



# Common Sense Initiative

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

**Sean McCullough**, Director

## Business Impact Analysis

**Agency, Board, or Commission Name:** Ohio Environmental Protection Agency-DERR

**Rule Contact Name and Contact Information:**

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

CSIO package- updating outmoded communication terms

**Rule Numbers:**

Hazardous Waste Management Program (HW): 3745-50-33, 3745-50-35;

Voluntary Action Program (VAP): 3745-300-04;

Cessation of Regulated Activities Program (CRO): 3745-352-40.

**Date of Submission for CSI Review:** July 16, 2021

**Public Comment Period End Date:** August 13, 2021

**Rule Type/Number of Rules:**

New/ \_\_\_ rules

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

Amended/ 4 rules (FYR? no)

Rescinded/ \_\_\_ rules (FYR?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.*

**HW 3745-50-33**, Fees for the off-site disposal of hazardous waste: This rule provides the requirement for owners and operators of off-site hazardous waste disposal facilities to pay deep well injection, land application, and landfilling disposal fees as specified in the Ohio Revised Code. Owners and operators are required to submit reports monthly, and pay monthly fees based on the amount of waste so disposed. The rule requires that a log be kept and made available to the director, and it provides information on how to get an extension to the required timeframes.

The draft amendments to this rule include changing “mailing” items to “submitting” items, and specifically allowing electronic submittals, both of which provide flexibility in the manner of the required submittals.

**HW 3745-50-35**, Fees for the treatment of hazardous waste: This rule provides that certain hazardous waste management facilities (as specified) shall submit a monthly report and a monthly fee to the director in the amount specified in the Ohio Revised Code, and provides the timeframe within which the fees are due to the director.

The draft amendment to this rule changes the “mailing” requirement to a “submitting” requirement, which provides flexibility in the manner of the required submittals.

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**VAP 3745-300-04, Certified laboratories:** This rule provides the requirements for a lab to provide certified data, methods for the analysis of analytes or parameter groups, a proficiency testing program, procedures to apply for several different types of certification, procedures used to evaluate laboratory applications for specified types of certifications and for laboratory certification renewals, requirements for some of the required documents, standards of performance and conduct required to maintain certification, procedures for submittals, laboratory audits, laboratory certifications (the certificate itself), document and data retention requirements, out-of-state labs, revocation or suspension of certification and certification reinstatement, appeals of certification determinations, and procedures to request modifications to certifications.

The draft amendments in this rule appear in the following locations: In (A)(6), we are removing the requirement to submit the required document “by certified mail” thus allowing for flexibility in the manner of its submittal. In (D)(3)(a) and in (D)(3)(b), we are changing “photocopy” to “copy” of the required document, thus allowing flexibility in the nature of the copy that is required to be submitted.

**CRO 3745-352-40, How can I get a waiver from complying with certain requirements of rule 3745-352-20 of the Administrative Code?:** This rule provides instructions and requirements to get a waiver from some of the requirements in a different rule in the CRO program if the owner or operator is temporarily discontinuing all regulated operations at the facility for more than a year.

The draft amendment in this rule reduces the number of copies of a specified required document from two copies to one copy, thus reducing the cost of compliance. This rule contains no specific requirements as to the nature of the submittal of the required documents, so it already contains the flexibility to submit them in hard-copy or electronically.

**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.**

HW 3745-50-33 and 3745-50-35: both are authorized by 3734.02 and 3734.18, both amplify 3734.18.

VAP 3745-300-04: authorized by 3746.03, amplifies 3746.

CRO 3745-352-40: authorized by 3752.03, amplifies 3752.03.

**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. All 4 of these rules are based in Ohio Revised Code, not federal provisions.

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

Not applicable- not federally-based provisions.

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**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)?**

HW 3745-50-33 and 3745-50-35: The Ohio Revised Code contains these fee requirements, and putting them in rule makes the requirements easier for our customers to see and understand the requirements, and since the rules are subject to 5-year review, they are reviewed frequently for the need to make updates and corrections. Additional amendments are planned for these rules in their 5-year review later in 2021.

VAP 3745-300-04: The rules in OAC Chapter 3745-300 allow property owners and developers to voluntarily evaluate and clean up environmentally contaminated property and get a release of liability from the state. Without regulation in these areas, parties would be reluctant to assess, clean up and redevelop properties due to liability uncertainty, hence, sites that enter the VAP would not be remediated or cleaned up to standards at safe levels for both human health and the environment. This specific rule provides all the particular requirements for certified labs to ensure that the labs doing the analyses and the data produced are of a standard high quality.

CRO 3745-352-40: The Ohio Revised Code indicates that the director of Ohio EPA shall promulgate rules to implement the Cessation of Regulated Operations statute. We have tried to mirror the statute very closely in the CRO rules, and make them as easy to understand as possible. The next 5-year review for the CRO rules, including this one, is in 2022.

**7. 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 degree of compliance with these regulations by the regulated community, and the minimal occurrences of hazards to public health, safety and 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?**

No.

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

**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.*

These draft rules will be made available for a 30-day Interested Parties review period from July 16 to August 13, 2021 via the Agency's websites and listservs. The Hazardous Waste and CRO rule listservs are comprised of various interested stakeholders representing

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regulated entities, professional associations, environmental groups, consultants, and attorneys, and total about 1,500 parties. The VAP listserv includes over 1,800 people, including VAP Certified Professionals, VAP Certified Laboratories, and other members of Ohio EPA's Interested Parties list for DERR rulemaking. Interested parties include developers, municipalities, environmental professionals and lawyers, as well as citizens and environmental groups. Interested Parties notices for these rules will also be posted on the DERR Interested Parties webpages.

