



Environmental
Protection Agency

Division of Materials and Waste Management

Response to Comments

Rules Pertaining to Chapter 3745-500 Multi-Program Regulations

Agency Contact for this Package

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Ohio EPA held a public comment period from December 3, 2010 to April 1, 2011 regarding composting rules, including the multi-program regulations in Chapter 3745-500. This document summarizes the comments and questions received during the comment period pertaining to Chapter 3745-500 and the composting program.

The composting rule package to be filed with the Joint Committee on Agency Rule Review (JCARR) will include only those multi-program rules necessary to administer the composting program.

Please note that after the comment period for the composting package had concluded, an omission was discovered that will be added to proposed OAC Rule 3745-500-01. The added language pertains to the statutory prohibition of open dumping and open burning and is consistent with the language of current rule OAC 3745-27-05(B) and 3745-27-05(C). The proposed rule will include the following language in OAC 3745-500-01(B) and (C):

(B) Notwithstanding paragraph (A) of this rule, no person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person responsible for the open dumping, the owner of the property, or the person who allows or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734. of the Revised Code, and shall submit verification that the solid waste has been properly managed.

[Comment: Prompt removal and disposal of solid waste does not relieve any obligations under state or federal environmental statutes. This may include environmental clean-up of the site or remediation of ground water contamination resulting from the open dumping.]

(C) Notwithstanding paragraph (A) of this rule, disposal of solid waste under Chapter 3734. of the Revised Code by means of open burning, as defined in Chapter 3745-19 of the Administrative Code, is permitted only as provided therein.

The following definitions in 3745-500-02 which received comments will be removed from the composting rule package. The comments received will be addressed in a separate response to comments document at a later date.

- Aquifer
- Aquifer system
- Biomass fuels
- Clean hard fill
- Compressible layer
- Consolidated stratigraphic unit
- Construction and demolition debris-derived constituents
- Critical layer
- Enclosed combustor
- Fire
- Gas collection and conveyance system
- Gas collection device
- Gas control device
- Gas control system
- Gas conveyance system
- Gas management system
- Gas mover
- Gas mover system
- Gas vent
- Gas well
- Geologic unit of formation
- Internal slope
- Lateral expansion
- Municipal solid waste
- Recycling
- Regional aquifer
- Reuse
- Sanitary landfill facility
- Shape file
- Significant zone of saturation
- Solid waste energy recovery facility
- Solid waste transfer facility
- Unstable area
- Waste-derived constituent

The following definitions in 3745-500-02 which did not receive comments will be removed from the composting rule package:

- Airport
- Angle of draw
- Bedrock
- Boring
- Concurring authority
- Construction and demolition debris facility
- Final slope
- Fine-grained soil
- Incinerator
- Interim slope
- Open flare
- Phase
- Phase limits
- Phreatic surface
- Piezometric surface
- Potentiometric map
- Potentiometric surface
- Professional surveyor
- Public well field
- Publically available information
- Qualified ground water scientist
- Run-out
- Spatial reference data
- Tie-in
- Tire-derived fuel
- Unconsolidated stratigraphic unit
- Unit
- Vertical expansion

3745-500-03 "Incorporation by reference" will contain only the following references:

For Chapter 503 Financial Assurance:

- Investment Company Act of 1940, 15 U.S.C. 80A-1 et seq
- U.S. Bureau of Economic Analysis document, available at <http://www.bea.gov> or by writing to U.S. Bureau of Economic Analysis, 1441 L Street NW, Washington, DC 20230: "Survey of Current Business", February 2009
- U.S.C. Title 11, Bankruptcy
- U.S. Bureau of Economic Analysis document, available at <http://www.bea.gov> or by writing to U.S. Bureau of Economic Analysis, 1441 L Street NW, Washington, DC 20230: "Survey of Current Business", February 2011
- U.S. department of treasury document, available at <http://www.fms.treas.gov>: "Circular

570" published in the July 1, 2011 C.F.R

For Chapter 560 Composting:

