

3745-599-01

Beneficial use - applicability.

(A) This chapter is the program chapter for the beneficial use of the following wastes placed on land or burned unless otherwise excluded as provided in rule 3745-599-05 of the Administrative Code:

(1) Foundry sands that are a solid waste, industrial waste, or other waste.

(2) Material resulting from the treatment of a water supply for drinking or industrial purposes that are a solid waste, industrial waste, or other waste.

(3) Solid waste, industrial waste, or other waste for use as fuel or as an ingredient in a combustion unit.

(4) Dredged material resulting from harbor or navigation maintenance activities.

(B) This beneficial use program chapter establishes a regulatory framework for use of a beneficial use byproduct and contains definitions, exclusions, and authorization and permit procedures applicable to the use of a beneficial use byproduct.

(C) When a beneficial use byproduct has been managed and used in accordance with this chapter, the beneficial use byproduct that has been used is not a solid waste under Chapter 3734. of the Revised Code.

(D) Compliance with this chapter, or permits authorized hereunder, does not relieve any person of obligations under state or federal laws and rules.

3745-599-02

Beneficial use - definitions.

As used in this chapter, terms are defined as follows:

(A)

- (1) "Agronomic benefit" means the promotion or enhancement of plant growth and includes but is not limited to increases in soil fertility and moisture retention.
- (2) "Asphalt" means a brown-black solid or semisolid mixture of bitumens obtained from native deposits or as a petroleum byproduct that is used in paving, roofing, and waterproofing.
- (3) "Asphalt concrete" means a composite material consisting of asphalt binder and mineral aggregate that is mixed together then laid down in layers and compacted.

(B)

- (1) "Beneficial use" means the use of a beneficial use byproduct as an ingredient, product, or in a manner that contributes to a manufacturing process or product that does not constitute disposal or cause pollution of any waters of the state. A beneficial use may include but is not limited to use for agronomic benefit; as a replacement of a raw material; as a soil amendment, fertilizer, or structural fill; or as a fuel.
- (2) "Beneficial use byproduct" means a solid waste, industrial waste, or other waste having properties necessary or preferred for beneficial use.
- (3) "Best management practices" or "BMPs" means activities, prohibitions or practices, maintenance procedures, and other management practices intended to prevent or reduce the pollution of waters of the state. BMPs also include treatment, operating procedures, and practices intended to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material and beneficial use byproduct storage.

(C)

- (1) "Cement" means a pozzuolanic material that can bind other materials together, is a powder, and to which both of the following apply:
 - (a) Includes a mixture of calcined limestone and clay.
 - (b) Sets and hardens independently.
- (2) "Cement concrete" means a construction material that solidifies and hardens independently after mixing with water and that includes cement mixed with any of the following:

(a) Cementitious materials such as fly ash or slag cement.

(b) Aggregate (generally a coarse aggregate such as gravel, limestone, or granite, plus a fine aggregate such as sand).

(c) Chemical admixtures.

(3) "Chip and seal pavement" means a pavement surface treatment that combines a layer of asphalt with a layer of fine aggregate, constructed by evenly distributing a thin base of asphalt onto an existing pavement and then embedding finely graded aggregate into it.

(4) "Controlled low-strength material" means a self-consolidating cementitious mixture that is intended to result in a compressive strength of twelve hundred pounds per square inch or less.

(D)

(1) "Director" means the director of environmental protection or the director's authorized representative.

(2) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any beneficial use byproduct into or on any land or ground or surface water or into the air, except if the disposition or placement constitutes storage, treatment, or beneficial use in accordance with this chapter.

(3) "Distributor" means a person that provides a beneficial use byproduct to another person for beneficial use.

(4) "Drinking water source protection area for a public water system using ground water" means the surface and subsurface area surrounding a public water system's supply well that will provide water to the well within five years as delineated or endorsed by Ohio EPA under the wellhead protection program and the source water assessment and protection program.

(E) "Emergency management zone" or "EMZ" means the surface and subsurface area in the immediate vicinity of a public water system intake as delineated or endorsed by the Ohio EPA under the source water assessment and protection program within which the public water supply owner or operator has little or no time to respond to potential contamination from a spill, release, or weather related event. The standard emergency management zone boundary consists of a semi-circle that extends five hundred feet upstream of the intake and one hundred feet downstream of the intake, except as modified due to local conditions.

(F) [Reserved.]

(G)

- (1) "Generator" means a person who generates a beneficial use byproduct.
- (2) "Ground water" means any water below the surface of the earth in a zone of saturation.
- (3) "Grout" means a construction material used to embed rebar in masonry walls, connect sections of pre-cast concrete, fill voids, or seal joints. Grout is generally composed of a mixture of water, cement, sand, and sometimes fine gravel.

(H) "Hazardous waste" means waste that is listed specifically as hazardous waste or exhibits one or more characteristics of hazardous waste as defined in rule 3745-51-03 of the Administrative Code.

(I) "Industrial waste" has the same meaning as in section 6111.01 of the Revised Code.

(J) [Reserved.]

(K) [Reserved.]

(L) "Liquid waste" means industrial waste or other waste that contains free liquids as determined by the paint filter test in accordance with method 9095B of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)" as described in rule 3745-599-03 of the Administrative Code."

(M)

- (1) "Masonry unit" means manufactured building product that includes but is not limited to materials composed of burned clay, concrete, stone, glass, gypsum, foundry sand, fly ash or other coal combustion residuals.
- (2) "Material change" means the composition of the beneficial use byproduct has changed such that either of the following occurs:
 - (a) The concentration of a known constituent exceeds the concentration limits established in the general or individual beneficial use permit issued pursuant to this chapter.
 - (b) A new constituent is present in the beneficial use byproduct that was not present or known at the time of the previous characterization.

(N) [Reserved.]

(O)

- (1) "Ohio EPA" means Ohio environmental protection agency.
- (2) "Open burning" has the same meaning as in section 3734.01 of the Revised Code.
- (3) "Open dumping" has the same meaning as in section 3734.01 of the Revised Code.
- (4) "Other waste" has the same meaning as in section 6111.01 of the Revised Code.

(P)

- (1) "Permittee" means any person covered under a general beneficial use permit or that has been issued an individual permit to beneficially use a beneficial use byproduct pursuant to this chapter.
- (2) "Person" means an individual, the state, any political subdivision of the state or other state or local body, the United States and any agency or instrumentality thereof, and any legal entity or organization defined as a person under section 1.59 of the Revised Code, or other entity.

(Q) [Reserved.]

(R) "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) that can be expected to exhibit the average properties of the universe or whole.

(S) "Solid waste" has the same meaning as in Chapter 3734. of the Revised Code. As used in the definition of solid waste for the purposes of this chapter, "unwanted" means discarded by the generator or used in a manner that shows the generator no longer reasonably needs or desires the beneficial use byproduct. Unwanted does not include beneficially used in accordance with this chapter.

(T) [Reserved.]

(U) "Unauthorized disposal" means placement on the land or in waters of the state not in compliance with this chapter, Chapter 3734., or Chapter 6111. of the Revised Code and includes open dumping, open burning, and speculative accumulation.

[Comment: See rule 3745-599-35 of the Administrative Code, "Beneficial use - legitimacy criteria," regarding a demonstration that the beneficial use byproduct has not been accumulated speculatively.]

(V) [Reserved.]

(W) "Waters of the state" has the same meaning as in section 6111.01 of the Revised

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[Code.](#)

3745-599-03

Beneficial use - incorporation by reference.

