

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Municipal Solid Waste Landfill Rules

Rule Number(s): Ohio Administrative Code (OAC) 3745-27-02 amend, 3745-27-04 amend, 3745-27-10 amend, 3745-27-15 amend, 3745-27-16 amend, 3745-27-18 amend, 3745-27-19 amend, and 3745-27-20 amend.

Date: September 29, 2015

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |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 package includes rules in OAC Chapter 3745-27 that govern sanitary landfills/MSW landfills facilities in Ohio. These regulations address the permit to install; financial assurance for closure, post-closure, and corrective measures at a sanitary landfill facility; operations at a sanitary landfill

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

facility; and prohibitions and closure at a sanitary landfill facility. Rule 3745-27-04: Regulation of select waste, distinguishes regulation of industrial solid waste landfills under OAC Chapter 3745-29 and residual solid waste landfills under OAC Chapter 3745-30 from MSW landfills subject to OAC Chapter 3745-27.

Three of the Chapter 3745-27 rules in this package are applicable to solid waste facilities other than MSW landfills:

- OAC Rule 3745-27-02: Permit to install, is applicable to any solid waste facility or infectious waste treatment facility required to obtain a permit. This procedural rule includes clarification regarding submittal of permit applications and defines “establishment” and “modification” of a facility which triggers the statutory obligation for a permit.
- OAC Rule 3745-27-04: Regulation of select waste, distinguishes regulation of industrial solid waste landfills under OAC Chapter 3745-29 and residual solid waste landfills under OAC Chapter 3745-30 from MSW landfills subject to OAC Chapter 3745-27.
- OAC Rule 3745-27-15: Financial assurance for solid waste facility or scrap tire transporter closure, applies to all solid waste facilities and scrap tire transporters obligated to comply with financial assurance requirements.

Rule Number	Rule Title	Preliminary Five-Year Rule Review Determination
3745-27-02	Permit to install.	Amend
3745-27-04	Regulation of select waste.	Amend
3745-27-10	Ground Water Monitoring Program for a Sanitary Landfill Facility.	Amend
3745-27-15	Financial assurance for solid waste facility or scrap tire transporter closure.	Amend
3745-27-16	Financial assurance for sanitary landfill facility post closure care.	Amend
3745-27-18	Corrective measures financial assurance for a sanitary landfill facility.	Amend
3745-27-19	Operational criteria for a sanitary landfill facility.	Amend
3745-27-20	Prohibitions and closure.	Amend

Ohio EPA has reviewed the identified eight effective rules in accordance with ORC 106.03 and 106.031 and has made the determination to amend these rules to make corrections in accordance with the Legislative Service Commission's Rule Writing Manual. Ohio EPA seeks to substantively amend OAC Rule 3745-27-10: Ground Water Monitoring Program for a sanitary landfill facility in response to comments from the Early Stakeholder Outreach period. Ohio EPA seeks to make a deletion pertaining to infectious waste shipping papers in rule 3745-27-19 to be consistent with changes in ORC 3734. The Agency seeks to delete paragraph (D) in rule 3745-27-04 regarding requirements of OAC Chapter 3745-27 for municipal solid waste landfills that have not disposed of waste since June 1, 1994. The Agency rationale is that this paragraph is a duplicative summary of other rules and not an appropriate location for the requirement because the paragraph's subject matter does not fit the titled rule: Regulation of select wastes. Additional changes contained in the amendments to these rules do not create any new obligations but primarily correct erroneous or outdated citations.

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

These regulations are authorized under Ohio Revised Code (ORC) 3734.02, 3734.12, 3734.021, 3734.71, 3734.72, 3734.73, 3734.74.

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. ORC 3734.021 provides the authority to adopt permit regulations governing the permitting of infectious waste treatment facilities. ORC sections 3734.71 through 3734.74 provide the authority to adopt rules governing the permitting and establishment of financial assurance for scrap tire facilities and financial assurance for scrap tire transporters.

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.

Yes. These regulations implement the RCRA Subtitle D Title 40 Part 258 federal requirements for municipal solid waste (MSW) landfills. These rules are a fundamental basis for the RCRA Subtitle D Title 40 Part 239 federal adequacy determination for Ohio MSW landfill permit program. The proposal to amend these existing rules will be reviewed by U.S. EPA to evaluate whether any changes impact Ohio's current federal determination of adequacy.

OAC Rule 3745-27-04: Regulation of select waste does not directly implement a federal requirement but distinguishes regulation of industrial solid waste landfills under OAC Chapter 3745-29 and residual solid waste landfills under OAC Chapter 3745-30 from MSW landfills subject to OAC Chapter 3745-27.