- 40 C.F.R. Part 61, "National Emission Standards for Hazardous Air Pollutants (NESHAP)
- "Methods for Chemical Analysis of Water and Wastes, EPA 600/4-79-020", published in 1983
- "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)," as amended through January 3, 2008, including the following:
 - Method 3050B, "Acid Digestion of Sediments, Sludges, and Soils."
 - Method 3051A, "Microwave Assisted Acid Digestion of Sediments, Sludges, Soils, and Oils."
 - Method 6010C, "Inductively Coupled Plasma - Atomic Emission Spectrometry."
 - Method 6020A, "Inductively Coupled Plasma - Mass Spectrometry."
 - Method 7000B, "Flame Atomic Absorption Spectrophotometry."
 - Method 7010, "Graphite Furnace Atomic Absorption Spectrophotometry."
 - Method 7471B, "Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique)."
 - Method 9045D, "Soil and Waste pH."
 - Method 9060, "Total Organic Carbon."
- "American Society for Testing and Materials." Each of the following ASTM standards are regulated by the date specified, another standard may be used if it is at least equivalent to those cited in this rule and is acceptable to Ohio EPA. ASTM standards include the following:
 - ASTM D2976-71, "Standard Test Method for pH of Peat Materials;" approved in 1971; reapproved in 1998 and 2004.
 - ASTM D6270-08, "Standard Practice for Use of Scrap Tires in Civil Engineering Applications;" approved in 1998; reapproved in 2004; amended in 2008.
 - ASTM D6868-11, "Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities;" approved in 2003; superseded in 2011.
- American public health association book: "Standard Methods for the Examination of Water and Wastewater" (Andrew D. Eaton, Lenore S. Clesceri, Eugene W. Rice, Arnold E. Greenberg eds., 21st ed. 2005). Available for purchase at <http://www.standardmethods.org/>. Standard methods include the following:
 - 9221 "Multi-Tube Fermentation Technique for Members of the Coliform Group."
 - 9222 "Membrane Filter Technique for Members of the Coliform Group."
 - 9260 "Detection of Pathogenic Bacteria."
- Association of Official Analytical Chemists book: "Official Methods of Analysis," (Dr. William Horwitz and Dr. George Latimer, Jr. eds., 18th ed. Rev. 2 2007). Available for purchase at <http://www.aoac.org>.
- North central region (NCR) document: "Recommended Chemical Soil Test Procedures for the North Central Region," (J. R. Brown ed., Pub. No. 221, 1998). The full text is available in electronic format at <http://extension.missouri.edu/publications/>. Copies may be purchased by writing to: "MU Extension Publications, 2800 Maguire Blvd., Columbia, MO 65211" or at <http://extension.missouri.edu/explore/shop/>.
- US Composting Council document: "Test Methods for Evaluation of Compost and Composting" (TMECC, August 12, 2011). Available for purchase at <http://compostingcouncil.org/publications/>.

3745-500-10 “Exclusions”, 3745-500-30 “Relationships among program chapters, multi-program chapters, and other rules”, and 3745-500-510 “Alternative material requests” will not be included in the composting rule package. 3745-500-310 “Criteria for issuing a permit to install” was incorporated into 3745-500-120 “Procedures for issuing, denying, modifying, transferring, and revoking licenses and permits to install.

3745-500-35 was revised by Ohio EPA to clarify the intent of the rule which only regards authorizing actions or orders issued prior to the effective date of the rule.

Ohio EPA reviewed and considered all comments pertaining to the composting program 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 and safety. Comments received that were related to Ohio EPA regulated programs other than composting were not answered in this document, but retained for future consideration when applicable rules are developed.

In an effort to help you review this document, the comments are grouped by rule number and organized in a consistent format. The name of the commenter follows the comment in parentheses.

3745-500-01 General administration - applicability.

No comments were received.

3745-500-02 General administration - definitions.

Comments received on definitions not used in the composting program or other multi-program chapters included in the rule package, are not included in this response. Those comments have been placed with the appropriate program for response, e.g. the C&DD program, transfer facility program, residual waste program, etc.

Comment: “Access road” should state solid waste facility rather than sanitary landfill facility. Roadways pertain to industrial waste, residual waste, compost and incinerator facilities as well as sanitary landfills. (Bruce Schmucker, Cornerstone, Mary Helen Smith, Mahoning County District Board of Health)

Response: The proposed definition, as written, applies only to landfills and not to transfer facilities, composting facilities, or incinerators. This is the intent. Should in future a program desire to use the multi-program definition, the definition can be amended.

