

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Professional engineer certification Required

Rule Number(s): Ohio Administrative Code (OAC) 3745-27-99 amendment

Date: December 21, 2014

Rule Type:

New

5-Year Review

Amended

Rescinded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.

This rule identifies the various plans, specifications, or information required to be submitted to Ohio EPA by OAC Chapters 3745-27, 3745-29, and 3745-30 that involve or may involve the practice of engineering pursuant to ORC Chapter 4733. This rule identifies those submittals that require preparation and seal by a licensed professional engineer. This rule also identifies those submittals that may, due to subject matter, constitute the practice of engineering pursuant to OAC Chapter 4733 and thereby require preparation and seal by a licensed professional engineer.

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Ohio EPA seeks to amend this rule to correct inaccurate references and add missing references. References to the OAC 3745-27-42 composting rule are no longer accurate or necessary. Composting regulations are now found in OAC Chapter 3745-560 and include identification of submittals to be prepared and sealed by a licensed professional engineer. Inaccurate references to submittals required under OAC Chapter 3745-30 have been corrected and two additional rule citations added because those rule requirements involve the practice of engineering. A reference to OAC 3745-400-15 pertaining to construction and demolition debris license modification applications would be removed as inappropriate for the subject matter of this rule. The Agency is also taking the opportunity to make various Legislative Service Commission grammatical changes and correct typos.

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

This rule is authorized under Ohio Revised Code (ORC) 3734.02, 3734.12, 3734.021, 3734.71, 3734.72, 3734.73, 3734.74, and 3734.78.

Under sections 3734.02 and 3734.12 of the Revised Code (ORC), the director of Ohio EPA has the authority to adopt rules governing solid waste facilities 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 air or water pollution, or create a health hazard. Solid waste facilities include sanitary landfills, industrial waste landfills, residual waste landfills, incinerators, transfer facilities, and scrap tire facilities. ORC sections 3734.71 through 3734.74 and 3745.84 provide specific authorities to adopt rules governing the scrap tire facilities and the beneficial use of scrap tires. ORC 3734.021 provides the authority to adopt regulations governing the infectious waste treatment and treatment facilities.

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.

No.

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

This rule is adopted under various sections of ORC Chapter 3734 and identifies the various plans, specifications, or information required to be submitted to Ohio that involve or may involve the practice of engineering pursuant to ORC Chapter 4733.

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)?

This rule identifies the various plans, specifications, or information required to be submitted to Ohio under rules adopted under ORC Chapter 3734 that involve or may involve the practice of engineering pursuant to ORC Chapter 4733. ORC Chapter 4733 establishes Ohio's State Board of Registration for Professional Engineers and Surveyors to safeguard the health, safety, property and welfare of the citizens of Ohio by providing effective licensure and regulation of professional engineers, professional surveyors and engineering and surveying firms. This rule supports the public purpose of ORC Chapter 4733 and ORC Chapter 3734 by ensuring that the practice of engineering involved in the preparation of submittals for solid waste facilities and infectious waste treatment facilities is conducted by appropriately qualified persons.

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

The Agency will continue to measure the success of these regulations through observation of submittals preparation and seal by a licensed professional engineer.

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.

On June 16, 2014, the Agency posted an [Early Stakeholder Outreach \(ESO\) document](#) on the Ohio EPA Division of Materials and Waste Management website requesting suggestions regarding the five-year review of this rule. Ohio EPA also provided an email notification of the ESO comment period to subscribers of the landfill, transfer facility, incinerator, scrap tire, composting, and infectious waste listserves. In the ESO, the Agency suggested retaining this rule without change.

A notice of availability and opportunity to comment on this rule amendment and this BIA will be posted on the Agency's website. An email notice will be sent to interested parties that have indicated interest in these rules and subscribed to the Agency's listserv.

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

The Agency received no comments in response to the June 2014 Early Stakeholder Outreach. During the Agency's completion of the rule review, inaccurate citations were identified necessitating amendment of the rule.

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?

No scientific data was used to develop this rule. This rule identifies the various plans, specifications, or information required to be submitted to Ohio under rules adopted under ORC Chapter 3734 that involve or may involve the practice of engineering pursuant to ORC Chapter 4733.

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?

No alternative regulations were considered during the development of this rule.

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.

No performance-based regulations were considered during the development of this rule.

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

ORC Chapter 4733 and OAC Rule Chapter 4733 define the practice of engineering and the requirement to obtain an Ohio professional engineer license. This rule supplements ORC Chapter 4733 by identifying the various plans, specifications, or information required to be submitted to Ohio under rules adopted under ORC Chapter 3734 that involve or may involve the practice of engineering as defined in ORC Chapter 4733. 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 ORC Chapter 4733 or OAC Rule Chapter 4733 or other 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 plans to file these rules with minimal changes, the Agency plans to continue the current efforts to ensure consistent and predictable rule implementation. However, the Agency does plan on conducting outreach to landfill owners, operators, and consultants highlighting the amendments to OAC Rule 3745-27-99.

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;

The scope of the impacted business community includes owners and operators of solid waste facilities and infectious waste treatment facilities and the consulting firms and consultants employed to prepare submittals to the Ohio EPA. Solid waste facilities include sanitary landfills, industrial waste landfills, residual waste landfills, incinerators, transfer facilities, and scrap tire facilities.

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

There is no adverse impact directly attributed to this rule since ORC Chapter 4733 and OAC Rule Chapter 4733 define the practice of engineering and the requirement to obtain an Ohio professional engineer license. This rule supplements ORC Chapter 4733 and OAC Rule Chapter 4733 by identifying those submittals that require preparation and seal by a licensed professional engineer and those submittals that may, due to subject matter, constitute the practice of engineering.

c. Quantify the expected adverse impact from the regulation.

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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.

There is no adverse impact directly attributed to this rule.

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

This rule identifies the various plans, specifications, or information required to be submitted to Ohio under rules adopted under ORC Chapter 3734 that involve or may involve the practice of engineering pursuant to ORC Chapter 4733. ORC Chapter 4733 establishes Ohio's State Board of Registration for Professional Engineers and Surveyors to safeguard the health, safety, property and welfare of the citizens of Ohio by providing effective licensure and regulation of professional engineers, professional surveyors and engineering and surveying firms. This rule supports the public purpose of ORC Chapter 4733 and ORC Chapter 3734 by ensuring that the practice of engineering involved in the preparation of submittals for solid waste facilities and infectious waste treatment facilities is conducted by appropriately qualified persons.

Regulatory Flexibility

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

This rule does not provide any exemptions or alternative means of compliance since ORC Chapter 4733 and OAC Rule Chapter 4733 define the practice of engineering, the requirement to obtain an Ohio professional engineer license, and the requirement that an Ohio licensed professional engineer prepare and seal documents that involve the practice of engineering. Any exemptions or alternatives would be found within ORC Chapter 4733 and OAC Rule Chapter 4733.

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, infectious waste treatment facilities, and scrap tire beneficial use projects regulated under OAC Chapter 3745-27 when assessing fines and penalties for paperwork violations and first-time offenders.

ORC Chapter 4733 establishing the State Board of Registration for Professional Engineers and Surveyors has separate and distinct authority regarding sanctions against persons found practicing engineering without an Ohio professional engineer license.

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

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Ohio EPA's Division of Materials and Waste Management (DMWM) and approved local health departments offer 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>.

The Ohio State Board of Registration for Professional Engineers and Surveyors provides assistance to individuals and firms and provides guidance and application forms to obtain a professional engineer license through their extensive [website](#).