Incorporation by reference. The text of the incorporated materials is not included in the rules contained in this chapter. The materials are hereby made a part of this chapter. For materials subject to change, only the specific version specified in this rule is incorporated. Any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new version.

(A) Availability. The materials incorporated by reference are available as follows:

- (1) Federal statutes. The full text is available in electronic format at <http://www.gpo.gov/fdsys>. These laws are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (2) Specifications of the "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, third edition, including Volume IV, Field Manual (SW-846)." Information and copies may be obtained by writing to: "National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161." The full text is also available in electronic format at <http://www.epa.gov/epaoswer/hazwaste/test/main.htm>. These test methods are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (3) Specifications of the "American Society for Testing and Materials" (ASTM). Information and copies may be obtained by writing to: "ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19426-2959." These documents are available for purchase at <http://www.astm.org>.
- (4) Other publications. The availability of these documents is provided in paragraph (B)(3) of this rule. However, many of the documents are also available for inspection and copying at most public libraries and "The State Library of Ohio."

(B) Incorporated materials.

- (1) Appropriate "Code of Federal Regulations," the regulations listed in this rule are those effective on July 1, 2014 and include 40 C.F.R. Part 241, "Solid Wastes Used as Fuels or Ingredients in Combustion Units."
- (2) Appropriate "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)," as amended through March 6, 2009 including the following:
 - (a) Method 1311, "Toxicity Characteristic Leaching Procedure."
 - (b) Method 1312, "Synthetic Precipitation Leaching Procedure."

- (c) Method 3050B, "Acid Digestion of Sediments, Sludges, and Soils."
 - (d) Method 3500C "Organic Extraction and Sample Preparation."
 - (e) Method 6010C, "Inductively Coupled Plasma ICP-Atomic Emission Spectrometry."
 - (f) Method 7000B or 7010, "Atomic Absorption Spectrophotometry."
 - (g) Method 8081B, "Organochlorine Pesticides by Gas Chromatography."
 - (h) Method 8082A, "Polychlorinated Biphenyls (PCBs) by Gas Chromatography."
 - (i) Method 8260B, "Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)."
 - (j) Method 8270D, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)."
 - (k) Method 9095B, "Paint Filter Liquids Test."
- (3) ASTM D3987-12, "Standard Test Method for Shake Extraction of Solid Waste with Water"; adopted November 1, 2012.
- (4) Other publications as follows:
- (a) American Public Health Association, American Water Works Association, and Water Environment Federation "Standard Methods for the Examination of Water and Wastewater"; 21st Edition, 2005." The full text of this document is available in electronic format at: www.standardmethods.org/.
 - (b) Matzke BD, Hassig NL, Wilson JE, Gilbert RO, Pulsipher BA, Nuffer LL, Dowson ST, Hathaway J, Murray CJ, and Segó LH. "Visual Sample Plan Version 7.3 User's Guide, PNNL-16939"; March, 2014. The full text is also available in electronic format at <http://vsp.pnl.gov>.
 - (c) Ohio department of natural resources (ODNR) division of soil and water conservation's "Rainwater and Land Development Manual"; 1996. The full text is available in electronic format at www.dnr.state.oh.us/tabid/9186/Default.aspx.
 - (d) United States environmental protection agency, office of solid waste, "RCRA Waste Sampling Draft Technical Guidance, "Planning Implementation and Assessment. EPA 530-D-02-002"; as amended

through August 2002. Information and copies may be obtained by writing to "U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue N.W., Washington, DC 20460." The full text is also available in electronic format at http://www.epa.gov/epawaste/hazard/testmethods/sw846/samp_guid.htm.

- (e) United States environmental protection agency internet-based resources relating to BMPs for erosion and sedimentation, including the sector specific "Industrial Storm Water Fact Sheet Series"; December, 2006. The full text is available in electronic format at www.epa.gov/npdes/stormwater/msgp.
- (f) United States environmental protection agency, "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA-821-R-02-012"; Fifth Edition, October 2002. The full text is available in electronic format at: http://water.epa.gov/scitech/methods/cwa/wet/disk2_index.cfm.
- (g) United States environmental protection agency, "Methods for Chemical Analysis of Water and Wastes, EPA 600/4-79/020"; March, 1983. The full text is available in electronic format at: <http://www.epa.gov/nscep/index.html>.
- (h) United States environmental protection agency, "National Management Measures to Control Nonpoint Source Pollution from Urban Areas"; November, 2005. The full text is available in electronic format at www.epa.gov/owow/nps/urbanmm/index.html.
- (i) United States environmental protection agency, "National Menu of Storm Water BMPs"; July, 2014. The full text is available in electronic format at <http://water.epa.gov/polwaste/npdes/swbmp/index.cfm>.
- (j) U.S. environmental protection agency, technical support center for monitoring and site characterization, "Statistical Software ProUCL 5.0 for Environmental Applications for Data Sets with and without Nondetect Observations"; September, 2013. The full text is available in electronic format at: <http://www.epa.gov/osp/hstl/tsc/software.htm>.

3745-599-05

Beneficial use - general exclusions.

General exclusions. This chapter is not applicable to the following materials, including instances when a beneficial use byproduct is commingled with the material:

(A) Agricultural additives regulated pursuant to Chapter 905. of the Revised Code and rules adopted thereunder.

(B) Asbestos-containing waste material regulated pursuant to Chapter 3704. of the Revised Code and rules adopted thereunder.

(C) Coal mining and reclamation operations regulated pursuant to Chapter 1513. of the Revised Code and rules adopted thereunder.

(D) Composting regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.

(E) Construction and demolition debris, including clean hard fill, regulated pursuant to Chapter 3714. of the Revised Code and rules adopted thereunder.

(F) Hazardous waste regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.

(G) Industrial minerals mining and reclamation operations regulated pursuant to Chapter 1501:14 of the Administrative Code.

(H) Infectious waste regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.

(I) Lime mining wastes regulated pursuant to Chapter 1514. of the Revised Code and rules adopted thereunder.

(J) Liquid wastes regulated pursuant to Chapter 6111. of the Revised Code and rules adopted thereunder.

(K) Manure regulated pursuant to Chapter 903. of the Revised Code and rules adopted thereunder.

(L) Polychlorinated biphenyls (PCBs) regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.

(M) Radioactive waste regulated pursuant to Chapter 3748. of the Revised Code and rules adopted thereunder.

(N) Scrap tires regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.

(O) Sewage, sewage sludge, sludge, sludge materials, and biosolids for which an

authorization has been issued under Chapter 6111. of the Revised Code and rules adopted thereunder.

(P) Solid waste and other waste disposed or used in activities that occur within the approved limits of a disposal facility regulated pursuant to Chapter 3714. or 3734. of the Revised Code and rules adopted under those chapters. As used in this paragraph "disposal facility" includes incinerators or energy recovery facilities.

(Q) Used oil regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.

(R) Yard waste or commingled yard waste regulated pursuant to Chapter 3734. of the Revised Code and rules adopted thereunder.

(S) Waste from oil and gas exploration and production operations including brine, regulated pursuant to Chapter 1509. of the Revised Code and rules adopted thereunder.

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3745-599-10

Beneficial use byproduct incorporated into certain construction materials or used as a fuel or as an ingredient in a combustion unit.