Because the composting rule package to be filed with the Joint Committee on Agency Rule Review (JCARR) will include only those multi-program rules necessary to administer the composting program, the definition of access road will not be included and will be added in the next appropriate landfill rule package.

Comments: **“Applicant” - Why address generate and transport? Does this mean that every person who is generating or transporting CDD or solid waste needs to be applicant? For what are they applying? The statute does not grant authority to regulate generation or transportation (besides scrap tires). Please revise. (Kathy Trent, WM; R. Jay Roberts, Rumpke; Mary Helen Smith, Mahoning County District Board of Health)**

Response: This multi-program rule definition will apply to the solid waste, infectious waste, and new C&DD facility programs. This includes infectious waste generators (applicants for an infectious waste generator registration) and infectious waste transporters (applicants for an infectious waste transporter registration) and scrap tire transporters (applicants for a scrap tire transporter registration). To avoid confusion, the proposed rule has been revised to simply refer to “who has applied for authorization in accordance with rules adopted under Chapter 3714., 3734., or 6111. of the Revised Code.”

Comment: **“Assets:” What is meant by the phrase “probable future economic benefits? Why is this term added and how is it applied in the rules? (Kathy Trent, WM)**

Response: Probable future economic benefits is the relative likelihood of receiving some expected material value. For example, accounts receivable are amounts owed to an entity for services or items sold. The payment isn’t received yet, but it is expected that payment will be made within the terms of the agreement.

The term “assets” is included in the multi-program definitions because it is used by the financial assurance chapter 3745-503 in the financial test mechanisms, in the licensing chapter 3745-501, as well as potentially in program chapters addressing financial assurance cost estimates. This definition is consistent with existing rule requirements and USEPA RCRA requirements.

No change was made to the rule.

Comment: **“Assets” should read “means all existing and all probable future economic benefits obtained or controlled by a particular person and/or entity.” (Mary Helen Smith, Mahoning County District Board of Health)**

Response: The addition of “entity” is not necessary because the definition of “person” includes entities.

No change was made to the rule.

Comment: **“Composting facility” should be expanded to mimic the facility definitions of C&DD (C)(10) and solid waste facility (S)(8). (Mary Helen Smith, Mahoning County District Board of Health)**

Response: The definition was revised in response to the comment.

Comment: **“Composting facility” means a designated facility... Why is it “designated”? This should be deleted. (Kathy Trent, WM)**

Response: The word “designated” was deleted from the definition.

Comment: **“Construct” - DOES NOT include "routine maintenance" (such as gravel in a driveway) and only considered "construction "when activity affects any engineered component" is a loop-hole that I agree needs to be CLOSED! (Sandra Petty)**

Response: The intent is to not require an owner or operator to be subject to construction certification report requirements due to routine maintenance. New construction and repairs due to damage or failure are required to be certified.

No change made to the rule.

Comment: **“C&DD” continues to include wording for non-toxic. There is no current definition of legitimate policy defining nontoxic. The current policy has been rescinded al illegal rule making. Also, this definition should mimic the definition for clean hard fill excluding the refractory brick. (Mary Helen Smith, Mahoning County District Board of Health)**

Response: This definition has been revised to reference the statutory definition of C&DD.

Comment: **“Establish” - the second sentence "Establish or establishment includes conducting such activities at any location not authorized to dispose of waste or C&DD." Should be deleted. It is unnecessary and could be construed to regulate any excavation activity unrelated to MSW or CD&D. (R. Jay Roberts, Rumpke)**

Response: The rule states that the excavation is related to the construction of the facility or components thereof. It should be clear that this does not include excavation activity unrelated to the establishment of a regulated facility.

Please note that the reference to C&DD was removed as it does not pertain to the composting program chapter.

Comment: **“Ground water” - should be changed to read "...any water below the surface of the earth in a saturated geologic unit." It is not clear, using the definition written in the proposed rule and the definition of a "zone of saturation", that liquid in a landfill is not ground water. (Eagon & Associates)**

Response: This is the existing definition of ground water. Confusion as to whether leachate is ground water has not arisen in the past. Leachate is not water, so it cannot be ground water. Ground water contaminated by leachate, is still ground water.