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

Ohio statute and rules regarding MSW landfills were initially established in the early 1970s and predate any federal MSW rules by two decades. Under RCRA Subtitle D, USEPA first established self-implementing national minimum standards for Municipal Solid Waste Landfills [40 CFR Part 258] in the early 1990s. RCRA Subtitle D does not compel the States to change state programs. This

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

created a dual regulation system consisting of self-implementing federal national minimum standards and existing State permit programs under State law. However, a State could eliminate this dual regulation if the State demonstrated to U.S. EPA that the State's permit program met or exceeded the federal national minimum standards. Since 1994, Ohio's State MSW landfill permit program has been approved by U.S. EPA. Ohio MSW landfill owners and operators complying with Ohio requirements do not face dual regulation.

U.S. EPA approval of a State permit program recognizes that State laws predate the self-implementing national minimum standards and that individual States have established more stringent MSW landfill requirements tailored to the state's needs and circumstances. 40 CFR Part 239 allows a State permit program to retain state-specific program elements as well as exceed the national minimum standards. Based on ORC Chapter 3734 authority and the Agency's extensive scientific data used in the creation of Ohio's MSW landfill rules, the Agency has previously adopted and continued implementation of Ohio regulations including provisions not specifically required by or more stringent than federal rules.

Most of these rule amendments are not substantive and all of the amendments will maintain U.S. EPA's approval of Ohio's State MSW landfill program. Substantive rule amendments to OAC 3745-27-10 streamline some ground water monitoring procedures that will result in reducing the adverse impact to MSW landfill owners and operators.

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)?

The purpose of these regulations are to fulfill the statutory requirements of ORC sections 3734.02 and 3734.12 requiring the director to adopt rules governing solid waste facilities to ensure 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 water pollution, or create a health hazard. Improper siting, design, construction, operation, monitoring, closure, and post-closure care of MSW landfills have resulted in water pollution, health hazards, fires, odors, and public nuisances.

ORC section 3734.021 requires the adoption of permit regulations governing the permitting of infectious waste treatment facilities to ensure facilities are located, designed, constructed, and operated to protect human health or safety or the environment. ORC sections 3734.71 through 3734.74 require adoption of rules governing the permitting and establishment of financial assurance for scrap tire facilities and financial assurance for scrap tire transporters to ensure protection human health or safety or the environment and that financial assurance is established to ensure funding to conduct facility closure, post-closure care, and clean-up under circumstances where the scrap tire facility owner or operator or scrap tire transporter are unable to perform the necessary tasks.

6. 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 various solid waste facilities, infectious waste treatment facilities, and scrap tire transporters with these rules and minimal occurrences of nuisance, fire or health hazards, or air or water pollution resulting from the improper management of solid and infectious wastes.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

The Agency contacted stakeholders from the municipal solid waste (MSW) landfill industry notifying them of the 5-year rule review process and the preliminary determination to retain these rules without change. Ohio EPA subsequently met with members of the Solid Waste Association of North America (SWANA) and National Solid Waste Management Authority (NSWMA) to explain our review timeframe and answer any questions they may have about the review process. Following the meeting on December 6, 2013, the Agency sent these industry associations an email summarizing the meeting and formally giving them the opportunity, in writing, to suggest necessary changes to the rules.

Additionally, on March 11, 2014, the Agency contacted the subscribers of the landfill listserv providing notification of the determination to retain the rules without change and the associated Early Stakeholder Outreach (ESO) comment period. The Agency received feedback from representatives of the National Waste and Recycling Association, Wood County Landfill, and the City of Wapakoneta.

After consideration of the comments received during the ESO period and in the process of drafting rule amendments following the Legislative Service Commission's standards for rule writing, Ohio EPA has decided to amend these rules in OAC 3745-27. A notice of availability and opportunity to comment on these rule amendments 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?

Comments received during the Early Stakeholder Outreach period mainly had suggestions on the ground water monitoring rule, OAC Rule 3745-27-10, with a few comments on the other regulations contained in this package. The Agency considered all comments received though the ESO period, and incorporated most of the suggestions into the rule amendments.

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?

U.S. EPA's scientific and engineering documentation used in development of the RCRA Subtitle D Title 40 Part 258 federal minimum national requirements for municipal solid waste (MSW) landfills supports the Ohio rules regarding ground water monitoring, financial assurance, operations, and the landfill prohibitions and closure rule. These rules are further supported by Ohio EPA's own evaluation and experience with MSW landfill monitoring and compliance data. Consideration of scientific and engineering data supporting the municipal solid waste landfill requirements last occurred during the previous adoption of these rules in 2002 and 2003. The amendments to ground water monitoring rule, OAC Rule 3745-27-10, were suggested by industry and supported by the Agency's experience and review of scientific data gained during implementation of this rule since 1994.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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?