(A) A beneficial use byproduct that is an ingredient in any of the construction materials listed in paragraph (B) of this rule are an authorized use under this beneficial use program chapter when the following are true:

- (1) The construction materials are produced by a facility meeting the appropriate activity code under the "North American Industry Classification System" (NAICS) or "Standard Industrial Classification" (SIC).
- (2) The beneficial use byproduct is legitimately managed in accordance with rule 3745-599-35 of the Administrative Code.
- (3) The use of the beneficial use byproduct as an ingredient results in a construction material that meets generally accepted industry specifications for the construction material.

(B) Construction materials:

- (1) Asphalt concrete.
- (2) Cement concrete.
- (3) Chip and seal pavement.
- (4) Controlled low-strength material when not used within waters of the state.
- (5) Grout.
- (6) Glass.
- (7) Masonry unit.

(C) The use of a beneficial use byproduct in accordance with 40 C.F.R. Part 241, as described in rule 3745-599-03 of the Administrative Code, as a fuel or as an ingredient in a combustion unit is an authorized use under this beneficial use program chapter if the beneficial use byproduct is legitimately managed in accordance with rule 3745-599-35 of the Administrative Code.

(D) Nothing in this rule limits the applicability of Chapters 3734., 6111., or 3704. of the Revised Code or rules adopted thereunder, or any other applicable environmental regulations.

[Comment: Management and storage of a beneficial use byproduct prior to incorporation as an ingredient into construction materials is subject to the legitimacy criteria in rule 3745-599-35 of the Administrative Code.]

3745-599-20

Beneficial use - prohibitions.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, test methods, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-599-03 of the Administrative Code titled "Beneficial use - incorporation by reference."]

(A) Except as authorized in accordance with this chapter, no beneficial use byproduct shall be placed on the land or burned.

(B) Except in accordance with an effective national pollutant discharge elimination system permit, no person shall place or cause to be placed a beneficial use byproduct in a location where it results in a discharge to waters of the state.

(C) Except in accordance with a water quality certification issued under Chapter 3745-32 of the Administrative Code, a permit issued under 33 U.S.C. 1344, or an isolated wetland permit issued under Chapter 6111. of the Revised Code, whichever is applicable, no person shall use a beneficial use byproduct by placing the beneficial use byproduct into waters of the state.

(D) No person shall use, manage or store a beneficial use byproduct in a manner or location where the use may endanger public health, safety, or the environment.

(E) No person shall use, manage or store a beneficial use byproduct in a manner or in a location that creates a public nuisance, or causes or contributes to water pollution or air pollution.

(F) No person shall conduct, permit, or allow unauthorized disposal of a beneficial use byproduct. In the event that any of these activities occur, or have occurred at a property, the person responsible for the activity, the owner of the property, or the person who allows or allowed the activity to occur, shall promptly remove and dispose or otherwise manage the beneficial use byproduct in accordance with Chapters 3734, and 6111, of the Revised Code, and shall submit verification to Ohio EPA that the beneficial use byproduct has been properly managed.

3745-599-25

Beneficial use - signatures.

(A) When a document is required to be signed in accordance with this rule, the person signing that document shall be one of the following:

(1) In the case of a corporation, a principal executive officer of at least the level of vice president or a duly authorized representative.

(2) In the case of a partnership, a general partner.

(3) In the case of a limited liability company, a manager, member, or other duly authorized representative of the limited liability company.

(4) In the case of sole proprietorship, the owner.

(5) In the case of a municipal, state, federal, or other governmental facility, the principal executive officer, the ranking elected official, or other duly authorized employee.

(B) The signature on the document signed in accordance with this rule shall constitute personal affirmation that all statements and all assertions of fact made in the document to the best of the signatory's knowledge and belief are true, accurate, include all required information, and comply fully with applicable state requirements and shall subject the signatory to liability under section 2921.13 of the Revised Code.

(C) Unless an alternate certification is specifically required, a document signed in accordance with this rule shall include the following certification statement:

"By signing this document I hereby certify that all statements and all assertions of fact made in the document to the best of my knowledge and belief are true and accurate, include all required information, and comply fully with applicable rules."

3745-599-30

Beneficial use - relationships among authorizing documents, rules, and the authority of the director and board of health.

- (A) When direct conflict occurs between this chapter and an authorizing document approved prior to the effective date of this rule under Chapter 3734. of the Revised Code, the owner or operator shall comply with the authorizing document until the obligation in the authorizing document ceases. After the obligation ceases, the owner or operator shall comply with this chapter.
- (B) When a direct conflict occurs between this chapter and an order issued by the director, approved board of health, or court having competent jurisdiction prior to the effective date of this rule, the owner or operator shall comply with the order until the order is terminated or until the obligation in the order ceases. After the obligation in the order has ceased, the owner or operator shall comply with this chapter.
- (C) Nothing in this chapter is intended nor shall be construed to limit or infringe upon any authority granted by statute to the director or a board of health, including but not limited to issuing orders, conducting inspections, and enforcing the standards and requirements of statutes and rules adopted thereunder.

3745-599-35

Beneficial use - legitimacy criteria.

Upon request by Ohio EPA, a person shall demonstrate legitimate use of a beneficial use byproduct by doing the following:

(A) Ensuring that the beneficial use byproduct is managed and stored as a valuable commodity and is appropriately managed to prevent releases to the environment.

(B) Demonstrating that the beneficial use byproduct is not accumulated speculatively. As used in this rule, a beneficial use byproduct is not accumulated speculatively by the person accumulating the beneficial use byproduct if all of the following are true:

(1) The beneficial use byproduct has a feasible means of being used in accordance with a general beneficial use permit or an individual beneficial use permit, or in a manner excluded under rule 3745-599-10 of the Administrative Code.

(2) The beneficial use byproduct will be used in such quantities and over such timeframes specified in the beneficial use permit. If the permit does not specify timeframes or quantities, upon request by Ohio EPA, the person shall demonstrate that during the preceding calendar year, commencing January first, the amount of beneficial use byproduct that is used, or transferred to a different site for use, equals at least seventy-five per cent by weight or volume of the amount of that beneficial use byproduct that was accumulated at the beginning of the calendar year. In calculating the percentage of turnover, the seventy-five per cent requirement is to be applied to beneficial use byproduct of the same type that is used in the same way (i.e., from which the same material is recovered or that is used in the same way).

3745-599-60

Approved sampling and characterization procedures for the use of a beneficial use byproduct.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, test methods, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-599-03 of the Administrative Code titled "Beneficial use - incorporation by reference."]

(A) A characterization required by a permit issued pursuant to this chapter shall be conducted in accordance with the permit.

(B) A characterization required by this chapter to determine whether a beneficial use byproduct can be used shall be conducted in accordance with one or a combination of the following applicable methods or other methods deemed acceptable by the director:

(1) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)," including the following:

(a) Method 1311, "Toxicity Characteristic Leaching Procedure."

(b) Method 1312, "Synthetic Precipitation Leaching Procedure."

(c) Method 3050B, "Acid Digestion of Sediments, Sludges, and Soils."

(d) Method 6010C, "Inductively Coupled Plasma-Atomic Emission Spectrometry."

(e) Method 7000B or 7010, "Atomic Absorption Spectrometry."

(f) Method 3500C "Organic Extraction and Sample Preparation."

(g) Method 8260B, "Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)."

(h) Method 8270D, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)."

(i) Method 8081B, "Organochlorine Pesticides by Gas Chromatography."

(j) Method 8082A, "Polychlorinated Biphenyls (PCBs) by Gas Chromatography."

(k) Method 9095B, "Paint Filter Liquids Test."

