Ohio Environmental Protection Agency

Division of Materials and Waste Management

Response to Comments

Rule: Composting Rules and associated multi-program chapters: 3745-500, 3745-501, 3745-503, and 3745-560.

Agency Contact for this Package

Division Contact: Michelle Braun, DMWM, 614-728-5372, michelle.braun@epa.ohio.gov

Ohio EPA filed proposed regulations regarding composting facilities on September 23, 2011 with the Joint Committee on Agency Rule Review (JCARR). This document summarizes the comments and questions received during the comment period associated with the JCARR jurisdiction, which ended on October 25, 2011. Prior to the JCARR hearing, these rules were put on hold, "to be refiled" status. These rules were then withdrawn and re-original filed with JCARR. A separate public comment and public hearing will be held, and an additional response to comments documents will be created if more comments are received.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

General/Overall Concerns

Comment 1: **Federal Subtitle D regulations should serve as a baseline for the minimum criteria required for Ohio EPA's proposed solid waste rules. At the present time, Ohio EPA's existing and proposed rules reach far beyond the federal standards and are much more detailed and voluminous in nature relative to the federal rules. Careful consideration needs to be given not only to the impact the proposed changes would have on public and private landfill owners/operators, but also to the impact on communities and industries that rely on these waste management facilities (Bill Petruzzi, Hull and Associates)**

Response 1: Careful consideration is given to the impact of proposed changes not only to the impact of proposed changes on facility owners and operators, but also upon the communities and industries that rely on these waste management facilities in addition to public health, safety, and the environment. Ohio's rule adoption process as established in Ohio statute and the Governor's executive order provide

important safeguards that these impacts are appropriately considered.

On the federal level, Subtitle D of the Resource Conservation and Recovery Act (RCRA) establishes a minimum national baseline upon which states are to establish their state specific programs. This is expressed in the Subtitle D rule preamble:

> *"The Federal role in this arrangement is to establish the overall regulatory direction, by providing minimum nationwide standards for protecting human health and the environment, and to provide technical assistance to States for planning and developing their own environmentally sound waste management practices. The actual planning and direct implementation of solid waste programs under subtitle D, however, remain largely State and local functions, and the act authorizes States to devise programs to deal with State-specific conditions and needs. EPA retains the authority to enforce the appropriate standards in a given State."*

Federal regulations under Subtitle D include:

- Criteria for Classification of Solid Waste Disposal Facilities (Title 40 Part 257). These establish federal minimum national performance standards regarding solid waste disposal facilities or practices excluding municipal solid waste landfills subject to Title 40 Part 258. Facilities and practices that fail to meet the criteria are prohibited and considered an "open dump". States are expected to establish their own state statute authority, enforcement authority, and programs following Subtitle D regulatory direction for minimum standards without any federal approval.

- National minimum standards for municipal solid waste landfills (Title 40 Part 258). These federal rules require States to have their own rules in place to receive primacy even though minimum federal rules exist. USEPA acknowledges that States will have their own MSW rules specific to the needs of the state. State rules that meet or exceed the minimum standards are granted primacy. This is expressed in the Subtitle D rule preamble:

  > *"EPA's approach to State program approval recognizes the traditional State role in*

> *implementing landfill standards and protecting groundwater. EPA fully intends that States will maintain the lead role in implementing this program."*

On the Ohio legislative level, numerous sections of the Ohio Revised Code require the Ohio EPA to adopt rules requiring permits, licenses, registrations and requirements not found in RCRA or Title 40 Parts 257 or 258 of the federal regulations. Ohio law requires Ohio EPA adopt rules regulating not only municipal solid waste landfills, but also industrial and residual solid waste landfills, solid waste incinerators, solid waste compost facilities, solid waste transfer facilities, construction and demolition debris disposal facilities, infectious waste generators, transporters, and treatment facilities, scrap tire collection, storage, recovery, and disposal facilities plus transporters and beneficial use of scrap tires.

