

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Solid Waste Disposal and Infectious Waste Host Fee Rules

Rule Number(s): Ohio Administrative Code 3745-502-01, 3745-502-02, 3745-502-03, 3745-502-04, 3745-502-05, 3745-28-07

Date: July 29, 2014

**Rule Type:**

- |                                  |   |
|----------------------------------|---|
| <input type="checkbox"/> New     | <input checked="" type="checkbox"/> 5-Year Review |
| <input 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 Rescinded                |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.*

The five rules in Ohio Administrative Code (OAC) Chapter 3745-502 clarifies the statutory

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

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

requirements for collecting, remitting, and reporting solid waste fees by solid waste facilities. OAC rule 3745-28-07 outlines the requirements for collecting, remitting, and reporting infectious waste host fees by infectious waste facilities.

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

Ohio Revised Code (ORC) 3714.07, 3734.026, and 3734.57.

**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.**

Not Applicable.

**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 public purpose of these regulations is to clarify the statutorily required fees on the transfer and disposal of waste in Ohio. Charging a fee on disposal aids in the promotion of waste diversion efforts like composting and recycling. Revenues generated from the fees help to fund Ohio EPA programs that ensure the protection of public health, safety and the environment.

**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 continued compliance with the fee rules and a decrease in the amount of waste disposed through diversion efforts.

### **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 website seeking comment on the suggestion to retain the fee rules without change.

Stakeholders were then contacted via email notifying them of the opportunity to provide input on the Agency's determination.

**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 feedback from stakeholders regarding the draft rules package and the suggestion to retain the fee rules without change.

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

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

**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?**

These rules primarily clarify the fees on the transfer and disposal of waste pursuant to Chapter 3734. and Chapter 3714. of the Ohio Revised Code. Due to the procedural nature of the rules, scientific data was not utilized in the initial development of the regulations or during this review cycle.

**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 not consider regulatory alternatives because the statute establishes the fees. The rules in Ohio Administrative Code 3745-502 serve as an amplification of the statutory requirements.

**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.***

The process of collecting and remitting fees on the transfer and disposal of waste is specifically outlined in statute. The Agency did not consider performance-based regulations, rather, amplified the statutory requirements in the Administrative Code.

**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 duplication was being made. To our knowledge, Ohio EPA is not duplicating another 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 is to file a determination to retain these rules without change, the Agency plans to continue the current efforts to ensure consistent and predictable rule implementation.

**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 municipal solid waste landfills, solid waste transfer facilities, and infectious waste treatment facilities or solid waste incinerators that are licensed to treat infectious waste.

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

The nature of the adverse impact imposed by OAC Chapter 3745-502 includes fees on the

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

**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

transfer or disposal of waste in Ohio. The state fees are required to be remitted to the State Treasury Fund. Solid waste management district disposal and generation fees are credited to a fund that is exclusive to the solid waste management district, and host community fees are paid into the general fund of the municipal corporation or the township.

**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 state fee outlined in 3745-502-02 is assessed on the transfer or disposal of solid waste and amounts to four dollars and seventy-five cents per ton. Fees on construction and demolition debris disposed at a municipal solid waste landfill facility equal thirty cents per cubic yard or sixty cents per ton.

District fees outlined in 3745-502-03 are variable and can range from:

- One to two dollars per ton for solid waste generated within the boundaries of the district and disposed at a solid waste disposal facility located within the boundaries of the district.
- Two to four dollars per ton for solid waste generated outside the boundaries of the district but within this state and disposed at a solid waste disposal facility located within the boundaries of the district.
- One to two dollars per ton for solid waste generated outside the boundaries of this state and disposed at a solid waste disposal facility located within the boundaries of the district. The disposal fee levied on solid waste generated outside the boundaries of this state shall not be more than the disposal fee levied on solid waste generated within the district.

Host community fees outlined in 3745-502-04 are not more than twenty-five cents per ton.

**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 the requirement for fees and the amount are mandated by section 3734.57, 3734.573, and 3714.07 of the Ohio Revised Code.

**Regulatory Flexibility**

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

ORC 3734.57 contains exemption provisions specifically for collecting and remitting fees on the disposal of waste. Language from that statute has been incorporated into the regulations in OAC Chapter 3745-502 as an alternative means of compliance.

Additionally, an owner or operator of a solid waste landfill or transfer facility subject to the regulations contained in Ohio Administrative Code 3745-502 is also required to comply with 3734.02(G) of the

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

**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

Ohio Revised Code. This section pertains to exemptions and variations that also allow for alternative means of compliance.

**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 regulated under OAC Chapter 3745-502 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 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>.