(2) Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms Fifth Edition October 2002.

(3) Other publication as follows:

(a) "Standard Methods for the Examination of Water and Wastewater."

(b) "Methods for Examination of Water and Wastes" (EPA 600/4-79-010)

(c) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms."

(4) Other United States environmental protection agency methods or other methods that demonstrate to the satisfaction of the director that the results of the analysis adequately represent constituent concentrations in the beneficial use byproduct.

3745-599-200

General beneficial use permit.

(A) The director may issue a general beneficial use permit without application. A general beneficial use permit may address the following:

- (1) A specific category or categories of beneficial use byproducts and uses by persons conducting similar activities.
- (2) Establishment of general beneficial use permit eligibility requirements including but not limited to activities such as generation, processing distribution, or placement of the beneficial use byproducts; and persons such as generators, processors, distributors, or landowners to obtain coverage.
- (3) Establishment of requirements pertaining to the characterization of the beneficial use byproducts.
- (4) Establishment of restrictions or standards for the uses of beneficial use byproducts. The director may consider restrictions or standards that include but are not limited to the following:
 - (a) United States environmental protection agency "Regional Screening Levels."
 - (b) Ohio environmental protection agency "Voluntary Action Program" standards.
 - (c) Ohio environmental protection agency "Aquatic Toxicity" standards.
 - (d) Ohio environmental protection agency "Water Quality" criteria.
 - (e) Ohio environmental protection agency "Sewage Sludge Program Limits."
 - (f) Information regarding ambient background concentrations.
- (5) Establishment of requirements, including BMPs pertaining to the use, management, and storage of beneficial use byproducts, including setbacks and isolation distances.
 - (a) The director may consider at a minimum the following in determining appropriate BMPs:
 - (i) Ohio department of natural resources (ODNR) division of soil and water conservation's "Rainwater and Land Development Manual."
 - (ii) USEPA's internet-based resources relating to BMPs for erosion and sedimentation, including the sector specific "Industrial Storm Water Fact Sheet Series."

- (iii) "National Menu of Storm Water BMPs."
 - (iv) "National Management Measures to Control Nonpoint Source Pollution from Urban Areas."
 - (v) "Standard Methods for the Examination of Water and Wastewater."
 - (vi) "Methods for Examination of Waster and Wastes" (EPA 600/4-79-010).
 - (vii) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms."
 - (viii) Other BMPs listed in Chapter 3745-40 of the Administrative Code.
- (b) Factors that may be considered by the director when establishing BMPs including but not limited to the following:
- (i) Ohio hydrologic soil groups. A listing of these soils can be found on the United States department of agriculture, natural resources conservation services web site at www.oh.nrcs.usda.gov/technical/soils/.
 - (ii) Precipitation forecasts.
 - (iii) Soil temperatures. The Ohio agricultural research and development center at the Ohio state university provides daily site specific data at several sites around Ohio for soil temperatures at the following internet address: www.oardc.ohiostate.edu/newweather.
- (6) Establishment of recordkeeping and reporting requirements.
 - (7) Establishment of requirements specific to the type of beneficial use byproduct, locations of use, and the uses authorized under the general beneficial use permit.
 - (8) Establishment of a general beneficial use permit expiration date and general beneficial use permit renewal procedures.
 - (9) Notification requirements upon distribution of the beneficial use byproduct.
 - (10) Establishment of requirements for land use restrictions including but not limited to deed restrictions and environmental covenants.
 - (11) A demonstration of legitimacy in accordance with rule 3745-599-35 of the

Administrative Code.

(B) Criteria for issuance of a general permit.

(1) The director shall not issue a general beneficial use permit unless the following are determined:

(a) Use of the beneficial use byproduct is unlikely to adversely affect the public health or safety or the environment.

(b) Use of the beneficial use byproduct is unlikely to cause pollution of waters of the state.

(C) A person may apply for coverage under a general beneficial use permit by submitting a notice of intent to obtain coverage in accordance with rule 3745-599-210 of the Administrative Code.

(D) Revocation or non-renewal of general beneficial use permits.

(1) The director may revoke a general beneficial use permit during its term for causes including but not limited to the determination that a violation of any applicable law or rule has occurred.

(2) The director may allow a general beneficial use permit to expire after its expiration date without any renewal of the general beneficial use permit.

(3) If the director proposes to revoke a general beneficial use permit or allows a general beneficial use permit to expire after its expiration date without any renewal of the general beneficial use permit, the director shall send notice of the proposed revocation or non-renewal in writing to each permittee covered under the general beneficial use permit.

(4) Termination of coverage under the general beneficial use permit shall occur upon the effective date of a final revocation or the expiration date of a general permit that is not renewed.

3745-599-210

Notice of intent to obtain coverage under a general beneficial use permit.

(A) A person eligible for coverage as specified in a general beneficial use permit may apply for coverage under the beneficial use general permit sixty days prior to the anticipated date of commencing use of the beneficial use byproduct by submitting the following to the director in accordance with this rule:

(1) A complete and accurate notice of intent to obtain coverage under a general beneficial use permit on forms prescribed by the director. The forms shall be signed in accordance with rule 3745-599-25 of the Administrative Code. At a minimum, such notice of intent shall contain the following:

(a) The general beneficial use permit number under which authorization to use a beneficial use byproduct is requested.

(b) The name, address, and telephone number of the applicant, and the name, address, telephone number, and title of the applicant's contact person.

(c) If different than the applicant, the name, address, and telephone number of the generator, and the name, address, telephone number, and title of the generator's contact person.

(d) If different than the applicant, the name, address, and telephone number of every intended distributor of the beneficial use byproduct, and the name, address, telephone number, and title of each distributor's contact person.

(e) Each location of the proposed use and storage of the beneficial use byproduct, unless otherwise specified in the general permit.

(f) A description of the beneficial use byproduct and a representation that the beneficial use byproduct complies with the general permit.

(g) Any additional information specified in the general permit or requested by the director.

(2) A nonrefundable application fee of three hundred fifty dollars.

(B) Any notice of intent or other documentation required to be submitted by this rule that fails to provide Ohio EPA with requested information needed to ascertain compliance with the applicable provisions of this chapter may be considered incomplete or deficient. Ohio EPA may either request additional information or return the notice of intent to the applicant without further processing. An incomplete application will not be considered.

3745-599-220

Coverage under a general beneficial use permit.

(A) General beneficial use permit coverage.

- (1) Upon receipt of a complete notice of intent that demonstrates that the criteria for general beneficial use permit eligibility have been satisfied, the director may authorize coverage of the applicant under the general beneficial use permit.
- (2) No person is authorized to use a beneficial use byproduct under authority of a general beneficial use permit until the director issues a written notification or order to that person that the use of the beneficial use byproduct is authorized by a general beneficial use permit.
- (3) Unless otherwise specified in the general beneficial use permit, no person shall use a beneficial use byproduct at a location that has not been identified in the notice of intent approved by Ohio EPA in the general beneficial use permit.
- (4) Coverage under a general beneficial user permit is non-transferrable.

(B) Recordkeeping. Unless otherwise specified in the general beneficial use permit, the following shall be maintained and made available to Ohio EPA by the permittee for a period of five years after use of the beneficial use byproduct has last occurred:

- (1) Records of the annual volume of the beneficial use byproduct that is managed and used under the general beneficial use permit.
- (2) Any beneficial use byproduct characterization information required by the general beneficial use permit.