No change was made to the rule.

Comment: **“Health district” defines general and city health districts. Do these sections adequately address combined general health districts? (Mary Helen Smith, Mahoning County District Board of Health)**

Response: The definition references to the creation under the authority of ORC 3709. of the Revised Code. ORC 3709.01 includes the union of health districts to combine and form a general health district.

No change was made to the rule.

Comment: **“Leachate” - should be revised to read "liquid within a solid waste or C&DD landfill." A release of leachate into ground water does not mean that the ground water is leachate. (Eagon & Associates)**

Response: The release of leachate into groundwater does not make ground water leachate. Rather, release of leachate into the ground water means that the ground water either contains waste-derived or C&DD derived constituents and may constitute water pollution.

No change was made to the rule.

Comment: **"Liabilities" means probable future sacrifices... What is meant by probable future sacrifices. This should be deleted. (Kathy Trent, WM)**

Response: This definition is consistent with existing rule requirements and USEPA RCRA requirements.

No change was made to the rule.

Comment: **"Nuisance" means anything that is injurious to human... How does this definition integrate with OAC 3745-15-07? This will be confusing to the regulated community. (Bruce Schmucker, Cornerstone; Kathy Trent, WM)**

Response: OAC 3745-15-07 states in part "...the emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance."

This is a description of a nuisance, as defined in 3745-500-02(N) as it pertains to air pollution. There are other nuisances as well. The definitions integrate sufficiently to address both the need for a broad definition and the need for a narrow definition when addressing specific situations.

No change was made to the rule.

Comment: **"Occupied dwelling" means a residential dwelling and also includes... This proposed definition has been significantly expanded from current rules to include many different businesses beyond residential dwelling. We cannot support this new proposed definition. (Bruce Schmucker, Cornerstone)**

Response: "Occupied dwelling" is a term defined in the C&DD statute ORC 3714.01. The existing composting rules use the term "occupied structures" which is defined in

the explosive gas monitoring program. In updating the rules, use of the term “occupied dwelling” was considered and deemed to be more appropriate. The multi-program rules also define “occupied structure.” Ohio EPA did not propose to replace “occupied structure” with “occupied dwelling.”

No change was made to the rule due to this comment.

Comment: **"Occupied dwelling" means a residential dwelling and also includes... and a restaurant or other eating establishment. To include restaurant or eating establishment in this definition makes its too far reaching without a definition. (Bruce Schmucker, Cornerstone)**

Response: To date, there has not been a question as to what constitutes a restaurant or eating establishment. Should the need arise, definitions can be added.

No change was made to the rule due to this comment.

Comment: **"Occupied dwelling" means a residential dwelling and also includes... Occupied dwelling does not include a dwelling owned or controlled by the owner or operator of a [ADD solid waste disposal] facility to which the siting criteria are being applied. (Bruce Schmucker, Cornerstone)**

Response: Although defined by ORC 3714 to apply to C&DD facilities, to avail this definition to other programs, limitations to the type of facility were not specified. Ohio EPA did indeed decide to use this term in the composting program.

No change was made to the rule due to this comment.

Comment: **“Open dumping” means the deposition of solid waste into waters of the state and means the final deposition of solid waste. We believe this definition presents opportunities for storage of solid waste that is not adequately defined in rule. When not adequately defined then case law requires the next logical provision which has been construed to be storage of clean hard fill for two years. Please define or prohibit solid waste storage. (Mary Helen Smith, Mahoning County District Board of Health)**

Response: The intent of this definition is to mirror ORC Chapter 3734. While the agency acknowledges the concerns regarding storage of solid waste constituting open dumping, Ohio EPA is not seeking to define solid waste storage in this rule package.

No change was made to the rule.

Comment: **"Residential dwelling" means a building used or intended to be used ... as a personal residence. Is personal residence defined somewhere? (Bruce Schmucker, Cornerstone)**

Response: To date, there has not been a question as to what constitutes a personal residence. Should the need arise, a definition can be added.

No change was made to the rule due to this comment.

Comment: "Residential dwelling" - how is this definition used in a chapter? (Kathy Trent, WM)

Response: Residential dwelling is referenced in the definition of occupied dwelling. The definition of occupied dwelling was revised to incorporate the meaning of residential dwelling, thus eliminating the need for the separate definition.