The Agency did consider suggested alternative regulations in amendments to OAC Rule 3745-27-10: Ground Water Monitoring Program for a Sanitary Landfill Facility. The Agency believes that the proposed amendments reasonably accommodate these suggestions in a manner consistent with the Title 40 Part 239 federal adequacy determination for the Ohio MSW landfill permit program. No other alternatives to rule requirements were suggested by stakeholders or other alternatives inconsistent with RCRA Subtitle D Title 40 Part 258 federal requirements for municipal solid waste (MSW) landfills considered since these may raise issues regarding U.S. EPA's approval of Ohio's MSW landfill permit program.

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.*

Ohio EPA considered the suggestions received during the Early Stakeholder Outreach period. These suggestions focused on streamlining various procedures and replaced approvals with self-implementing requirements. Numerous amendments were made to 3745-27-10 in response to these suggestions. The Agency did not specifically consider performance-based regulations during the review of these rules.

12. 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 there was duplication with existing regulations. This review did result in an amendment to OAC Rule 3745-27-19 to delete a reference to infectious waste shipping papers consistent with changes to Ohio's infectious waste law. This deletion removed a regulatory duplication with the Ohio Department of Transportation, who has authority over infectious waste transporter shipping papers.

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 MSW landfill owners, operators, and consultants highlighting the substantive amendments to ground water monitoring in OAC Rule 3745-27-10.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

a. Identify the scope of the impacted business community;

The scope of the impacted business community includes owners and operators of MSW landfills.

The scope of the impacted business community for OAC Rule 3745-27-02: Permit to install, is broader and includes owners and operators of all solid waste facilities, including MSW landfills, and infectious waste facilities required to obtain a permit to install.

The scope of the impacted business community for OAC Rule 3745-27-15: Financial assurance for solid waste facility or scrap tire transporter is broader and includes owners and operators of all solid waste facilities, including MSW landfills, and registered scrap tire transporters required to comply with financial assurance obligations.

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

The adverse impact for these eight rules consists of the employer time and cost of compliance. The nature of these adverse impacts is summarized for each rule:

- OAC Rule 3745-27-02: Permit to Install. Consistent with Ohio law, this procedural rule establishes permit obligations for solid waste and infectious waste facilities. The rule includes submittal of a permit application, exceptions to the permit requirement, and payment of a nonrefundable permit application fee as specified in ORC 3734. This rule defines establishment and modification of a facility triggering statutory obligation for a permit and the procedure for issuance, termination, and revocation of permits.

The adverse impact of this rule is the obligation to submit a permit application prior to establishing or modifying certain solid waste and infectious waste facilities, submittal of a statutorily established nonrefundable permit application fee and the obligation to follow the permit related procedures.

- OAC Rule 3745-27-04: Regulation of select waste. This rule distinguishes regulation of industrial solid waste landfills under OAC Chapter 3745-29 and residual solid waste landfills under OAC Chapter 3745-30 from MSW landfills subject to OAC Chapter 3745-27.

The rule provides eligible owners and operators of solid waste landfills disposing of industrial wastes the option of regulation under alternative regulatory programs specific to their wastes. Instead of regulation under the MSW landfill rules (OAC Chapter 3745-27), eligible owners or operators may choose to be regulated under the industrial solid waste rules (Chapter 3745-29) or residual waste landfill regulations (Chapter 3745-30). The adverse impact to business is dependent upon the eligible owner and operator's selection and the cost of compliance is determined by either Chapter 3745-29 or Chapter 3745-30. The degree of adverse impact is less under Chapter 3745-29 or Chapter 3745-30 than under OAC Chapter 3745-27 because the landfill design and operation is tailored to disposal of industrial solid wastes.

- OAC Rule 3745-27-10: Ground Water Monitoring Program for a Sanitary Landfill Facility. This rule requires the design, installation, and monitoring of a MSW landfill ground water monitoring system. Nature of impact involves the time and resources to identify the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

appropriate placement of monitoring wells, well installation and maintenance, and sampling and analysis. Depending on monitoring results, adverse impacts of this rule may include the time and resources associated with development and implementation of a ground water assessment monitoring and possible corrective action measures if contamination of ground water is determined as a result of the operation of the solid waste facility.