(C) Administrative change. The director may make an administrative change to the order or written notification specified in paragraph (A)(2) of this rule. An administrative change may include changes to do either of the following:

- (1) Update or correct administrative information including but not limited to the telephone number, address, or contact person of the permittee, generator, or distributor.
- (2) Correct typographical errors.

(D) Change in beneficial use byproduct characteristics.

- (1) The permittee shall notify the director prior to a change in the generating process or when the permittee anticipates a change in the feedstock, input materials, or raw materials used in the generating process and submit a demonstration that the beneficial use byproduct continues to meet the specifications of the general permit.
- (2) If a change in the generating process, feedstock, input materials, or raw

materials occurs, the director may require the permittee to conduct and submit an additional characterization of the beneficial use byproduct in accordance with rule 3745-599-60 of the Administrative Code.

(3) If at any time the beneficial use byproduct does not meet the requirements of the general permit, the permittee shall cease use and distribution of the beneficial use byproduct and provide written notice to Ohio EPA not later than three days after ceasing use of the beneficial use byproduct. Use and distribution of the beneficial use byproduct shall cease until the permittee does one of the following:

(a) Sixty days prior to commencing use and distribution of the beneficial byproduct, the permittee shall perform and submit the following to Ohio EPA:

(i) A characterization of the beneficial use byproduct as required in the general beneficial use permit. The characterization shall include sufficient samples as necessary for a statistical analysis.

(ii) A statistical analysis which demonstrates compliance with the general beneficial use permit in which samples meet a ninety-five per cent upper confidence limit and do not exceed the limits in the general permit.

(iii) An explanation as to why the prior sampling compliance characterization indicated an exceedance.

(b) Submits an application for an individual beneficial use permit and obtains an authorization pursuant to this chapter.

(E) Denial of coverage under a general beneficial use permit.

(1) The director may deny coverage for the use of a beneficial use byproduct at any location where the director determines that the use may endanger public health, safety, or the environment or if the director determines the use may create a public nuisance or cause or contribute to water pollution or air pollution. In making a determination to deny coverage, the director shall at a minimum consider the following locations:

(a) Within a drinking water source protection area for a public water system using ground water.

(b) Within five hundred feet of a well that provides potable drinking water for human or livestock consumption.

(c) Within an emergency management zone.

(d) Within a flood plain.

(2) The director may deny coverage for the use of a beneficial use byproduct in the construction of facilities used to treat, store, or convey potable water for human or livestock consumption.

(3) The director may deny coverage under a general beneficial use permit when information including but not limited to the notice of intent that is required to be submitted under this chapter is not in compliance with this chapter or with any requirements in the general beneficial use permit.

(4) If coverage under a general beneficial use permit is denied, an applicant may apply for an individual beneficial use permit in accordance with rule 3745-599-300 of the Administrative Code.

(F) Revocation of coverage under a general beneficial use permit. The director may revoke coverage under a general beneficial use permit if any of the following occur:

(1) The director finds that there has been a violation of a law, rule, or an authorization issued pursuant to Chapter 3704., 3714., 3734., 6109., or 6111. of the Revised Code or the rules adopted thereunder.

(2) The director has determined that a public nuisance, or an adverse impact to public health, safety, or the environment has been caused by the use of the beneficial use byproduct.

(3) The director has determined that information submitted as the basis for the director's determination to authorize coverage was incomplete, incorrect, or is no longer valid.

(4) The permittee requests that the director revoke the permittee's coverage under a general beneficial use permit.

(G) Renewal notice of intent. Unless otherwise specified in the general beneficial use permit, a permittee with coverage under a preceding expired or expiring general permit who seeks coverage under a renewed general beneficial use permit may submit to the director a notice of intent and associated fees in accordance with the requirements specified in rule 3745-599-210 of the Administrative Code. The notice of intent shall be submitted not later than forty-five days after the effective date of the renewed general beneficial use permit. If a notice of intent is submitted in accordance with this paragraph, then the applicant shall be deemed to have temporary coverage under the renewed general beneficial use permit until the director notifies the permittee in writing that coverage under the renewed general beneficial use permit has been authorized or denied.

[Comment: If a notice of intent is not submitted in accordance with paragraph (G)

of this rule, coverage under a general beneficial use permit will expire upon the expiration date of the general beneficial use permit.]

[Comment: If coverage under a notice of intent submitted in accordance with paragraph (G) of this rule is denied, an applicant may apply for coverage under an alternative general beneficial use permit or submit an application for an individual beneficial use permit.]

3745-599-310

Application for an individual beneficial use permit.

A person applying for an individual beneficial use permit shall submit the following to the director:

(A) A complete and accurate application for an individual beneficial use permit on forms prescribed by the director, signed by the applicant in accordance with rule 3745-599-25 of the Administrative Code, that includes the following:

- (1) The name, address, and telephone number of the applicant and the name, address, telephone number, and title of the applicant's contact person.
- (2) If different than the applicant, the name, address, and telephone number of the generator, and the name, address, telephone number, and title of the generator's contact person.
- (3) If different than the applicant, the name, address, and telephone number of each intended distributor of the beneficial use byproduct and the name, address, telephone number, and title of each distributor's contact person.
- (4) A description of the beneficial use byproduct proposed for use as generated, including a description of the following:
 - (a) A description of the process through which the beneficial use byproduct is generated, including the feedstock, input materials, and raw materials used to generate the beneficial use byproduct.
 - (b) A physical and chemical description, including leaching characteristics, of the beneficial use byproduct proposed for use as generated.
- (5) A description of the manner in which the beneficial use byproduct is intended to be managed and used in accordance with rule 3745-599-35 of the Administrative Code. In addition, the description shall address the following:
 - (a) How the beneficial use byproduct will provide a useful contribution to the commercial, production, or manufacturing process. The beneficial use byproduct provides a useful contribution if the beneficial use byproduct does any of the following:
 - (i) Contributes a valuable ingredient to a product or intermediate material in an industrial process.
 - (ii) Is used as an effective substitute for a commercial product or intermediate material in an industrial process.
 - (b) How the beneficial use byproduct will be used to produce a valuable product or intermediate material in a process.

- (c) How the beneficial use byproduct is used as an effective substitute for a commercial product, a soil additive or amendment, or as an ingredient or intermediate in an industrial process.
- (6) If the beneficial use byproduct is being proposed to be used as an agronomic benefit, a demonstration of the agronomic benefit.
- (7) A description of the BMPs that will be used when transporting, storing, and handling the beneficial use byproduct to minimize loss, including the activities necessary to ensure that the beneficial use byproduct is not released to the environment.
- (8) A description of the expected chemical characteristics, including the leaching characteristics, of runoff from the beneficial use byproduct if the beneficial use byproduct will be applied to the land.
- (9) A description of the location and environs of the proposed use and of the storage of the beneficial use byproduct.
- (10) The estimated annual volume of the beneficial use byproduct proposed for use and storage.
- (11) A description of any other permits or authorizations that have been issued for the site where the beneficial use byproduct will be used.
- (12) Any additional information requested by the director.
- (B) A copy of the applicant's initial beneficial use byproduct characterization demonstration developed in accordance with rule 3745-599-340 of the Administrative Code.
- (C) The analytical results of the compliance sampling and analysis plan of each beneficial use byproduct intended for use performed in accordance with rule 3745-599-340 of the Administrative Code.
- (D) A nonrefundable application fee of three hundred fifty dollars.

3745-599-320

Issuance of an individual beneficial use permit.