Comment: "Solid waste" includes non-toxic and spent non-toxic in the definition of solid waste. Non-toxic and spent non-toxic must be defined in rule since the policy that defined it in the past was rescinded as illegal rule-making. Failure to do so means that any fly ash and foundry must be interpreted as solid waste since there is no definition or legal standard. (Mary Helen Smith, Mahoning County District Board of Health)

Response: The reference to non-toxic fly ash and foundry sand is identical to the language used in ORC 3734.01 definition of solid waste.

Please note that the language in this definition was changed to reference the statutory definition of "solid waste."

Comment: "Solid waste facility" means a site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes or, if the solid wastes consist of scrap tires, for collection, storage, or processing of the solid wastes; or for the transfer of solid wastes.

Why do we have three definitions, one for solid waste facility [(S)(10)], solid waste disposal facility [(S)(8)] and the other sanitary landfill facility [(S)(1)]. The solid waste facility definition should include sanitary landfill facility and solid waste disposal facility, correct? (Bruce Schmucker, Cornerstone)

Response: In addition to sanitary landfill facilities and solid waste disposal facilities, 'solid waste facility' encompasses other non-landfill and non-disposal facilities such as composting, transfer facilities and scrap tire collection, storage, and processing facilities.

No change was made to the rule.

Comment: "Surface water" means any water on the surface of the earth. How does this definition integrate with the Ohio EPA - Division of Water Pollution Control definitions used in ORC 6111. (Bruce Schmucker, Cornerstone)

Response: ORC 6111 does not define the term "surface water" in either statute or the Division of Surface Water (DSW) rules. ORC 6111 and DSW rules do use the term consistent with the plain English meaning of the words as any water on the surface of the earth. While this definition has existed in the solid waste rules since June 1976, the agency is not aware of any issues raised with this definition. Note that the use of the term "surface water" is distinct from the defined term "surface waters of the state."

No change was made to the rule.

Comment: "Water pollution" is provided but there is no context to evaluate this definition. (Kathy Trent, WM)

Response: The term is used in the composting rules and multi-program rules.

No change was made to the rule.

Comment: "Water pollution" means the unpermitted release to the waters of the state from one or a combination of the following... How does this definition integrate with ORC 6111? (Bruce Schmucker, Cornerstone)

Response: There is no definition of water pollution in ORC 6111 or rules adopted thereunder. The definition of water pollution is similar to the definition of pollution found in ORC 6111.01(A).

No change was made to the rule.

Comment: "Water pollution" means... (a) Sediment from disturbed areas. Delete. This is covered by the NPDES program and is redundant. Inclusion would also make a sediment pond a source of water pollution. (Bruce Schmucker, Cornerstone; Kathy Trent, WM)

Response: A sediment pond is not a source of water pollution because its discharge is permitted.

Please note that the language in this definition was changed to reference the statutory definition of "water pollution."

Comment: "Water pollution" means... (g) Naturally occurring constituents that increase in concentration in ground water due to waste-derived or C&DD-derived constituents released from the potential sources of contamination interacting with the geologic formations present under or around the facility.

This is groundwater related – why is it here and not the groundwater section? It does not appear to be a definition but a new water quality standard? (Bruce Schmucker, Cornerstone)

Response: This paragraph is redundant with the definitions of C&DD-derived constituents and waste-derived constituents. Therefore this paragraph was removed from the definition of water pollution.

Please note that the language in this definition was changed to reference the statutory definition of "water pollution."

Comment: "Water pollution" means... (g) Naturally occurring constituents that increase in concentration in ground water due to waste-derived or C&DD-derived constituents released from the potential sources of contamination interacting with the geologic formations present under or around the

facility.

There should not be a requirement to evaluate water quality impacts from naturally occurring constituents. Also, the phrase "interacting with the geologic formations present under or around the facility" does not make sense and should be removed. (Kathy Trent, WM)

Response: The language in this definition was changed to reference the statutory definition of "water pollution."