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Comment 2: **It is very difficult for industry, regulatory agencies, and other stakeholders to understand and appreciate the breadth of rule changes when proposed on the basis of waste type (i.e., composting residual waste, industrial waste, municipal solid waste, etc.) rather than a comprehensive program that applies to all waste types inclusively. We do understand and appreciate that Ohio EPA is required to review their rules on a 5-year cycle, although the timing for the rule review of difficult waste types is staggered. This poses a challenge to implementing a rule rewrite/reorganization for a specific waste type such as compost, when including a multi-rule program where definitions and technical criteria may eventually apply to multiple waste types. Therefore, we believe that either the proposed changes should be made for all waste types within the existing rule structure at this time, or be delayed until such a time that the entire solid waste program can be rewritten/reorganized (Bill Petruzzi, Hull and Associates).**

Response 2: As a part of the Division of Materials and Waste Management's (DMWM) effort to improve regulatory clarity and reduce duplication, the division is undertaking a gradual reorganization of its rules. As an initial step in this reorganization, the division has drafted new Chapter 3745-560 which will be the program chapter applicable solely to composting facilities. The composting rule package also

includes "multi-program" chapters which are intended in the future to have applicability to facilities in addition to composting facilities.

The multi-program chapters consolidate, in a single location, similar or identical requirements that are currently duplicated in numerous program chapters under existing rules. Now, these requirements will be found in one multi-program chapter and referenced, where appropriate within each individual program (e.g., composting facilities, solid waste, transfer facilities, and infectious waste facilities) chapter. The multi-program chapters that are included in the composting rule package include:

- OAC Chapter 3745-500 General Administration Rules
- OAC Chapter 3745-501 Licensing Rules
- OAC Chapter 3745-503 Financial Assurance Rules

In December 2010, DMWM released drafts of these multi-program chapters for interested party review. Comments expressed difficulty with reviewing all of the solid waste program chapters and all of multi-program chapters at one time. Comments clearly favored the approach taken with the filing of the proposed composting rule package. That approach is to propose the composting chapter only with the necessary multi-program chapters. The associated multi-program chapters would be focused on those definitions and rules necessary to support the compost chapter.

After the composting rule package becomes effective, other program chapters would be proposed along with necessary proposed revisions to the effective multi-program rules necessary to support that program chapter. This allows the public and regulated community to limit their focus on the proposed program chapter of their interest and then comment on how that program chapter may reference to rules in an associated multi-program chapter.

Comment 3: **We are unaware of any specific cases where significant impacts to human health, safety and the environment have occurred as a result of the current permitting and design criteria for operating solid waste facilities that would necessitate the need for a complete rewrite/reorganization of the rules at this time. Also, from a cost-benefit perspective, it does not appear that**

added costs to comply with changes in the technical and organizational components of the proposed rules are justified. Notwithstanding, we understand that Ohio EPA, the regulated community and other stakeholders do share a common goal to protect the environment, and therefore, an open discussion of cost-benefit prior to moving forward with the proposed rules changes and subsequent transition would be beneficial. (Bill Petruzzi, Hull and Associates)

Response 3: The Division of Materials and Waste Management (DMWM) does see long term cost benefits with the gradual reorganization of its rules. Benefits include:

- Program chapters (such as the proposed composting chapter OAC 3745-560) will be where any facility owner, consultant, or citizen will go to see what regulations apply to their activities. The only need to look at any rule in a multi-program chapter is when the program chapter specifically references to multi-program rules.

- The internal organization of an individual program chapter will be logically structured to facilitate finding rules. The composting rules are organized by compost facility class (class I facility rules are numbered in the -100s, class II in the -200s, class III in the -300s, and class IV in the -400s. Within each grouping, there is a common order. For example; the rule "Rules for Commencement of Operations" for class I facilities is -102, that rule specific to class II facilities is found in -202, class III is found in -302, etc.

- In certain areas, such as licensing procedures, administrative procedures, and financial assurance instruments, the requirements are common among two or more programs. This is the basis of the future multi-program rules contained in the proposed composting rule package. The current Chapter 3745-37 is a multi-program chapter for licensing and also contains requirements for approved health departments. The proposed Chapter 3745-501 updates the licensing requirements in Chapter 3745-37 creating a new licensing chapter for composting facilities. Chapter 3745-501 is intended to become a future licensing multi-program chapter as future program chapters are created. The proposed Chapter 3745-503 updates the current Chapter 3745-27 multi-program financial assurance rules

creating a new chapter 3745-503 applicable to composting facilities. The proposed chapter 3745-503 is intended to be a future financial assurance multi-program chapter as future program chapters are created.

- Rules themselves will be generally shorter, the titles more descriptive of what the rule addresses, and fewer unrelated requirements buried in one lengthy rule.

