



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

Paul Braun, paul.braun@epa.ohio.gov, 614-644-3734

Regulation/Package Title (a general description of the rules' substantive content):

OAC Rules 3745-76-01 to 3745-76-04 and 3745-76-06 to 3745-76-15, Control of Non-Methane Organic Emissions from Existing Landfills

Rule Number(s): OAC Rules 3745-76-01 to 3745-76-04, and 3745-76-06 to 3745-76-15

Date of Submission for CSI Review: April 20, 2020

Public Comment Period End Date: May 22, 2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 12 rules (FYR? Y)

Rescinded/ 2 rules (FYR? Y)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.
Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 3745-76 of the Ohio Administrative Code (OAC) contains the requirements for the control of non-methane organic compound (NMOC) emissions from existing landfills. An existing landfill is any landfill that commenced construction, reconstruction, or modification on or before July 17, 2014. The Emission Guidelines of this rule apply to landfills that accepted waste after November 8, 1987. These rules are part of Ohio's plan to control NMOC emissions from these landfills under the Clean Air Act Section 111(d) and 40 CFR Part 60, Subpart Cf. Ohio's plan is codified in 40 CFR 62.8870.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Rule Number	Authorizing Statute	Proposed Action
3745-76-01	3704.03(E)	Amended
3745-76-02	3704.03(E)	Amended
3745-76-03	3704.03(E)	Amended
3745-76-04	3704.03(E)	Rescinded
3745-76-06	3704.03(E)	Amended

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3745-76-07	3704.03(E)	Rescinded
3745-76-08	3704.03(E)	Amended
3745-76-09	3704.03(E)	Amended
3745-76-10	3704.03(E)	Amended
3745-76-11	3704.03(E)	Amended
3745-76-12	3704.03(E)	Amended
3745-76-13	3704.03(E)	Amended
3745-76-14	3704.03(E)	Amended
3745-76-15	3704.03(E)	Amended

4. 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, the regulation implements a federal requirement. The proposed rule amendments enable the State of Ohio to maintain primacy to administer and enforce a federal law. These rules are part of Ohio’s plan to control NMOC emissions from existing landfills under the Clean Air Act Section 111(d) and 40 CFR Part 60, Subpart Cf. Ohio’s plan is codified in 40 CFR 62.8870.

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

The proposed regulations do not include provisions not specifically required by the federal government. These rules mirror the federal language in 40 CFR Part 60, Subpart Cf and do not exceed any of the limits set in the federal rules.

6. 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 rules in this chapter are part of Ohio’s plan for controlling NMOC emissions from existing landfills as required under Section 111(d) of the Clean Air Act. The proposed regulations will help protect public health and welfare and help enable the State to meet the national ambient air quality standard for ozone.

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

These rules set limits on the emission of NMOC from existing landfills. Organic compounds are precursors to criteria pollutants like ozone for which national ambient air quality standards have been established. Ohio EPA considers these rules successful in that Ohio continues to progress towards attaining and maintaining the ambient air quality standards established by U.S. EPA.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No, none of these rules are being submitted under these statutes.

Development of the Regulation

9. 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 established an initial 30-day stakeholder outreach comment period ending November 6, 2019. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,300+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

Ohio EPA received one set of comments pertaining to the rulemaking path for these rules during the comment period.

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

DAPC received one set of comments from a stakeholder. The stakeholder suggested that Ohio EPA consider adopting the Federal Plan rather than revising the state rules; however, if Ohio EPA needs to proceed with the revisions to Chapter 3745-76, the agency should ensure that the regulated landfills are only subject to one set of standards; that the revised regulation should not be more stringent than those established for new landfills; that the revised rule address transition issues for landfills complying with the new requirements; that the compliance date of Chapter 3745-76 should occur when U.S. EPA has approved Ohio's revised Section 111(d) plan; that Chapter 3745-76 revisions should include language stating that future amendments to the federal regulations carry through to the State rule; and that Chapter 3745-76 should include an automatic rescission clause.