Comment: **"Waters of the State" are used as siting criteria items and have historically been limited to surface waters. The proposed definition expands the historic application to also include ground water. Inclusion of ground water in the definition will effectively eliminate any new landfill or expansion of existing landfill as a 200 foot separation must be present from any waters of the State. (Michael Born, Shumaker, Loop & Kendrick, LLP, Bruce Schmucker, Cornerstone)**

Response: "Waters of the state" is defined in 3745-500-02 but is currently not applicable to residual waste facilities. The term "waters of the state" is not currently utilized in OAC 3745-30-06 regarding criteria for a residual waste landfill permit to install application. OAC 3745-30-06 is specific to "surface waters" and not the broader term "waters of the state." Residual waste facility siting criteria will be considered in the future when the agency releases an interested party draft of rules for residual waste landfills.

No change was made to the rule.

Comment: **"Yard waste" Section (Y) defines yard waste. However, the limitation to garden, lawn care and landscape business has been eliminated. These types of business should be restored to prevent other companies, such as tree cutting operations, to construe all their material to be yard waste. (Mary Helen Smith, Mahoning County District Board of Health)**

Response: Current rule does not include this limitation but rather it appears in a comment for the purposes of illustration. Ohio EPA's intent in the comment was not to limit the definition of yard waste by location of generation. Anyone generating materials that meet the definition of yard waste, regardless of location, will have to manage it as yard waste. Material from tree cutting operations may be considered yard waste if it meets this definition.

No change was made in response to this comment. Please note that this definition has been moved to rule 3745-560-02.

Comment: **The definition of salvaging was eliminated and should be restored to section OAC 3745-500-02. (Mary Helen Smith, Mahoning County District Board of Health)**

Response: The definition of "salvaging" used in 3745-27-01 was added to rule 3745-560-02.

Comment: **The definition of source-separated yard waste was eliminated and should**

be restored to section OAC 3745-500-02. (Mary Helen Smith, Mahoning County District Board of Health)

Response: Ohio EPA removed the definition of “source-separated yard waste” because it was no longer applicable to the composting regulations in OAC Chapter 3745-560. A definition for “source separated yard waste” may be needed if another program uses the term (e.g. to institute a solid waste landfill yard waste restriction program).

No change was made to the rule.

Comment: Include a definition of Waste Acceptance. (Kathy Trent, WM)

Response: A definition of “accept” or “acceptance” is specific to the program. In response to this comment, Ohio EPA added a definition in 3745-560-02 specific to acceptance of material at a compost facility.

3745-500-03 Incorporation by reference.

Comment: Delete 3745-500-03. (R. Jay Roberts, Rumpke; Kathy Trent, WM; Michael Born, Shumaker, Loop & Kendrick, LLP)

Response: Ohio EPA is required by Section 121.72 of the Ohio Revised Code (ORC) to provide potentially affected parties with information regarding items that have been incorporated by reference within the rules. To fulfill this statutory obligation, Ohio EPA has included information on the availability (how to obtain copies) and the date, edition, or version of the item referenced. This rule fulfills this requirement for the entire chapter and is consistent with procedures used by Ohio EPA and other agencies. As Ohio EPA is required to comply with ORC 121.72, must include this information in rule.

We believe there is no ambiguity created. We believe that the context of each instance in which outside materials are referenced make clear the extent of the incorporation.

No change was made to the rule due to this comment.

Comment: Inclusion of so many standards via reference is indicative of the DSIWM’s desire to prescribe exactly what type of test or procedure will be used in every scenario imaginable during design and construction. While certainly this will eliminate some uncertainty regarding what the DSIWM will ultimately determine is acceptable, it is also likely to reduce the flexibility that is often necessary. We are concerned that the prescriptive nature of these rules will result in increased costs as tests and procedures that are not necessary will need to be completed because they are required by the rules.

In addition, we concerned that over time as new tests and/or procedures are developed there will not be the flexibility to use them or utilize best engineering judgment by either the private sector or the staff of the DSIWM because the rule requires a specific test/procedure. While we concur with

the DSIWM's desire to eliminate uncertainty and achieve uniformity, we are concerned that these proposed rules go too far. (Bruce Schmucker, Cornerstone; Steve White, Republic; Kathy Trent, WM; R. Jay Roberts, Rumpke)

Response: The programs determine when an external standard or test specification is necessary. When an ASTM standard is used, note that flexibility is already build into 3745-500-03(B)(5) which states that another standard may be used if it is at least equivalent to the one cited in the rule and is acceptable to Ohio EPA. This allows flexibility for using alternative methods or another version of the method without needing to obtain a variance. Such flexibility is especially desired for ASTM standards as they are consistently being updated. As opportunity allows, 3745-500-03 will be updated to reflect the latest ASTM versions.