The early stakeholder outreach comment period was waived for this rulemaking. The rules were submitted directly to the Lieutenant Governor's office for distribution to interested parties to comment on. Stakeholders were notified of Ohio EPA's plans to revise these rules on July 16, 2021. The interested party review period for these rules will be from July 16 to August 13, 2021.

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

Ohio EPA will be collecting input during the interested party review period from July 16h to August 13th and will adjust the drafted rules accordingly.

**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?**

HW 3745-50-33 and 3745-50-35: Scientific data were not used in the development of these two rules; they are based on statutory requirements.

VAP 3745-300-04: This rule is based on updated guidance developed by the State, U.S. EPA, and similar peer reviewed guidance to incorporate best practices through which blighted properties can be remediated and cleaned up voluntarily. Measurable outcomes will include the quality of the certified labs, their analyses, and their certified data that are produced and used to provide environmental protection.

CRO 3745-352-40: Scientific data were not used in the development of this rule; it is based on statutory requirements.

**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?**

HW 3745-50-33 and 3745-50-35: Alternative regulations were not considered; these rules are based on statutory requirements.

VAP 3745-300-04: Ohio EPA considered available guidance from U.S. EPA and other states to develop an Ohio-specific rule. Ohio EPA is currently considering other amendments to this and other VAP rules pursuant to recent amendments to Ohio statute; these will be the subject of a VAP rule package shortly.

CRO 3745-352-40: Alternative regulations were not considered; these rules are based on statutory requirements.

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**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.*

HW 3745-50-33 and 3745-50-35: These rules are based in statutory requirements that the fees and information must be submitted. The amendments to these rules are allowing additional mechanisms for these submittals.

VAP 3745-300-04: The rules in OAC chapter 3745-300 establish an administrative program through which blighted properties can be remediated and cleaned up voluntarily. Overall, the VAP is a performance-based program, as properties that enter it must achieve applicable standards. The process each volunteer chooses to clean up the property is not necessarily dictated in rule. However, the outcome is always the same for each VAP property; they are required to maintain and meet applicable standards before a Covenant Not to Sue will be issued by the director. The steps that are taken under the rule procedures to remediate a property to reach and meet those applicable standards, however, are left up to the certified professional in cooperation with the entities who want to clean up the property. The standards in this rule for certified labs are designed to provide a consistently high standard of laboratory analyses and certified data upon which clean-up decisions may be based.

CRO 3745-352-40: This rule is based in statutory requirements that Ohio EPA has tried not to deviate from. The rule is designed to provide the mechanism to get a waived from certain requirements if the facility is temporarily ceasing regulated operations so that if it is not necessary for the owner or operator to be held to those requirements, they don't have to be.

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

When each of these rules was originally promulgated, Ohio EPA worked with LSC and the regulated community to ensure that they did not duplicate any other Ohio rules. These rules have been amended in the past to eliminate duplicative requirements. Each of these rules has been subject to 5-year review since that review process was initiated, so they are reviewed periodically for this and other factors. Ohio EPA is the only agency that has jurisdiction to adopt regulations governing the management of hazardous wastes, to manage the CRO Program, and the VAP program.

**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 these amended rules will include notifying the regulated community of the rule amendments and providing guidance to the regulated community as needed. Ohio EPA inspectors and field staff will be briefed on these amendments, so they will be well equipped to offer assistance as they interact with the regulated community.

## **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**

The business community impacted by these rules consists of the businesses that generate, treat, store, dispose of, or transport hazardous waste; certified labs and labs that intend to seek, maintain, modify, or appeal their certification; and facilities that are discontinuing their regulated operations for more than a year and wish to seek a waiver for some CRO requirements.

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

There are no adverse impacts being added to the rules in this rules package. The amendments in these rules are designed to offer increased regulatory flexibility and potential cost savings, so the cost of compliance with these rules is expected to either remain unchanged or slightly decrease.

**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.*

Ohio EPA has identified no adverse impacts regarding these rule amendments. The rules in this package contain minor corrections that will have no adverse impact on cost of compliance.

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

Each of these rules is required by Ohio statute, and the Agency believes that the regulatory intent does not exceed the statutory intent. The amendments in these rules are designed to provide regulatory flexibility in the manner in which required fees and documents are submitted to Ohio EPA, and to reduce the number of copies of some of those documents that must be submitted. This flexibility might result in a reduction in the cost of doing business for the regulated community in Ohio.

## **Regulatory Flexibility**

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

HW 3745-50-33 and 3745-50-35: No, a facility’s activity regarding hazardous management determines whether they are subject to the hazardous waste management rules (both federal and Ohio rules).

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VAP 3745-300-04: No, all labs seeking to become certified or to remain certified are subject to the same requirements.

CRO 3745-352-40: No, all facilities that are temporarily discontinuing all regulated operations for over a year are subject to the same requirements to get a waiver from the requirements as discussed in this rule.

**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 will evaluate the applicability of ORC section 119.14 to entities regulated by these rules when assessing fines and penalties for paperwork violations and first-time offenders.

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

For all 4 of these rules, the following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a nonregulatory 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://www.epa.ohio.gov/ocapp>.

- Ohio EPA also has a permit assistance web page ([http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](http://www.epa.ohio.gov/dir/permit_assistance.aspx)) 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.

- Ohio EPA maintains the Compliance Assistance Hotline 1-800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

- U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 1-800-368-5883.

- Ohio EPA's Division of Environmental Response and Revitalization (DERR) Hazardous Waste Program offers free technical assistance to the regulated community.

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