Ohio EPA replies that the regulations will only apply to existing landfills; will not be more stringent than those established for new landfills; will only give as much time to transition as 40 CFR Part 60, Subpart Cf allows; will not be effective until after U.S. EPA has approved Ohio's revised Section 111(d) plan; and will not incorporate 40 CFR Part 60, Subpart Cf by reference as Ohio EPA is re-writing Chapter 3745-76 to reflect the requirements in 40 CFR Part 60, Subpart Cf. The regulations cannot include language stating that future amendments to the federal regulations carry through to the State rule or include an automatic rescission clause pursuant to the Joint Committee on Agency Rule Review's procedures.

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11. 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?

Peer reviewed scientific data associated with the federal regulations for the existing landfills promulgated in 1996 (i.e., the 1991 Landfill NSPS Background Information Document), data associated with the NSPS landfill amendments proposed in 2002 and 2006 (never finalized), and the more current data (i.e., a landfill and landfill gas energy project database, a voluntary survey of landfills, and the U.S. EPA Greenhouse Gas Reporting Program) obtained in support of the revised regulations for existing landfills under 40 CFR Part 60, Subpart Cf. The data supported the need for clarification of issues related to landfill gas treatment, accounting for emissions from closed areas of landfills, surface monitoring, and corrective action timelines in 40 CFR Part 60, Subpart Cf. The proposed revisions to OAC Chapter 3745-76, mirror the requirements in 40 CFR Part 60, Subpart Cf.

12. 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?

These rules are based on federal regulations in 40 CFR Part 60, Subpart Cf. There are no alternative regulations to consider.

13. 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 considers these rules performance based. The rules set monitoring criteria and emission limits. The facilities are free to design their own collection and monitoring systems as long as they can meet the criteria.

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

Ohio EPA performed a review of our internal regulations as well as rules of other Ohio EPA divisions and outside agencies. These rules do not duplicate any other state rules.

15. 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.

The regulations will be incorporated in OAC Chapter 3745-76 and will apply to all affected existing landfills within the State. The applicable OAC Chapter 3745-76 requirements are implemented and enforced through the Title V permits that the landfill facilities are required to apply for and obtain.

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Adverse Impact to Business

16. 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; and**
- b. Identify the nature of all adverse impact (e.g., 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.

- a. The existing landfills within the State that accepted waste after November 8, 1987 and were constructed, reconstructed or modified on or before July 17, 2014.
- b. The cost of compliance for most of the affected facilities within the State will not increase significantly. Many facilities subject to these rules have already installed their landfill gas collection and control systems which represent the major capital and operating expenses incurred by the facilities. Additional monitoring and recordkeeping costs may be incurred by some facilities depending on the requirements a given facility is subject to. Some facilities may have to use encumbered funds earlier than expected due to the change in the threshold level of NMOCs that trigger the requirement to install the gas collection and control systems. Some facilities will offset any costs of compliance driven by the rule requirements because of a facility’s ability to sell the power generated by the installed gas collection and control systems (i.e., energy recovery systems).
- c. The costs of compliance will be facility-specific and are difficult to assess for all affected facilities in the State.

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

The proposed rule amendments enable the State to maintain approval to administer and enforce a federal law. The affected facilities in the State would be subject to the same costs of compliance under the State and federal regulations.

Regulatory Flexibility

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

Compliance with the control requirements specified in the proposed regulations is driven by exceeding an emission threshold. For facilities with lower waste acceptance rates, it is less likely that the control requirement threshold would be triggered as soon, if at all, and therefore, these smaller facilities would essentially be exempted from compliance costs that facilities with higher waste acceptance rates would be subject to.

19. 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 Ohio EPA uses enforcement discretion regarding fines and penalties for facilities committing a first-time reporting violation. In many cases, penalties are waived.

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

The following resources are available:

- 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://www.epa.ohio.gov/ocapp>.
- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline (800-329-7518), weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.

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- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.

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