



Common Sense Initiative

Mike DeWine, Governor
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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):

Solid Waste Incinerator/Energy Recovery facility Rules

Rule Number(s) 3745-27-50, 3745-27-51, 3745-27-52, 3745-27-53, 3745-500-02, 3745-550-01, 3745-550-02, 3745-550-300, 3745-550-350, 3745-550-600, 3745-550-615, 3745-550-670, 3745-550-700

Date of Submission for CSI Review: 5/5/22

Public Comment Period End Date: 6/6/22

Rule Type/Number of Rules:

New/ 8 rules

No Change/ rules (FYR?)

Amended/ 1 rules (FYR?)

Rescinded/ 4 rules (FYR? Yes)

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):

- ✓ **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) rules 3745-27-50, 3745-27-51, 3745-27-52, and 3745-27-53 were first promulgated in 1991 and govern solid waste incinerator/energy recovery facilities in Ohio. The solid waste incinerator and energy recovery facility rules are up for their five-year review pursuant to ORC section 106.03. With support from stakeholders, DMWM initially planned to file these rules without change. After a preliminary review, DMWM determined that minimal programmatic changes to bring the rules in compliance with the Legislative Service Commission's rule drafting standards are needed. DMWM also concluded that relocating the rules into their own Ohio Administrative Code chapter, consistent with DMWM's effort to re-organize all of its rules, would be most convenient for industry at this time. DMWM also removed the requirement to double-case leachate lines to be consistent with how the Division of Surface Water regulates wastewater lines and amended the financial assurance requirements so facilities with a closure cost estimate under \$5,500 no longer need to obtain financial assurance. The newly drafted regulations in OAC Chapter 3745-550 have been drafted as new replacement rules and all text is underlined. The existing rules are being rescinded.

- 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.**

These regulations are authorized under ORC sections 3734.02, 3734.021, 3734.12, and 3734.73.

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- 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.

These regulations do not implement a federal requirement.

- 5. 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.

- 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 purpose of the solid waste incinerator/energy recovery facility rules is to fulfill the requirements of ORC 3734.02, which obligates the director to adopt rules governing solid waste facilities to ensure that the facilities will be located, maintained, 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.

- 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 continued compliance with the solid waste incinerator/energy recovery facility 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 incinerator/energy recovery facilities.

- 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, not applicable.

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 on the solid waste incinerator listserv were notified via email of the early stakeholder outreach period and were provided thirty days (July 27, 2018 to August 27, 2018) to comment on the initial concepts being considered in this review.

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

In response to the early stakeholder outreach, Ohio EPA received one comment in agreement with the initial proposal to retain the rules without change. This comment was received from Stericycle in Warren, Ohio, the sole facility subject to the rules. Ohio EPA does not anticipate any opposition to the decision to migrate the rules out of OAC Chapter 3745-27 into OAC Chapter 3745-550.

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?

These rules use a scientific basis consistent with industry standards and the statutory requirements of ORC Chapter 3734. In this review, the Agency considered data regarding the costs to obtain a financial assurance instrument and to prepare a closure cost estimate for small solid waste incinerators and energy recovery facilities. The Agency then compared those numbers to the cost incurred by Ohio EPA to close the solid waste incinerator or energy recovery facility in the event the owner or operator abandoned the facility. Based on this analysis, the Agency determined that an owner or operator of a solid waste incinerator or energy recovery facility with a closure cost estimate that is less than \$5,500 does not need to obtain financial assurance.

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 current rules provide solid waste incinerators with regulatory alternatives. Solid waste incinerators that primarily incinerate infectious waste have the option of being licensed and permitted as an infectious waste treatment facility in lieu of obtaining a permit in accordance with these rules.

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.*

In addition to the consideration of the requirements contained in ORC 106.03, this rulemaking effort focused on migrating the incinerator and energy recovery facility rules out of OAC Chapter 3745-27 and into OAC Chapter 3745-550. The Agency did not specifically consider additional performance-based regulations during this review.

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

The Agency reviewed its own regulations to determine if the obligations are redundant with other requirements. To our knowledge, these rules are not duplicating another existing Ohio regulation.

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.

The Agency plans to continue the current efforts to ensure consistent and predictable rule implementation, including providing education for stakeholders regarding the re-organization of the

rules. The selection of rule effective dates will allow time for a smooth transition from OAC Chapter 3745-27 to OAC Chapter 3745-550.

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.

A person choosing to establish and operate a solid waste incinerator/energy recovery facility 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 vary depending on the facility size, as well as other factors.

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

- For new facilities, preparing plans and a narrative for the permit application, paying the established statutory permit fees, and meeting design and construction standards for the waste handling floor and leachate management system.
- Preparation and submittal of an annual license application.
- Siting criteria to avoid incompatible land uses (e.g., parks, residences, streams).
- Payment of established statutory annual license fees and possibly fines for non-compliance.
- Recordkeeping for the purpose of collection of disposal fees and demonstrating compliance.
- Waste acceptance restrictions to avoid non-compliance with disposal restrictions (e.g., hazardous waste, asbestos, explosive materials, lead-acid batteries, yard waste, scrap tires).
- Cost and time for maintenance of the facility to avoid creation of nuisance conditions and preparing contingencies in event of an emergency.
- Cost to close the facility, including financial assurance so as not to burden the taxpayer should the operator fail to conduct facility closure.

Data on the cost of permitting, operating, and closing a solid waste incinerator/energy recovery facility is limited. The Ohio regulations for these facilities are very similar to requirements for a solid waste transfer facility, which require an enclosed structure designed with a floor to contain and capture any spillage. 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.”

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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 for solid waste facilities that ensure those facilities will be located, maintained, 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 regulatory intent and statutory mandate justify the adverse impact to the regulated business 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 solid waste incinerator/energy recovery facility subject to the regulations contained in Ohio Administrative Code 3745-550 has the option to submit an exemption request in accordance with ORC 3734.02(G). This section pertains to exemptions and variations that allow for alternative means of compliance. The Agency is proposing a financial assurance exemption for small facilities with a closure cost estimate under \$5,500.

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 solid waste facilities regulated under OAC Chapter 3745-550 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?

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, a plain-English publications library, and assistance in completing permit application forms. Additional information is available at: <http://epa.ohio.gov>.