(A) If the director determines that the application for an individual beneficial use permit is incomplete, including such additional information as necessary to determine whether an application satisfies the requirements of rule 3745-599-310 of the Administrative Code, the director may request information for further consideration of the application. Upon receipt of a written request for information for further consideration of the application, the applicant shall provide such information. If the applicant fails to submit a complete revised application not later than one hundred eighty days after the date of the notice that the application is incomplete, the director may deny the application or return any revised applications to the applicant.

(B) An individual beneficial use permit is non-transferrable.

(C) Upon receipt of a complete application for an individual beneficial use permit and a determination that the criteria for an individual beneficial use permit have been met, the director may issue an individual beneficial use permit to the applicant that may include the conditions to prevent public nuisance or adverse impacts to public health, safety, and the environment, including but not limited to conditions related to the following:

(1) Establishment of restrictions and requirements pertaining to management of and persons responsible for management of the beneficial use byproduct including but not limited to the following:

(a) Activities such as generation, processing distribution, or placement of the beneficial use byproduct.

(b) Persons such as generators, processors, distributors, or landowners.

(2) Establishment of requirements pertaining to the characterization of the beneficial use byproducts.

(3) Establishment of restrictions or standards for the uses of beneficial use byproducts. The director may consider restrictions or standards that include but are not limited to the following:

(a) United States environmental protection agency "Regional Screening Limits."

(b) Ohio environmental protection agency "Voluntary Action Program" standards.

(c) Ohio environmental protection agency "Aquatic Toxicity" standards.

(d) Ohio environmental protection agency "Water Quality" criteria.

- (e) Ohio environmental protection agency "Sewage Sludge Program Limits."
- (f) Information regarding ambient background concentrations.
- (4) Establishment of requirements, including BMPs pertaining to the use, management, and storage of beneficial use byproducts, including setbacks and isolation distances.

 - (a) The director may consider at a minimum the following in determining appropriate BMPs:

 - (i) Ohio department of natural resources (ODNR) division of soil and water conservation's "Rainwater and Land Development Manual."
 - (ii) USEPA's internet-based resources relating to BMPs for erosion and sedimentation, including the sector specific "Industrial Storm Water Fact Sheet Series."
 - (iii) "National Menu of Storm Water BMPs."
 - (iv) "National Management Measures to Control Nonpoint Source Pollution from Urban Areas."
 - (v) "Standard Methods for the Examination of Water and Wastewater."
 - (vi) "Methods for Examination of Waster and Wastes" (EPA 600/4-79-010).
 - (vii) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms."
 - (viii) Other BMPs listed in Chapter 3745-40 of the Administrative Code.
 - (b) Factors that may be considered by the director when establishing BMPs including but not limited to the following:

 - (i) Ohio hydrologic soil groups. A listing of these soils can be found on the United States department of agriculture, natural resources conservation services web site at www.oh.nrcs.usda.gov/technical/soils/.
 - (ii) Precipitation forecasts.
 - (iii) Soil temperatures. The Ohio agricultural research and development center at the Ohio state university provides daily site specific data

at several sites around Ohio for soil temperatures at the following internet address: www.oardc.ohiostate.edu/newweather.

- (5) Establishment of recordkeeping and reporting requirements.
 - (6) Establishment of requirements specific to the type of beneficial use byproduct, locations of use, and the uses authorized under the individual beneficial use permit.
 - (7) Establishment of an individual beneficial use permit expiration date and individual beneficial use permit renewal procedures.
 - (8) Notification requirements upon distribution of the beneficial use byproduct.
 - (9) Establishment of requirements for land use restrictions including but not limited to deed restrictions and environmental covenants.
 - (10) Establishment of requirements for the permittee to sample for constituents in addition to those identified in the beneficial use byproduct characterization and analysis plan.
 - (11) Additional terms and conditions in an individual beneficial use permit as authorized under Chapters 3734. or 6111. of the Revised Code.
- (D) Criteria for issuance of an individual beneficial use permit. The director shall not issue an individual beneficial use permit unless the following are determined:
- (1) Use of the beneficial use byproduct in accordance with the permit is unlikely to adversely affect the public health or safety or the environment.
 - (2) Use of the beneficial use byproduct in accordance with the permit is unlikely to cause pollution of waters of the state.
- (E) Expiration of an individual beneficial use permit. An individual beneficial use permit shall be effective for five years from the effective date of the permit unless otherwise stated in the permit, or if the permit is revoked in accordance with rule 3745-599-370 of the Administrative Code.

3745-599-330

Notice and information for distribution - individual beneficial use permits.

(A) Unless otherwise specified in the individual beneficial use permit, any permittee who distributes a beneficial use byproduct to another person for use shall provide the person receiving the beneficial use byproduct with the beneficial use byproduct's notice of necessary information prior to or with the initial distribution. The notice of necessary information shall include the following:

(1) The name, address, and telephone number of the generator of each beneficial use byproduct, or the name, address, telephone number, and title of the generator's authorized contact person.

(2) The type and number of each applicable beneficial use permit.

(3) A statement that the material is or contains a beneficial use byproduct that meets the constituent limits established in the individual beneficial use permit.

(4) A summary of results from any characterization required in accordance with rule 3745-599-340 of the Administrative Code.

(5) A copy of the individual beneficial use permit issued for the use of the beneficial use byproduct.

(B) Upon request by a person receiving the beneficial use byproduct, the permittee shall provide to that person the following:

(1) A copy of the beneficial use byproduct characterization and analysis plan.

(2) A copy of the individual beneficial use permit issued for the use of the beneficial use byproduct.

(C) The permittee shall provide updates to the notice of necessary information to the person receiving the beneficial use byproduct for use annually on the anniversary of the first notice of necessary information and whenever a beneficial use byproduct being used undergoes a material change.

3745-599-334

Generator obligations for recordkeeping and reporting - individual beneficial use permits.

(A) Unless otherwise specified in the individual beneficial use permit, a permittee who is a generator shall submit to Ohio EPA an annual report signed in accordance with 3745-599-25 of the Administrative Code. The annual report shall be submitted on or before April first of each year for the previous calendar year on forms prescribed by the director and shall include at a minimum the following:

(1) A list of all persons and locations that received the beneficial use byproduct from the generator and the quantity of beneficial use byproduct distributed annually to each person and location expressed in dry tons or by volume.

(2) Any documentation demonstrating legitimacy of the beneficial use required under rule 3745-599-35 of the Administrative Code.

(3) Information required by rule 3745-599-345 or 3745-599-350 of the Administrative Code.

(4) The following information, if it has changed since the submittal of the previous annual report:

(a) A description of the beneficial use byproduct including a description of the process used to generate the beneficial use byproduct and a list of the materials used to generate the beneficial use byproduct.

(b) A copy of the beneficial use byproduct characterization and analysis plan developed in accordance with rule 3745-599-340 of the Administrative Code.

(c) Any re-characterization of the beneficial use byproduct, including laboratory results and statistical analyses of the beneficial use byproduct, in accordance with this chapter if performed by the distributor. Characterization of the blended product should occur whenever a process change occurs with blending of original beneficial use byproduct. Any re-characterization laboratory results and statistical analyses of the beneficial use byproduct performed or obtained after the initial characterization of the beneficial use byproduct in accordance with this chapter.

(5) Any other information required by the individual beneficial use permit.

(B) The permittee shall maintain all of the records required to be reported pursuant to paragraph (A) of this rule for a minimum of five years after distribution of the beneficial use byproduct ceases, and shall make them available upon request.