- OAC Rule 3745-27-15: Financial assurance for solid waste facility or scrap tire transporter closure. The nature of the adverse impact of this rule involves the time and resources associated with the development of a closure cost estimate and the cost of establishment and maintenance of a financial assurance instrument. This rule establishes several acceptable types of financial assurance mechanisms available to the owner or operator.
- OAC Rule 3745-27-16: Financial assurance for sanitary landfill facility post-closure care. The nature of the adverse impact of this rule involves the time and resources associated with the development of a post-closure care cost estimate and cost of establishment and maintenance of a financial assurance instrument. The rule establishes several acceptable types of financial assurance mechanisms available to the owner or operator.
- OAC Rule 3745-27-18: Corrective measures financial assurance for a sanitary landfill facility. This rule only is triggered if it is determined that corrective measures are necessary to address significant instances of ground water contamination. The rule establishes several acceptable types of financial assurance mechanisms available to the owner or operator. MSW landfills do not usually cause ground water contamination to a level that triggers corrective measures needing financial assurance. Therefore the adverse impact is only applicable to those facilities that need to comply with this rule and consists of the time and resources associated with the development of a corrective measures estimate and the cost to establish and maintain a financial assurance instrument.
- OAC Rule 3745-27-19: Operational criteria for a sanitary landfill facility. The nature of adverse impact to the owner and operator involves the time and resources associated with compliance with the operational requirements of this rule. The cost of compliance is variable based upon the facility size and manner of operation.
- OAC Rule 3745-27-20: Prohibitions and closure. The nature of adverse impact involves the owner and operator's one-time assessment of RCRA Subtitle D Title 40 Part 258 federal based siting prohibitions for continued operation of existing landfill operations after 1994 and the siting of new proposed MSW landfills. If the facility does not meet a location restriction established in this rule and is unable to satisfy the performance standards of the location restriction demonstration, then there is a significant adverse business impact due to required facility closure.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

“representative business.” Please include the source for your information/estimated impact.

An Ohio industry choosing to establish and operate a municipal solid waste (MSW) landfill 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 naturally vary depending on the landfill size, design, location, and underlying geology. The following limited information is based upon some estimates provided by an Ohio municipal solid waste industry association and financial institutions providing financial assurance instruments.

- OAC Rule 3745-27-02: Permit to Install. This rule identifies permit obligations and procedures that includes definitions of establishment and modification of a facility that triggers a permit obligation. While this rule addresses what triggers a permit or modification requirement, other rules not included in this rule-making significantly determine the amount of adverse impact associated with preparation of a permit application. These other rules address specific facility permit application requirements for content, information, and design to be included in a facility permit application. Permit fees are established directly in ORC 3734 and ORC 3745. These amendments to this rule simply update the rule and are not anticipated to change the cost of compliance.
- OAC Rule 3745-27-04: Regulation of select waste. This rule distinguishes procedures and regulation of industrial solid waste landfills under OAC Chapter 3745-29 and residual solid waste landfills under OAC Chapter 3745-30 from MSW landfills subject to OAC Chapter 3745-27. There is no cost of compliance associated directly with this rule; costs are identified in OAC Chapter 3745-29 and 3745-30 of the Administrative Code. .
- OAC Rule 3745-27-10: Ground Water Monitoring Program for a Sanitary Landfill Facility. This rule requires design, installation, and monitoring of a MSW landfill ground water monitoring system. Initial well installation ranges from \$5,000 to \$10,000 per well. Background sampling, analytical analysis, and reporting also runs about \$5,000 to \$10,000 per well. Routine costs, including annual sampling, statistics, and associated reporting costs around \$1,200 to \$2,500 per well, while wells in assessment monitoring can be up to \$3,500 per well. Miscellaneous plan revisions, demonstrations, re-sampling, and Agency correspondence ranges from \$2000 to \$10,000 per year. Finally, assessment plans, investigations, reports, and corrective measures plans can cost from \$50,000 to \$100,000. The amendments to OAC Rule 3745-27-10 would lessen costs due to streamlining various procedures and replacement of approvals with self-implementing requirements. Other changes incorporate Legislative Service Commission grammatical changes and correct typos and will not change the cost of compliance.
- Financial assurance rules (OAC Rule 3745-27-15, OAC Rules 3745-27-16 and 3745-27-18) require the establishment and maintenance of a financial assurance instrument for either the cost of closure, post-closure, and corrective measures. Each rule identifies the same acceptable types of financial assurance instruments available to the owner or operator to fulfill the requirements of the rule.

