Prior to new rules and rule amendments becoming effective, Ohio EPA will discuss any implementation concerns and request that stakeholders and health departments identify additional needs for outreach and specific guidance.

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; and**
- b. Identify the nature of all adverse impact (e.g., 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.

The C&DD processing facility regulations in this package have a direct impact on the majority of owners and operators of construction and demolition debris processing facilities in the state of Ohio.

The nature of the adverse impact on owners and operators of construction and demolition debris processing facilities includes the cost to obtain a permit to install, annual license, and financial assurance for the processing facility, as well as costs related to facility construction, operations, and final closure.

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 owner or operator’s decisions related to the facility size, design, and location, and the maximum

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amount of material to be allowed on site. 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 depending on operational practices and facility capacity and is dependent upon the owner and operator's decision to expand or modify the facility.

Costs to obtain authorizations include a permit application fee of \$1,000 and a permit fee upon issuance of \$2,000. The total fee for a license is \$750. Preparation of a permit application to establish a C&DD processing facility would involve initial costs of site evaluation and facility design. Financial assurance to cover the cost of facility closure consists of a fixed amount that ranges from \$10,000 for a processing facility under 5 acres to \$50,000 for a processing facility over 10 acres, combined with a disposal cost of \$50/yd³ of mixed C&DD at the facility.

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

The Agency is required to adopt rules governing construction and demolition debris processing facilities under section 3714.022 of the Revised Code that ensure the facilities will not create a nuisance, fire hazard, or health hazard and will not cause or contribute to air or water pollution. The obligation to fulfill the statute justifies the adverse impact on the regulated community.

Regulatory Flexibility

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

An owner or operator of a construction and demolition debris processing facility required to comply with the regulations contained in OAC Chapter 3745-400 may request an alteration or modification to a permit to install, which provides the Director or the board of health having territorial jurisdiction the authority to consider and authorize specifications tailored to the facility that vary from those established in the effective permit to install.

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?

The director or the approved health department will evaluate the applicability of ORC section 119.14 to C&DD processing facilities regulated under OAC Chapter 3745-400 when assessing fines and penalties for paperwork violations and first-time offenders.

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

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>.

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