3745-599-335

Distributor obligations for recordkeeping and reporting - individual beneficial use permits.

(A) Unless otherwise specified in the individual beneficial use permit, the permittee who is a distributor shall submit to Ohio EPA an annual report signed in accordance with 3745-599-25 of the Administrative Code. The annual report shall be submitted on or before April first of each year for the previous calendar year on forms prescribed by the director and shall include at a minimum the following:

(1) A list of all persons and locations that received the beneficial use byproduct and the quantity of beneficial use byproduct distributed annually to each person and location expressed in dry tons or by volume.

(2) The name, address, and telephone number of each generator of a beneficial use byproduct distributed by the permittee.

(3) Any documentation demonstrating legitimacy of the beneficial use required under rule 3745-599-35 of the Administrative Code.

(4) Information required by rule 3745-599-345 or 3745-599-350 of the Administrative Code.

(5) The following information, if it has changed since the submittal of the previous annual report:

(a) A description of the beneficial use byproduct including a description of the process used to generate the beneficial use byproduct and a list of the materials used to generate the beneficial use byproduct.

(b) A copy of the beneficial use byproduct characterization and analysis plan developed in accordance with rule 3745-599-340 of the Administrative Code.

(c) Any re-characterization of the beneficial use byproduct, including laboratory results and statistical analyses of the beneficial use byproduct, in accordance with this chapter if performed by the distributor. Characterization of the blended product should occur whenever a process change occurs with blending of original beneficial use byproduct. Any re-characterization laboratory results and statistical analyses of the beneficial use byproduct performed or obtained after the initial characterization of the beneficial use byproduct in accordance with this chapter.

(6) Any other information required by the beneficial use permit.

(B) The permittee shall maintain all of the records required to be reported pursuant to paragraph (A) of this rule for a minimum of five years after distribution of the beneficial use byproduct ceases, and make them available upon request.

3745-599-340

Characterization and analysis plan for individual beneficial use permits.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, test methods, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-599-20 of the Administrative Code titled "Beneficial use - incorporation by reference."]

(A) Initial beneficial use byproduct characterization demonstration. The applicant shall submit an initial beneficial use byproduct characterization demonstration that shall include at a minimum the following:

- (1) The name, address, and telephone number of the applicant and contact person.
- (2) The applicant's determination in accordance with rule 3745-52-11 of the Administrative Code that the beneficial use byproduct is not a hazardous waste.
- (3) A physical and chemical description of each beneficial use byproduct as generated, including a description of the generating process, the product generated, and a list of the feedstock, input materials, and raw materials used to generate the beneficial use byproduct.
- (4) A listing of all constituents reasonably expected to be present in each beneficial use byproduct and rationale for including or excluding all reasonably expected constituents on the listing. Reasonably expected constituents are all constituents that have the potential to occur at concentrations exceeding regional screening levels as published by the United States environmental protection agency.
- (5) An analysis for all constituents listed for each beneficial use byproduct in accordance with paragraph (A)(4) of this rule. These listed constituents shall be the constituents of concern for the purposes of the initial beneficial use byproduct characterization demonstration and compliance sampling and analysis plan required in this rule.
- (6) Identification of the analytical methods selected and explanation of the appropriateness of the selected methods. If appropriate to the use of the beneficial use byproduct, the initial beneficial use byproduct characterization documentation shall consider the appropriate analytical methods to determine the leaching potential of constituents of concern to the environment.

[Comment: Applicants may refer to the following documents for guidance on how to choose a sampling strategy; determine the appropriate number of samples; evaluate whether a statistically significant set of samples has been acquired; and conclude that a statistically determined confidence interval (if practical) has represented the average properties of a beneficial use byproduct.

"RCRA Waste Sampling Draft Technical Guidance, Planning, Implementation, and Assessment. USEPA, Solid Waste and Emergency Response. August 2002. EPA 530-D-02-002."

"SW-846 Chapter Nine."

"Statistical Software ProUCL 4.0 for Environmental Applications for Data Sets with and without Nondetect Observations."

"Visual Sample Plan Version 5.0 User's Guide."

Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms Fifth Edition October 2002.]

(7) A description of the representative sampling strategy for the initial beneficial use byproduct characterization using approved sampling and analysis procedures in accordance with rule 3745-599-60 of the Administrative Code. The description of the sampling strategy shall include at a minimum the following:

(a) Whether the representative sampling strategy characterizes the beneficial use byproduct by volume or characterizes a beneficial use byproduct as generated through time.

(b) The location and the number of all grab samples, composite samples and incremental samples taken to define the average properties of the beneficial use byproduct. The number and location of samples shall be chosen so as not to miss areas of high chemical concentration.

(c) Whether a sufficient number of samples were collected by the applicant to ensure that the collected samples truly represent the average properties of the entire beneficial use byproduct. In the case of simple random sampling using grab samples, the applicant shall perform a statistical analysis of the data. If composite or incremental samples were used for the sampling method, and a statistical analysis is not practical, the applicant shall demonstrate to the satisfaction of the director that the sampling method is valid and defensible for the purpose for which the data was collected.

(8) A description of the sample handling techniques and shipping procedures selected to maintain the sample integrity, including sample preservation and chain of custody. The description shall also set forth the quality control procedures and sampling protocols used to obtain representative samples of the beneficial use byproduct.

(9) A discussion of the analytical results used to justify the use of the beneficial use

byproduct for the use specified in the individual beneficial use permit application that contains at a minimum the following:

- (a) All raw data and analytical results gathered in accordance with the initial beneficial use byproduct characterization demonstration.
- (b) A summary table of all the raw data and the data analysis included in a computerized database or electronic spreadsheet.
- (c) The analytical report containing enough detailed information so that the reported statistical analyses are reproducible.
- (d) A description of the statistical or empirical data evaluation methods to determine the representative average properties of the beneficial use byproduct.
- (e) A data validation report performed by a person not employed by the laboratory performing the initial beneficial use byproduct characterization demonstration.

(B) Compliance sampling and analysis plan. An applicant shall develop and submit a proposed compliance sampling and analysis plan with the individual beneficial use permit application. The proposed compliance sampling and analysis plan shall include all beneficial use byproducts that the applicant is seeking to use under the individual beneficial use permit application pursuant to this chapter.

- (1) The proposed compliance sampling and analysis plan shall demonstrate compliance with the permit and shall include all components of the initial beneficial use byproduct characterization.
- (2) If the proposed compliance sampling and analysis plan is different than the sampling and analysis performed for the initial beneficial use byproduct characterization demonstration, the applicant shall submit an explanation of all changes. The proposed compliance sampling and analysis plan shall include at a minimum the following:
 - (a) An explanation of any changes made to the list of constituents of concern.
 - (b) An explanation of any changes of the analytical method selected and appropriateness of the selected analytical method.
 - (c) An explanation of any changes to the sampling strategy to characterize the beneficial use byproduct by volume or as generated through time.
 - (d) An explanation of any changes to sample handling techniques and shipping procedures.

(e) An explanation of any changes to sampling strategy followed to obtain representative samples.

(f) An explanation of any changes of the sampling strategy including locations and number of samples.

(C) If deemed necessary to ensure the protection of public health, safety, or the environment or to prevent a public nuisance, the director may require sampling and monitoring for constituents in addition to those identified in the beneficial use byproduct characterization and analysis plan.

3745-599-345

Compliance sampling and analysis for individual beneficial use permits.