The reorganization will improve regulatory clarity and reduce the amount of time finding where a specific activity is now regulated in the 69 lengthy rules in OAC Chapter 3745-27. Chapter 3745-27 deals with municipal solid waste landfills, solid waste incinerators, solid waste compost facilities, solid waste transfer facilities, infectious waste generators, transporters, and treatment facilities, scrap tire collection, storage, recovery, and disposal facilities plus transporters and beneficial use of scrap tires as well as various administrative rules. Chapter 3745-27 also includes rules on plastic bottle labeling, standards for solid waste management districts, and financial assurance.

Under this new organization, rules specific to a program will be located in an easily identified separate program chapter that contains all that program's rules including direct references to multi-program chapters addressing common program areas such as general administrative procedures, licensing, and financial assurance. Under this new organization, once people learn the structure, it will be easier for owners, operators, the licensing authorities, consultants, attorneys, financial assurance providers, and the public to locate regulatory requirements for the numerous types of facilities and activities. The benefits include finding what you need more easily and improving compliance through clearer and more organized rules. In the long run, this equates to saving time and money.

Comment 4: **We suggest that the rewrite of specific compost and/or other rules be based on unified standards, equivalencies, performance-based standards, and a risk-based approach. It would be more appropriate to have one unified standard for different waste types, used across the board in the state, rather than having different standards for different waste programs for specific waste types. The solid waste industry has long been viewed and regulated as a potential pollution source that poses risks to human health, safety and the**

environment at a higher level than most other industries or municipal services. As technology and operational protocol have advanced over time and modern waste management strategies work to minimize risk and provide benefits to the community, waste and material management facilities need to be viewed and regulated within the same perspective that is applied to other industries. (Bill Petruzzi, Hull and Associates)

Response 4: The Division of Materials and Waste Management (DMWM) does strive to take a holistic approach toward establishing standards and requirements for solid waste facilities. The Agency's obligation is to establish standards in terms of the relevant statutes. While statutes require rules to ensure broad protections (examples below), many individual statutes specifically require the rules to include various specific areas (an example is the compost quality standards) and types of authorizations.

- ORC 3734.02(a): "…*shall adopt …rules having uniform application throughout the state governing solid waste facilities and the inspections of and issuance of permits and licenses for all solid waste facilities in order to ensure that the facilities will be located, maintained, and operated, and will undergo closure and post-closure care, in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, create a health hazard, or violate 40 C.F.R. 257.3-2 or 40 C.F.R. 257.3-8, as amended."*
- ORC 3734.021*: "…shall adopt… rules necessary or appropriate to protect human health or safety or the environment".*
- ORC 3734.028*: "…shall adopt…. rules establishing standards of quality for compost products produced by composting facilities …to ensure that the use of those products in accordance with accepted agricultural or horticultural practices does not pose a threat to public health or safety or the environment."*
- ORC 3734.041(F)*: "…shall adopt rules …..prescribing standards for conducting the explosive gas monitoring ….including, without limitation, standards governing the numbers, locations, and design and construction of monitoring wells; quality control procedures to be followed by persons conducting those evaluations to ensure the accuracy of the monitoring; the frequency for sampling the monitoring wells, which shall be at least quarterly, except as otherwise provided in this division;*

and the frequency of reporting monitoring results to the director and board of health. The rules shall require that, in the instance of closed sanitary landfills, explosive gas monitoring be conducted for the period of twenty years after closure or for such other period as the director considers necessary or appropriate."

- ORC 3734.70; ORC 3734.71; ORC 3734.72; and ORC 3734.73; "*shall adopt …rules having uniform application throughout the state governing scrap tire.."* collection, storage, monocell and monofill facilities, and recovery facilities *"… and the inspection of and issuance of registration certificates and licenses for those facilities in order to ensure that the facilities are located, maintained, operated, and closed in a manner that does not create a nuisance, hazard to public health or safety, or fire hazard."*

The challenge of unified standards is both recognizing when a unified approach is possible and when it is not scientifically justified or statutorily allowable. The nature of the waste varies from heterogeneous mixtures (municipal waste) to homogeneous wastes (captive industrial landfills). There are a variety of activities and circumstances of managing solid waste. Activities and their potential impacts to public health, safety, and the environment vary significantly from landfilling to transfer, composting, and incineration.

