



Common Sense Initiative

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Business Impact Analysis

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

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Regulation/Package Title: Underground Injection Control- No change 2020

Rule Number(s): 3745-34-62

Date of Submission for CSI Review: 02/26/2020

Public Comment Period End Date: 03/30/2020

Rule Type/Number of Rules:

New/___ rules

No Change x 1 rules (FYR? 1)

Amended/___ rules (FYR? __)

Rescinded/___ rules (FYR? __)

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.

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.

Rules in Chapter 3745-34 of the Ohio Administrative Code (OAC) establish requirements for construction, permitting, maintenance, operations and closure of underground injection wells. OAC Rule 3745-34-62 provides financial responsibility requirements for owners and operators of injection wells for closure plan and post closure care. This rule has been reviewed pursuant to the five-year rule requirements set forth in section 106.03 of the Ohio Revised Code and the division is not proposing changes.

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.**

Division (B) of section 6111.043 of the Revised Code authorizes Ohio EPA to adopt these regulations. It states, “the director of environmental protection, in consultation with the director of natural resources, shall adopt rules governing the injection of sewage, industrial waste, hazardous waste and other wastes into wells.”

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- 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, this regulation enables Ohio EPA to administer regulations that improve and maintain the quality of waters of the state for the purpose of protecting public health and welfare, and to enable the planned use of such waters for public water supplies, industrial and agricultural needs, propagation of fish, aquatic life, wildlife, and recreational use. This rule determines compliance with the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority from the Federal Government.

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

No, this regulation does not exceed the federal regulation.

- 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 Ohio-specific public policy goals (as stated in Ohio Revised Code section 6111.043) are to establish a program for regulation of the injection of sewage, industrial waste, hazardous waste, and other wastes into wells in order to control pollution of the waters of the state, to prevent contamination of underground sources of drinking water, and to satisfy all requirements of the Safe Drinking Water Act (SDWA). This rule is required for Ohio to maintain SDWA primary enforcement authority. In addition, the rule aims to prevent the migration of contamination into underground sources of drinking water via underground injection and are, therefore, protective of human health.

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

The Agency will base success based on compliance rates with the closure and post closure requirements.

- 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

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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.

Stakeholders include underground injection control owners and operators, consultants, environmental organizations, other state agencies and the general public. The only measure someone has to take to be notified of DDAGW's potential rule activity is to request to be added to our electronic or hard-copy mailing list. Stakeholders can also sign themselves up for this notification directly from Ohio EPA's website.

Stakeholders were first notified of DDAGW's plans to amend this rule on October 21, 2019 however on further review, the division has determined that no changes are necessary at this time. The rules will be placed into interested party review period to allow stakeholders to comment on the draft rule.

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

Stakeholders did not provide any comments during early stakeholder outreach on the agency's intent to file this rule with changes.

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?

This rule provides financial responsibility requirements for closure and post closure care of underground injection wells. 40 CFR Section 146.73, "Financial responsibility for post-closure care" was considered.

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?

In order to retain primary enforcement authority, Ohio EPA is required to adopt the federal counterparts of rules. Therefore, Ohio EPA could not consider alternatives.

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.

The rule in this package is performance-based and will demonstrate the overall effectiveness of properly constructed and maintained underground injection control wells.

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

Ohio EPA has reviewed internal regulations and determined there are no duplications.

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.

Ohio EPA implementation of this rule includes the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing rule amendments.
- Working with the stakeholders to develop appropriate notification templates and language.
- Conducting staff training throughout the state before and continuing after the rule becomes effective.
- Developing internal procedures and guidance documents for staff to use in implementing rules.

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;

The cost of compliance of this rule will fall upon facilities with underground injection wells.

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

Rule requires owners and operators of underground injection wells to comply with financial responsibility requirements for closure and post closure care of underground injection wells.

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.

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3745-34-62: This rule requires owners and operators of class I underground injection control wells, to comply with financial responsibility requirements for closure and post closure care found in the hazardous waste rules. Under these rules, prior to operation a facility must prepare detailed written estimates for the cost of closing the facility and providing post-closure care and demonstrate they have the financial assurance to fulfill those costs in the form of one of the following for both closure and post closure: a trust fund, a surety bond guaranteeing payment into a trust fund, a letter of credit, insurance, a financial test and guarantee, or multiple financial mechanisms. The cost to comply with this rule will vary for each well depending on the site-specific circumstances. However, based on cost estimates submitted by the owners and operators of class I wells, the average cost to comply with this rule is estimated at \$293,716.89 to \$367,146.10 per well.

* U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2013 - 2019.

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

The Agency considers the overall cost for complying with these regulations to be minor in comparison with ensuring that underground sources of drinking water are protected for public consumption.

Regulatory Flexibility

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

No exemptions or alternative means of compliance for small businesses have been written into this rules package.

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?

Ohio EPA does not assign fines and penalties for first-time offenders and prefers to obtain compliance through outreach first and if needed, written notice of violations prior to any type of formal enforcement.

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

The following resources are available:

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- 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.
- Facilities can contact members of Ohio EPA's Division of Drinking and Ground Waters' Underground Injection Control (UIC) Unit for technical assistance. They can be reached by calling 614-644-2752. The UIC Unit also maintains a website which includes answers to many commonly asked questions <http://epa.ohio.gov/ddagw/uic.aspx>).
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 pm and a permit assistance webpage https://www.epa.ohio.gov/dir/permit_assistance 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.