As opportunity arises during review of the program rules, please let us know when a cited reference results in unnecessary cost.

Comment: **3745-500-03 proposed to adopt by reference an extensive listing of federal, state and numerous technical documents in the rule. Many are guidance documents that may not been peer reviewed, accepted as known engineering standards. While there may be a desire to incorporate compliance with federal or even state adopted rules, it does not appear to be a file cabinet of documents that have not been made available for review nor has there been time to consider their review. There are agricultural handbooks even the OEPA Weekly Review mentioned. There are so many standards inserted by reference we do not have a clear idea what standard is expected during the engineering design or construction. (Kathy Trent, WM; R. Jay Roberts, Rumpke; Bruce Schmucker, Cornerstone; Steve White, Republic)**

Response: The purpose of 3745-500-03 is to provide information (the availability and the complete titles and publishing information) on external documents cited by the rules. The programs determine when an external standard or test specification is necessary.

Suitability of a referenced standard can be commented upon when the program rules are drafted and proposed. For example, within the proposed composting rules there are the following citations to 3745-500-03:

- 3745-520-02 cites ASTM D6400 in the definitions of compostable container and compostable serveware.
- 3745-520-110(C)(1)(d), -210(C)(1)(f), -310(C)(1)(f), -410(C)(1)(f) cite the federal asbestos/NESHAP program
- 3745-520-130, -230, -330 cite a multitude of USEPA methods and standard methods to be used to determine compost quality

Comment: **The draft rule contains a long list of materials that are being incorporated by reference. The incorporation by reference list appears to be a very complete list, but there could be some documents not on this list that may be used for landfill permitting and compliance purposes. For example, the stability manual does not appear to be on the list. Does that mean it should**

not be used in landfill permitting and design? (Michael Born, Shumaker, Loop & Kendrick, LLP)

Response: An applicant may use any number of aids, such as the stability manual, but if the document is not cited by a rule, it will not appear in 3745-500-03.

3745-500-35 Relationships among authorizing documents, rules, and the authority of the director and board of health.

Comment: Section (A) states, "and at the same time comply with rules adopted under those chapters... ". Should this read under these chapters? (Mary Helen Smith, Mahoning County District Board of Health)

Response: Correct usage is "those."

No change was made to the rule.

3745-500-50 Signatures.

No comments received.

3745-500-120 Procedures for issuing, denying, modifying, transferring, and revoking licenses and permits to install.

No comments received.

3745-500-130 Retention and distribution of authorizing documents – procedures for boards of health and Ohio EPA.

No comments received.

3745-500-150 Alteration to a solid waste permit to install.

Comment: There is no definition of what constitutes an alteration. Likewise, there is no definition in Section 3745-500-02 of a permit modification. The distinction between these two terms (modification and alteration) is subtle and needs to be clearly defined. (Michael Born, Shumaker, Loop & Kendrick, LLP)

Response: Each program will identify what changes constitute a modification and what changes constitute an alteration.

For example, in the composting program "Alteration" is defined as a change to a class I composting facility from the requirements specified in the facility's authorizing documents which is at least equivalent to the rule requirements, and "Modification" is defined as any substantial change to the location or size of the material placement area, or to the design, construction, process, or operation of a class I composting facility.

3745-500-210 Variances for solid waste facilities.

No comments received.

3745-520-220 Exemptions for solid waste facilities.

No comments received.

3745-500-310 Criteria for issuing a permit to install.

Comment: Change (A) to "if it is capable of fulfilling ALL requirements for the protection of ground water and air" to prevent the disastrous and long term effects of putting one of these landfills in an unpredictable location such as Morrow County Proposed Landfill. (Sandra Petty)

Response: Because a regulation would not be a requirement for a person unless it was applicable, the word "appropriate" was removed from paragraph (A). This paragraph was moved to rule 3745-500-120.