In development of the composting quality standards, the Agency has sought a holistic approach looking at various standards used by the composting industry, other states and countries, federal composted sewage sludge, and other soil standards. While there is no one unified set of standards, the Agency is proposing unified compost quality standards for the state of Ohio that are appropriate for accepted agricultural or horticultural practices.

Comment 5: **Ohio EPA's piecemeal approach in developing the Multi-program rules has effectively denied the Utilities the opportunity to submit meaningful comments. (Michael Born, Ohio Utility Group)**

Response 5: It is simply not true that the adoption of the proposed three multi-program OAC Chapters 3745-500 (General Administrative), 3745-501 (Licensing), and 3745-503 (Financial Assurance) would effectively deny anyone the

future opportunity to submit meaningful comments. The proposed adoption of program Chapter 3745-560 (Composting) would make these three multi-program chapters applicable only to composting facilities.

The result of adoption of the proposed composting program Chapter 3745-560 and three multi-program Chapters 3745-500 (General Administrative), 3745-501 (Licensing), and 3745-503 (Financial Assurance) would be:

- Only regulated compost facilities would be affected by these three multi-program chapters.
- All other types of regulated facilities continue to be regulated by other existing rules.
- Specific to landfills owned and operated by utilities, those landfills continue to be regulated under the existing residual waste program Chapter 3745-30, the existing multi-program Chapter 3745-37 (Licensing), the existing financial assurance multi-program rules 3745-27-15 and 3745-27-16, and the existing administrative multi-program rules 3745-27-01, 3745-27-02, 3745-27-04, and 3745-27-05.

It should be noted that Ohio EPA's expression of future intent to review and update the residual waste program Chapter 3745-30 including reference to the new multi-program rules are simply intent. Today's intent will be effected by future decisions on US EPA's proposed coal combustion residual regulations, possible federal legislation, and public comment on future proposed revisions to Chapter 3745-30. Any future revisions to the multi-program Chapter 3745-30 (Residual waste landfills) and that chapter's reference to other applicable multi-program chapters or rules is fully subject to Ohio's rule adoption requirements, the Governor's executive order, and procedures and appeal rights.

Nothing in the proposed composting rule package or Ohio EPA's expression of intent regarding future changes in Chapter 3745-30 preclude, alter, or pre-empt future opportunity to comment or exercise appeal rights.

Comment 6: **Developing the multi-program rules has prevented the Agency from continuing to recognize the critical distinctions among waste streams. The multi-program rules eliminate program-specific flexibility.**

Ohio EPA should maintain the current regulatory structure – separate programs for distinct waste streams. (Michael Born, Ohio Utility Group)

Response 6: The Agency does recognize critical distinctions among waste streams and the different methods of disposal. Ohio EPA is not only maintaining the current residual waste program chapter but expanding this program specific chapter approach to other programs. This is one of the key benefits of the re-organization.

Both program chapters and multi-programs exist in current rule. The residual waste landfill Chapter 3745-30 is a prime example of the program specific chapter approach. This existing program chapter effectively references to existing multi-program chapters and rules. Existing Chapter 3745-37 is a prime example of the multi-program chapter which addresses common elements of licensing while the individual program chapter is specifically tailored to the waste type and disposal facility.

The Agency has publically expressed the goal of carrying this existing approach to other programs currently found in Chapter 3745-27. There are 69 lengthy rules in Chapter 3745-27 dealing with municipal solid waste landfills, solid waste incinerators, solid waste compost facilities, solid waste transfer facilities, infectious waste generators, transporters, and treatment facilities, scrap tire collection, storage, recovery, and disposal facilities plus transporters and beneficial use of scrap tires as well as various administrative rules. Chapter 3745-27 also includes rules on plastic bottle labeling, standards for solid waste management districts, and financial assurance. Separating these significant and diverse program requirements into their own program specific chapters is the purpose of the re-organization. The first to be proposed for adoption is the composting program Chapter 3745-560 with the associated multi-program chapters.