The cost of compliance involves the time and resources to develop a cost estimate, selection of an acceptable financial instrument, and the cost of the financial instrument. The cost of a financial instrument is variable and dependent on the type of instrument and the face value of the instrument as well as the financial institution's evaluation of a company's fiscal merits. A standby trust agreement averages between \$500 to \$3,500 depending on the bank, a funded trust is anywhere from 1% of the amount in the trust for deposits of \$250,000 or less to .5% of the amount for deposits up to \$1,000,000. For surety bonds, the cost ranges from 2% to 4% of the penal sum of the bond depending on the creditworthiness of the applicant. There may be collateral required as well if the company's credit scores are not adequate. A letter of credit typically requires full collateral as well as a fee depending on the bank. Insurance has a variable cost depending on the insurer and the creditworthiness of the applicant. The final financial assurance instrument listed is the financial test. Costs associated with this section of the rule include demonstrating that the owner or operator passes a financial test and can guarantee funds specifically for financial assurance. The amendments to these rules correct inaccurate citations, incorporate various Legislative Service Commission grammatical changes, and correct typos. These amendments are not anticipated to change the cost of compliance.

- OAC Rule 3745-27-19: Operational criteria for a sanitary landfill facility. The nature of the adverse impact involves the employer time associated with compliance with the operational requirements, documentation, and reporting. The amount of adverse impact will vary with the owner or operator's selection of various factors; landfill size, design, equipment and personnel selection and amount of waste accepted on a daily basis. Operational costs are also affected by the unique performance of an individual landfill in terms of landfill leachate and gas generation that will also vary throughout the operational life of a landfill. Based on limited reported costs, generally preparation of reports and certifications required by OAC Rule 3745-27-19 appear to range from less than \$1,000 to greater than \$5,000 depending on complexity. Reported leachate treatment costs range from \$0.01 to more than \$0.11 per gallon depending on availability of treatment and characteristics of leachate. Daily cover and final cover are significant costs but highly dependent of on-site availability. Key OAC Rule 3745-27-19 requirements include:
 - Construction certification, certification, and compliance.
 - General operational criteria
 - Daily cover
 - Final cover
 - Scales
 - Surface water management
 - Leachate management
 - PCB and hazardous waste prevention and detection program
 - Annual operation report
 - Ten year design demonstration
 - Yard waste management and restriction program

The amendments to OAC Rule 3745-27-19 involve correction of an inaccurate citation, incorporation of various Legislative Service Commission grammatical changes, and correction of typos. One change concerns the MSW landfill acceptance of treated

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

infectious waste and involves the deletion of a reference to infectious waste shipping papers consistent with recent changes to the infectious waste law and rules. These amendments are not anticipated to change the cost of compliance.

- OAC Rule 3745-27-20: Prohibitions and closure. The nature of impact involves employer assessment of Title 40 Part 258 federal based siting prohibitions for proposed MSW landfill siting and continued operation of existing landfill operations after 1994. If the facility does not meet a location restriction established in this rule, the cost of compliance may include the time and resources of conducting appropriate site investigations to support a location restriction demonstration. Facilities that trigger a location restriction and are unable to satisfy the performance standards of the location restriction demonstration face the significant adverse business impact associated with facility closure.

The amendments to OAC Rule 3745-27-20 involve incorporation of various Legislative Service Commission grammatical changes and correction of typos. These amendments are not anticipated to change the cost of compliance.

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

The Agency determined that the regulatory intent justifies the adverse impact to the regulated business community because regulations for the safe disposal of municipal solid waste are mandated by U. S. EPA and section 3734.02 of the Ohio Revised Code. Experience has demonstrated that review of permit applications for establishment and modification of MSW landfills is an important regulatory mechanism to insure MSW landfills are located, maintained, and operated in a sanitary manner so as not to create a nuisance, cause or contribute to air or water pollution, or create a health hazard. Experience has demonstrated that adequate monitoring system is vital to assess a MSW landfill's impact on ground water. Experience has also demonstrated that financial assurance is critical to ensure funding to conduct closure, post-closure care, and corrective measures under circumstances where the facility owner or operator is unable to perform the necessary tasks. Finally, maintaining a U.S. EPA Title 40 Part 239 federal adequacy determination for Ohio MSW landfill permit program allows Ohio MSW landfills to operate under one set of Ohio regulations rather than the cost of complying with both the federal and state requirements.

Regulatory Flexibility

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

Though some provisions of these rules do provide alternative means of compliance for facility owners and operators, these rule amendments do not provide any new exemptions or alternative means of compliance. While not part of this rule package, it is important to note that OAC 3745-27-03 specifically addresses a process for an owner or operator for any solid waste facility to seek case-specific exemptions and variances that can establish alternative means of compliance.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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 transporters regulated under OAC Chapter 3745-27 when assessing fines and penalties for paperwork violations and first-time offenders.

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

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>.