

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Industrial Solid Waste Landfill Rules

Rule Number(s): Ohio Administrative Code Chapter 3745-29

Date: February 7, 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 Rescinded |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 industrial solid waste landfill regulations in Ohio Administrative Code 3745-29 address the siting, design, permitting and licensing, construction, operation, and closure of industrial solid waste landfill facilities. Ohio EPA is not proposing any amendments to this chapter.

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

Ohio Revised Code Sections 3434.02 and 3734.12.

3. Does the regulation implement a federal requirement? No. 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.

Not Applicable.

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 purpose of this regulation is to fulfill the requirements of ORC 3734.02 and ORC 3734.12 which require the director to adopt rules governing solid waste facilities in order 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 water pollution, or create a health hazard. The industrial solid waste landfill rules provide Ohio industries with an alternative to disposal of wastes into municipal solid waste landfills through this chapter of solid waste disposal regulations for landfills that handle exclusively industrial solid waste landfill streams.

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 number of Ohio industries seeking to establish and operate industrial solid waste landfills, continued compliance with the rules, and minimal occurrences of nuisance, fire or health hazards, or air or water pollution resulting from the operation of industrial solid waste landfill landfills.

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 contacted stakeholders on the solid waste electronic mailing listserv list on January 18, 2012. These interested parties were notified of the Early Stakeholder Outreach period that began January 18, 2012 and ran through February 29, 2012.

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

The only response received from stakeholders was supportive of the decision to file the rules unchanged.

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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 in this rule development because no changes to the rule were considered. The industrial solid waste landfill chapter was initially developed by Ohio EPA using established scientific and engineering data consistent with data for solid waste landfills. However, the industrial solid waste landfill chapter does not incorporate all of the federal requirements specific to municipal solid waste landfill regulations.

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 decided to file the rules as "No Change." The industrial solid waste landfill rules are themselves a form of "alternative regulations" because they provide a different set of requirements that vary from the federally based rules governing municipal solid waste landfills. The objective was to provide Ohio industries the option to use solid waste landfill facilities that primarily dispose of industrial solid waste landfill without having to also comply with federal requirements specific to municipal solid waste landfills.

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 does not plan on amending the industrial solid waste landfill rules and therefore did not consider performance-based regulations during this review. However, the industrial solid waste landfill rules in OAC Chapter 3745-29 are a set of performance-based regulations. Solid waste disposal facilities that dispose primarily of industrial solid waste landfill have the option to comply with this chapter in lieu of compliance under OAC Chapter 3745-27, which applies to other solid waste disposal facilities including municipal solid waste landfills.

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 regulation 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 proposing a "No Change" filing, the Agency plans to continue the current implementation schedule. Ohio EPA feels that because we received positive feedback on our proposition to file a "No Change," the regulated community feels that the regulations are applied consistently and predictably.

Adverse Impact to Business

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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 impacted business community includes the five owners or operators of industrial solid waste landfill landfills in Ohio.

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

The industrial solid waste landfill chapter provides Ohio industries an option to establish and use an alternative landfill to municipal solid waste landfills. If the industry chooses to establish and operate an industrial solid waste landfill landfill, the nature of the adverse impact includes design and construction standards; siting criteria to avoid incompatible land uses (e.g. parks, residences, streams); costs including permit fees, annual license fees, and possibly fines for non-compliance; time for recordkeeping for the purpose of applying disposal fees and compliance with the regulations; costs and time for housekeeping to avoid nuisances and preparing contingencies in event of an emergency; and costs to clean up the facility upon closure, including financial assurance so as not to burden the tax payer.

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.

An Ohio industry choosing to establish and operate an industrial solid waste landfill landfill can anticipate the cost of compliance to be less than that required of a municipal solid waste landfill. Although there is a cost of compliance associated 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. Costs associated with industrial solid waste landfill landfills would be very similar, though slightly less, than the costs associated with municipal solid waste landfills. The following information is based upon estimates provided by an Ohio municipal solid waste industry association.

Permit costs for developing an engineering package for a lateral expansion range from \$750,000 to \$1,000,000 excluding hydrogeological investigations. Hydrogeological investigations add an additional \$50,000 - \$250,000 for a simple vertical expansion, \$250,000 to \$1,000,000 for a simple lateral expansion or new facility, and \$2,000,000 for a complex lateral expansion with complex hydrogeological/siting criteria issues. Setback demonstrations for the demonstration that the facility meets the siting criteria are around \$500 per acre. Construction costs for a sanitary landfill facility range from \$250,000 to \$1,000,000 per acre, with an average of \$400,000 acre.

Additional costs are incurred for the monitoring of ground water at the facility. 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

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\$10,000 per year. Finally, assessment plans, investigations, reports, and corrective measures plans can cost from \$50,000 to \$100,000.

It is important to note that many of these costs are incurred over the life of the facility which is determined by the owner and operator of the industrial landfill depending on operational practices and landfill capacity. Beyond the permit necessary to establish the industrial landfill, the costs associated with subsequent permit applications is dependent upon the owner and operator's need to expand or modify the facility.

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

ORC 3434.02 requires the Director of Ohio EPA to draft rules for solid waste facilities that 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 or cause or contribute to pollution of the land, water, or air. The adverse impact these rules create on business is reduced because of the flexibility from other solid waste disposal regulations in OAC Chapter 3745-27.

Regulatory Flexibility

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

An owner or operator of an industrial solid waste landfill facility subject to the regulations contained in Ohio Administrative Code 3745-29 are also required to comply with rules 3745-27-01, 3745-27-02, 3745-27-03, 3745-27-04 and 3745-27-05 of the Administrative Code. Rule 3745-27-03 pertains to exemptions and variations that 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 3745-27 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 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>.

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