Comment 7: **Ohio EPA should abandon the piecemeal development of the multi-program rules. Equally problematic is Ohio EPA's backwards piecemeal approach. Ohio EPA has explained the multi-program rules only apply to solid waste programs for which new program rules have been developed that reference the multi-program rules. Yet the Agency has express its intent to issue new rules for other solid waste programs, including the residual solid**

waste program, at which point the multi-program rules become applicable. With that, Ohio EPA has recognized that the substance of the multi-program rules will need to be re-opened to address program-specific issues. Ohio EPA's backward approach is a waste of Agency resources. (Michael Born, Ohio Utility Group)

Response 7: As a part of the Division of Materials and Waste Management's (DMWM) effort to improve regulatory clarity and reduce duplication, the division is undertaking a gradual reorganization of its rules. As an initial step in this reorganization, the division has drafted new Chapter 3745-560, which will be the program chapter of rules applicable solely to composting facilities. The composting rule package also includes "multi-program" chapters which will have applicability to facilities in addition to composting facilities.

The multi-program chapters consolidate, in a single location, similar or identical requirements that are currently duplicated in numerous program chapters under existing rules. Now, these requirements will be found in one multi-program chapter and referenced, where appropriate within each individual program (e.g., composting facilities, solid waste, transfer facilities, and infectious waste facilities) chapter. The multi-program chapters that are included in the composting rule package include:

- OAC Chapter 3745-500 General Administration Rules
- OAC Chapter 3745-501 Licensing Rules
- OAC Chapter 3745-503 Financial Assurance Rules

In December 2010, DMWM released drafts of these multi-program chapters for interested party review. Interested party comments expressed difficulty with reviewing all of the solid waste program chapters and all of multi-program chapters at one time. Comments clearly favored the approach taken with the filing of the proposed composting rule package. That approach is to propose the composting chapter only with the necessary multi-program chapters. The associated multi-program chapters would be focused on those definitions and rules necessary to support the compost chapter.

After the composting rule package becomes effective, other program chapters would sequentially be proposed with necessary proposed revisions to the effective multi-program

rule to support that newly added program chapter. While it will take a longer initial effort to complete the total reorganization in such stepwise fashion, spreading the Agency's effort over a longer period of time has advantages. Clearly, this approach does allow the Agency, public, and regulated community to limit their focus on the proposed program chapter of their interest and then specifically comment on how that program chapter may reference to rules in an associated multi-program chapter.

<u>3745-500: Multi-program administration</u>

Comment 8: **OAC 3745-500-01 (N) Nuisance Definition**

In the response to comments, OAC 3745-15-07 is referenced as it pertains to air pollution. The proposed definition in Chapter 3745-500 includes other items which we do not support including, such as "interferes with the comfortable enjoyment of life, or property and affects a community, neighborhood, or any considerable number of persons" …. The standard defined for air pollution can be understood. The proposed language in this chapter is too broad a standard. Please delete this definition. (Kathy Trent, WM)

Response 8: This definition of nuisance has been in the solid waste rules since 1976. During the intervening 35 years, the Agency has applied this definition when citizens have alleged or filed verified complaints alleging nuisances due to the operation of solid waste facilities. This definition has been tested and accepted during those 35 years. The comment does not offer any specific rationale to justify deletion. No change was made in response to this comment.

Comment 9: **3745-500-150 Alteration to a solid waste permit to install.**

However, we remain troubled by any procedure either in this case or as was proposed in other Multi-program rules which allows the Ohio EPA to dismiss a request to change a permit or other authorizing document without comment or reason any formal request to change a permit or other authorizing document. Further, we remain troubled by any procedure either in this case or as was proposed in other Multi-program rules that allows the Ohio EPA to dismiss a request to change a

permit or other authorizing document when the applicant has no right to appeal that decision.

As noted ……..the Ohio EPA appears to suggest that if the Ohio EPA "declined to act" upon an alteration request and the permit holder wanted to appeal that action the permit holder could then file request as a modification or as part of full permit application, presumably be issued a denial and then appeal that action of the Director. Proposed OAC 3745-560-02 specifically defines what constitutes a modification and what constitutes an alteration. While these definitions are specific to composting facilities it is assumed that as the Ohio EPA adopts Multi-program rules for other types of facilities these rules will contain similar definitions of what constitutes alterations and modifications. For example, modifications are defined in part as, "any substantial change…" Alterations are defined in part as a change that "…is at least equivalent to the rule requirements…" Thus they are two different types of changes to a permit. As such it would appear possible for an applicant to resubmit a previously submitted alteration request as a modification so as to obtain an appealable decision only to have the Ohio EPA once again classify it as an alteration and decline to act.