(A) Unless otherwise specified in the individual beneficial use permit and the referenced permit application, the permittee shall perform compliance sampling and analysis characterization for each beneficial use byproduct at a minimum annually.

(B) A compliance sampling and analysis characterization is not required annually if the permittee has not used or distributed the beneficial use byproduct in the past year. Prior to resuming use or distribution of the beneficial use byproduct, the permittee shall perform the compliance sampling and analysis characterization in accordance with this rule.

(C) If at any time the results of a beneficial use byproduct compliance sampling and analysis characterization indicate that any constituent concentration exceeds the constituent limits in the beneficial use permit authorizing the beneficial use byproduct, the permittee shall cease use and distribution of the beneficial use byproduct and provide written notice to Ohio EPA not later than three days after ceasing use of the beneficial use byproduct. Use of the beneficial use byproduct shall cease until the permittee does one of the following:

(1) Sixty days prior to commencing use and distribution of the beneficial byproduct, the permittee shall perform and submit the following to Ohio EPA:

(a) A characterization of the beneficial use byproduct as required in the individual beneficial use permit and referenced permit application. The characterization shall include sufficient samples as necessary for a statistical analysis.

(b) A statistical analysis which demonstrates compliance with the individual beneficial use permit in which samples meet a ninety-five per cent upper confidence limit and do not exceed the limits in the individual beneficial use permit.

(c) An explanation as to why the prior sampling compliance characterization indicated an exceedance.

(2) Submits an application for and obtains a new or modified authorization pursuant to this chapter.

3745-599-350

Changes to an individual beneficial use permit.

(A) The director may make an administrative change to an individual beneficial use permit. An administrative change to an individual beneficial use permit is an amendment that does not result in a modification. An individual beneficial use permit may be administratively changed to do the following:

(1) To update administrative information including the telephone number, address, or contact person of the permittee, generator, or distributor.

(2) To correct typographical errors contained in an individual beneficial use permit.

(B) Change in the raw materials or generating process of the beneficial use byproduct.

(1) The permittee shall notify the director prior to a change in the generating process or when the permittee anticipates a change in the feedstock, input materials, or raw materials used in the generating process and submit a demonstration that the beneficial use byproduct continues to meet the specifications of the individual permit.

(2) If at any time the results of a beneficial use byproduct re-characterization indicate a material change, the permittee shall cease use and distribution of the beneficial use byproduct until the permittee does one of the following:

(a) Sixty days prior to commencing use and distribution of the beneficial byproduct, the permittee shall perform and submit the following to Ohio EPA:

(i) A characterization of the beneficial use byproduct as required in the individual beneficial use permit and referenced permit application. The characterization shall include sufficient samples as necessary for a statistical analysis.

(ii) A statistical analysis which demonstrates compliance with the individual beneficial use permit in which samples meet a ninety-five per cent upper confidence limit and do not exceed the limits in the individual beneficial use permit.

(iii) An explanation as to why the prior sampling compliance characterization indicated an exceedance.

(b) Submits an application for and obtains an authorization pursuant to this chapter.

(C) Modification of an individual beneficial use permit. As used in this rule, "modification" means a change that is inconsistent with or not authorized by the individual beneficial use permit.

- (1) The director may modify an individual beneficial use permit in response to changes in applicable laws, rules, or other factors affecting compliance with the terms and conditions of the individual beneficial use permit.
- (2) The permittee may request a modification of an individual beneficial use permit. A request to modify shall at a minimum contain the following:
 - (a) A completed form prescribed by the director.
 - (b) A brief narrative explanation of the modification being requested.
 - (c) Identification of the specific permit requirements related to the requested modification.
 - (d) The rationale for the modification and an evaluation demonstrating that the modification:
 - (i) Maintains equivalent protection as specified in the individual beneficial use permit.
 - (ii) Does not affect any requirements in the individual beneficial use permit that are not part of the modification request.
 - (e) A non-refundable fee of three hundred fifty dollars.
- (3) The modification shall be effective on the date specified in the modified individual beneficial use permit issued by the director.

3745-599-360

Renewal of an individual beneficial use permit.

- (A) A permittee who seeks to continue use of a beneficial use byproduct after the expiration of an individual beneficial use permit may submit to the director an application for renewal of the permit not later than one hundred eighty days prior to the permit's expiration. An application for renewal shall include the application requirements specified in paragraphs (A) and (B) of rule 3745-599-310 of the Administrative Code including the non-refundable application fee of three hundred fifty dollars. In addition, the application shall include a copy of the laboratory results for each sampling compliance characterization that has occurred since the approval of the individual beneficial use permit.
- (B) If an applicant submits a complete application for renewal of an individual beneficial use permit not later than one hundred eighty days prior to the expiration of the existing permit and Ohio EPA has neither approved nor denied the application for renewal prior to the expiration of the existing permit, the existing permit shall be effective until the application for renewal is either approved or denied by the director.
- (C) If an applicant submits an application for renewal not later than one hundred eighty days prior to the expiration date of the existing permit and the application for renewal is denied by the director, the existing permit expires on the effective date of the denial of the application for renewal or the expiration date of the existing permit, whichever is later.
- (D) If an applicant fails to submit an application for renewal not later than one hundred eighty days prior to the expiration of the existing permit, the existing permit expires on the expiration date specified in the permit and the permittee shall not continue use of the beneficial use byproduct until coverage for the use under this chapter has been obtained.
- (E) An applicant seeking renewal of a beneficial use individual permit shall submit to the Ohio EPA a revised renewal application for an individual beneficial use permit not later than ninety days after the date of written notification that the application is incomplete. The director may deny an incomplete application or return the application to the applicant.
- (F) If the director concludes that additional information is necessary to determine whether an application for renewal satisfies this chapter, upon written request the applicant shall supply such additional information.
- (G) Renewal of an individual beneficial use permit is subject to the same requirements as a new individual beneficial use permit pursuant to this chapter.

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Denial and revocation of a beneficial use individual permit.

(A) Denial of an individual beneficial use permit. The director may deny an individual beneficial use permit application or a renewal application for the use of a beneficial use byproduct for any of the following reasons:

(1) The use of a beneficial use byproduct is proposed at one or more of the following locations:

(a) Within a drinking water source protection area for a public water system using ground water.

(b) Within five hundred feet of a well that provides potable drinking water for human or livestock consumption.

(c) Within an emergency management zone.

(d) Within a flood plain.

(2) The use of a beneficial use byproduct is proposed for use in the construction of facilities used to treat, store, or convey potable water for human or livestock consumption.

(3) The use of a beneficial use byproduct is proposed at any location where the director determines that the use may endanger public health, safety, or the environment, create a public nuisance, or cause or contribute to water pollution or air pollution.

(4) The application is incomplete, deficient, or otherwise not in compliance with this chapter.

(5) The permittee has not demonstrated compliance with the individual beneficial use permit for which a renewal application has been submitted.

(6) The permit for which a renewal application has been submitted has been revoked.

(B) Permit revocation. The director may revoke an individual beneficial use permit if any of the following occur:

(1) The director finds that there has been a violation of law, rule, permit, or other authorization within the director's jurisdiction.

(2) The director has determined that a public nuisance or an adverse impact to public health, safety, or the environment has been caused by the use of the beneficial use byproduct.

(3) The director has determined that information submitted as the basis for the

director's determination to approve the permit was incomplete, incorrect, or is no longer valid.

(4) An additional constituent of concern is identified that has not been evaluated under the individual beneficial use permit.

(5) At the request of the individual beneficial use permit holder.