

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Construction and Demolition Debris Ground Water Monitoring Fee

Rule Number(s): 3745-520-50

Date: June 5, 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 Rescinded                |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.*

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Ohio Administrative Code (OAC) Rule 3745-520-50 is the regulation pertaining to the fees for construction and demolition debris (C&DD) facilities. ORC 3714.071 provides the director of Ohio EPA the authority to adopt a rule establishing the fee on the disposal of C&DD for the purpose of funding ground water monitoring.

Ohio EPA has reviewed the identified rule in accordance with ORC 119.032 and has made the determination to retain the rule without change.

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

Ohio Revised Code (ORC) 3714.071.

**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. Federal laws and regulations are different than Ohio law and regulation regarding construction and demolition debris. Under federal law, construction and demolition debris is included in the federal definition of solid waste. While U.S. EPA has not adopted federal requirements specific to construction and demolition debris landfills, there is a federal prohibition against open dumping and federal minimum standards for solid waste disposal facilities which includes construction and demolition debris landfills.

There are no federal requirements for states to adopt or to enforce in the federal *Criteria for Classification of Solid Waste Disposal Facilities and Practices* (40 CFR part 257) under the authority of sections 1008(a)(3) and 4004(a) of subtitle D of Resource Conservation and Recovery Act (RCRA). 40 CFR part 257 establishes overall regulatory direction by providing minimum nationwide standards for protecting human health and the environment and provides technical standards to states for planning and developing their own environmentally sound waste management practices. 40 CFR part 257 is enforced by means of federal citizen suit.

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

Not applicable. There are no federal requirements for states to adopt or to enforce in the federal *Criteria for Classification of Solid Waste Disposal Facilities and Practices* (40 CFR part 257) under the authority of sections 1008(a)(3) and 4004(a) of subtitle D of Resource Conservation and Recovery Act (RCRA).

Note: In Ohio law, construction and demolition debris is regulated under ORC Chapter 3714 and is distinct from regulation as a solid waste under ORC Chapter 3734. The proposed rules seek to implement the requirements of ORC Chapter 3714.

**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)?**

ORC 3714.071 provides the director of Ohio EPA the authority to adopt a rule establishing a fee on the disposal of C&DD for the purpose of funding ground water monitoring. The statute requires that

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this fee be used solely to fund and conduct ground water monitoring at C&DD facilities in accordance with the provisions of ORC 3714.071.

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

The Agency will measure success of the regulations through continued compliance with the rules and a reduction in violations of environmental laws. Success will be measured by the results of ground water monitoring at C&DD facilities, maintenance of public health and safety, and protection of the environment.

**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.*

Ohio EPA outlined the 5-year rule review process, which rules were under review, and the Division of Materials and Waste Management's (DMWM) preliminary determinations with representatives of the C&DD industry and approved health departments during December 2013 and meetings in January and February 2014. On January 14, 2014, Ohio EPA posted an Early Stakeholder Outreach outlining the preliminary determinations and established a 30-day period seeking stakeholder input. Email notice of the availability of this Early Stakeholder Outreach was provided to stakeholders who subscribe to Ohio EPA'S electronic Interested Parties C&DD listserv. There are over 800 email addresses registered on the listserv with individuals able to subscribe or unsubscribe at their discretion.

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

DMWM received no suggestions or comments for the ground water monitoring fee rule during the Early Stakeholder Outreach (ESO) process.

**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?**

Scientific data was not used in the development of this rule because the determination was made to retain the rule without change.

**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 since the Agency has determined in accordance with ORC 119.032 that this rule does not need to be amended or rescinded.

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**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 Agency did not consider performance-based regulations since the Agency has determined in accordance with ORC 119.032 that this rule does not need to be amended or rescinded.

**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.**

Ohio EPA will provide notice of the rule's availability to stakeholders, facility operators, and Ohio EPA approved local health departments responsible for issuing annual licenses and inspecting C&DD facilities. This notice will invite questions and provide contacts. Prior to rule amendments becoming effective, Ohio EPA will discuss any implementation concerns and request that stakeholders and health departments identify additional needs for outreach and specific guidance.

**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;
- b. Identify the nature of the adverse impact (e.g., license 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.*

These C&DD disposal facility regulations and the ground water monitoring fee rule have a direct impact on all owners and operators of construction and demolition debris disposal facilities in the state of Ohio.

The nature of the adverse impact on the owners and operators of construction and demolition debris disposal facilities associated with these rules include the fee for ground water monitoring

The proposal to retain OAC Rule 3745-520-50 without change will continue the existing ten cents per ton C&DD disposal fee to fund the ORC 3714.071 ground water monitoring program. In 2013, 38

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Ohio construction and demolition debris disposal facilities reported disposal of over 24.2 million tons of C&DD and remitted \$333,719.22 for the ORC 3714.071 ground water monitoring program. The adverse impact was directly proportional to the reported tonnage and varied widely among facilities. Nine facilities remitted less than \$1,000; five facilities between \$1,000-2,000; eight facilities between \$2,000-5,000; eight facilities between \$5,000-10,000; five facilities between \$10,000-20,000; and three facilities over \$20,000 with the single highest remittance being \$86,900.

**15. 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 pertaining to construction and demolition debris facilities under section 3714.02 of the Revised Code that protect human health, safety, and the environment. The obligation to fulfill the statute justifies the adverse impact on the regulated community. The Agency is proposing to retain without change ORC Rule 3745-520-50 which would maintain the existing fee established under ORC 3714.071. The Agency has determined that continuance of this fee is necessary to fund the monitoring of C&DD facilities at this time.

**Regulatory Flexibility**

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

Any person, including the owner or operator of a construction and demolition debris facility, subject to the regulations contained in Ohio Administrative Code 3745-400 may be issued an exemption by the licensing authority under the authority of ORC section 3714.04. This exemption authority provides the licensing authority a case-specific basis to consider and establish 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 construction and demolition debris landfills regulated under OAC Chapter 3745-400 and OAC Rule 3745-520-50 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 C&DD regulatory assistance. DMWM staff offer technical assistance to license applicants and facility owners or 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

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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>.

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