As noted by the Ohio EPA in their response to comments, historically the Agency has approved alteration requests. Therefore, it would not appear to be unreasonable or overly burdensome on the Ohio EPA that in the rare instance where it is unable or unwilling to approve an alteration request that it be done as a formal action of the Director.

In conclusion, we believe that any rule that affords the Ohio EPA the opportunity to simply decline to act on a request is inconsistent with other Ohio EPA programs, unreasonable, and inappropriate. (Matt Neely, Republic Services, Inc.)

Response 9: The comment's concern that submitting a permit application for what might be defined as an alteration could be dismissed by Ohio EPA without any explanation or right to appeal. The comment fails to recognize that the formal submittal of a permit application is afforded all the established legal protections and permit review procedures

regardless of what type of changes are proposed. As a formal permit application (even an application proposing only an alteration), the permit application process and legal requirements would ensure notice of deficiencies, issuance of a proposed denial stating the basis for the denial, opportunity for an adjudication hearing and filing of objections to the hearing report, issuance of a final denial stating the basis for the denial with opportunity to appeal of the issuance of the Director's final action to the Environmental Review Appeals Commission (ERAC). The decision of ERAC is also subject to further legal appeals.

Specific to this proposed set of composting rules, it would be the choice of the Class I compost facility permittee whether to use the formal permit application process or seek Ohio EPA concurrence for an alteration defined in 3745-560-02 following the process outlined in 3745-500-150.

The agency has historically used an alteration concurrence as an optional simpler regulatory process available to the permittee to exercise reasonable flexibility to implement a deviation from the permit that is at least equivalent to rule. Our experience is that this mechanism has been successful. The key is that the requested change not be a modification and be at least equivalent to the rule. As explained above, the permittee always has the option of submitting a permit application seeking approval of changes. In this rulemaking, Ohio EPA's intent is to establish this simple procedure in rule for class I compost facilities consistent with this historical practice. No change was made in response to this comment.

The comment suggests that the Agency create a type of appeal process should an alteration be declined. Such an approach would be largely duplicating the existing permit process and established legal protections and permit review procedures. Rather than duplicating existing processes for what is intended to accommodate simple flexibility, the Agency would simply revert to the requirement that all changes be submitted as formal permit applications. Given the permittee's option to submit a formal permit application, the Agency does not think it is necessary. No changes have been made in consideration of this comment.

While Ohio EPA has publically expressed the intent to retain the historical practice of concurrences with alterations in all solid waste permit programs, the Agency expects future

program rule chapters will have their own definitions of alteration and modification tailored to the type of facility.
Please note that this response is specific to 3745-500-150, and that the comment's broader concern about the use of "decline" or "decline to act" language in Chapters 3745-506, 3745-512, and 3745-520 will be addressed in the response to comments for those individual chapters.

3745-560: Composting

Comment 10: **There is concern regarding the proposed rules stating that registration certificates for class II, III, and IV compost facilities are not transferable upon change of ownership. In the case of a change in ownership, the facility may not be undergoing any physical change, any interruption of operations, or any permanent cessation of operation and facility closure. The question is whether the termination of the facility's existing registration and the new owner's submittal of a new registration for the continuation of the facility operation are necessary? The concern is that the requirement for a new registration due to a change facility ownership may unintentionally complicate any established local zoning requirements. (Summarized phone call with Ric Moore, RHM Consulting, Co.)**

Response 10: In consideration of this comment, Ohio EPA has removed the proposed rule language in rules 3745-560-200(H), 3745-560-300(G), and 3745-560-400(G) that had stated that registration certificates for class II, III, and IV compost facilities are not transferable upon change of ownership. Ohio EPA has revised the rules to allow a change of ownership through the registration amendment process with revised language in the following rules:

- Revision to 3745-560-200(A), (C), and (G) for Class II compost facilities.
- Revision to 3745-560-300(A), (B), and (F) for Class III compost facilities.
- Revision to 3745-560-400(A), (B), and (F) for Class IV compost facilities.

Since the change of ownership is now proposed as an amendment of the registration, there is no need to address a

change of ownership in the facility closure rules. Rules 3745-560-235(D), 3745-560-335(D), and 3745-560-435(D) have been revised to remove reference to a proposed change of ownership for class II, III, and IV compost facilities.

3745-560-02 Composting - definitions

Comment 11: **(C)(6) Please clarify if yard waste mixed with other materials placed in a "Bag" is "commingled yard waste"? It is assumed that yard waste in a bag can be accepted at a compost facility. (Kathy Trent, WM)**

Response 11: Ohio EPA's intention is that yard waste not containerized and mixed with solid waste is considered commingled. Yard waste placed in bags or containers then placed in with solid waste is not considered commingled as long as the bags or containers have not been ruptured or opened. Bags or containers of yard waste could be potentially diverted for composting.

Comment 12: **(C)(12) Please add the word "contaminated" in front of "machine" since there are a number of machines. Being in contact with a machine is not by itself "cross-contamination". The biggest potential source of contamination is the loader, which could be processing new material as well as loading finished material. (Kathy Trent, WM)**

Response 12: The proposed definition of cross-contamination states that there be "…the intentional or unintentional contact of feedstocks subject to a more stringent quality standard with a feedstock subject to a less stringent quality standard." The definition then identifies examples "…and includes but is not limited to contact with the surface of a machine,…". Contact with the clean surface of a machine would not create any intentional or unintentional contact of any feedstocks and therefore not present a potential for cross-contamination. No change has been made in response to this comment.

3745-560-05 Composting - closure cost estimate

Comment 13: **Please define the reasoning behind the dollar estimates per cubic yard for closure cost-estimates. (Kathy Trent, WM)**

Response 13: The rationale for the $2.50 minimum dollar per cubic foot estimate for specified types of wastes is consistent with the existing rules:

- Closure rule 3745-27-47 requires removal of all compost products and solid wastes.
- Operational rule 3745-45 requires financial assurance for final closure in accordance with rule 3745-27-15.
- Financial assurance rule 3745-27-15 specifies that Class I compost facility provide for the actual cost of disposal of solid wastes at a solid waste landfill. Class II compost facilities shall use the actual cost of disposal of solid wastes and for specified types of wastes and compost product use a minimum closure cost estimate of $2.50.

What is new in the proposed rule is the minimum closure cost estimate of $8.00 for approved alternative materials. Given that there are more class II facilities where these materials could be taken at a lower cost than a landfill, $2.50 continues to be appropriate for specified types of wastes and the proposed $8.00 minimum for approved alternative materials.

<u>3745-560-210 Operational requirements for class II composting facilities.</u>

Comment 14: **Compostable containers do not have to always be shredded prior to incorporation into a composting system, if the system has a method for shredding or breaking up these containers. For example, a windrow turner is capable of breaking up compostable bags. (Kathy Trent, WM)**

Response 14: The compostable container requirement is in existing regulation and a consistent industry practice. Ohio EPA has not received any additional comments on the requirement and has retained the requirement.

<u>3745-560-225 Compost sampling and testing requirements for class II composting facilities.</u>

Comment 15: **(A)(2) Please revise this section to acknowledge "... one composite sample representative for up to 10,000 cubic yards" of similar feedstock materials. This should be representative. Most piles are less than 10,000 cubic yards. The current wording implies each pile has to be sampled. (Kathy Trent, WM)**

Response 15: The wording of the proposed rule is correct and consistent with existing regulations. One compost sample consisting of nine grab samples taken is considered representative of each pile as long as that pile contains no more than 10000 cubic yards. Larger piles would necessitate a larger number of grab samples. No change has been made in response to this comment.

<u>3745-560-230 Compost quality standards for class II composting facilities</u>

Comment 16: **Usually testing is for either fecal coliform or Salmonella but not both items. Please allow the use of either test to meet this requirement. This is based upon 40 CFR 503 Pathogens on which this testing requirement is the basis. (Kathy Trent, WM)**

Response 16: Given that compost product may be distributed and usage is without restrictions, the current rule requirement for both pathogen tests will be retained. The sewage sludge regulations in OAC Chapter 3745-40 specify minimum temperatures and minimum numbers of consecutive days that temperatures must be maintained when using composting as a treatment method. In addition the rules require annual monitoring of both indicators, plus enteric viruses and helminth ova if they do not meet the time temperature requirement. Given the differences in the scope of the two regulatory programs and the unrestricted distribution of compost product to homeowners, the requirement of both fecal coliform and Salmonella tests are appropriate to ensure that compost product is safe from pathogens.

End of Response to Comments