Comment: Two opposing comments were received regarding paragraph (B). One was to make it mandatory rather than discretionary (Sandra Petty), the other was to delete it since social/economic evaluations are required as part of surface water permitting (Michael Born, Shumaker, Loop & Kendrick, LLP).

Response: Ohio EPA is taking a different approach regarding the location of director's discretionary consideration of social and economic impact in rule. The approach will be to address these criteria in each individual program rule where permit criteria are listed. Paragraph (B) was removed from the rule.

Note that the proposed composting rule OAC 3745-560-101 does not include the director's discretionary consideration of social and economic impact with the Class I composting facility permit criteria. Class I compost facilities process waste into compost product removed from the facility. Upon closure of a Class I composting facility, no waste material or compost product is left or buried at the facility.

3745-500-330 Termination of a permit to installed issued under Chapter 37334. of the Revised Code.

Comment: (A) There are extenuating financial reasons that may have delayed the full construction of a new permitted site. Three years may not provide sufficient time. This rule should grandfather existing sites. (Kathy Trent, WM)

Response: Three years is the same time frame as established in OAC 3745-27-02(I)(1). Since adopting this time frame in 2008, there have not been incidents where this has been shown to be insufficient.

If there are extenuating circumstances, another time frame can be established through a variance.

Comment: (C) states that the permit to install can be extended up to a maximum of

twelve months. A one year extension is a relatively short time period. This extension should be extended up to twenty four months. (Michael Born, Shumaker, Loop & Kendrick, LLP)

Response: Twelve months is the same time frame as established in OAC 3745-27-02(I)(3). Since adopting this time frame in 2008, there have not been incidents where this has been shown to be insufficient.

If there are extenuating circumstances, another time frame can be established through a variance.

3745-500-350 Causes for revoking a permit to install issued under Chapter 3734. of the Revised Code.

Comment: This entire rule should be deleted and replaced with the actual language under 3734.09 for revoking a permit. An alternative is to simply have a rule that specifies the director can revoke a license or permit under ORC 3734.09. (Kathy Trent, WM)

Response: The rule has been revised to simply cite ORC 3734.45. ORC 3734.09 pertains to licenses, not permits.

Comment: (B) "The owner or operator violates Chapter 3734 of the Revised Code and rules adopted thereunder." should be deleted as it is not currently listed in 3745-27(02)(K). This language would allow for revocation of a permit for any minor violation of a rule and does not allow for a demonstration of "substantial compliance". (R. Jay Roberts, Rumpke)

Response: In rewriting 3745-500-350, paragraph (B) was deleted. In addition, the criteria addressed by paragraph (B) is not included in ORC 3734.45. Therefore this criterion will not be used as a reason for permit revocation.

Comment: (D) allows a permit to be revoked if somehow a permittee "induces" another party to violate Chapter 3734. This provision is extremely vague and provides ambiguous reasons for other parties to cause a permit to be revoked even though WM, itself, did not even violate any law or regulation. This is not acceptable and we do not believe it is authorized by law. (Kathy Trent, WM)

Response: ORC 3734.45(C) establishes this as a cause for revoking a permit or license.

Comment: (E) attempts to create a cause for revoking a permit because of "economic reprisal". What does this mean and how will it be determined? It appears as if there is an enforcement manual guidance that has been inserted into the definitions without careful thought and protection given to the permittee to retain their permit or license. The appropriate determination authorized in the statute is whether a permittee is complying with the statute and rules. We do not believe the statute under ORC 3734.09 provides this type of draconian review and authority to revoke a permit. The statute specifically states the director may revoke "for a violation of any section of this chapter or any rule adopted under it." It does not speak to "economic reprisal".

(Kathy Trent, WM)

Response: ORC 3734.45(D) establishes this as a cause for revoking a permit or license.

Comment: **(E) should not apply to captive residual waste landfills as they are not open to the general public. It also should clearly state that this condition applies only to landfill customers not electric service customers. (Michael Born, Shumaker, Loop & Kendrick, LLP)**

Response: The statute does not provide any exceptions to ORC 3734.45(D).

Comment: **(F) appears to allow the Ohio EPA to revoke a permit if a company prevents any business from disposing of its waste at a facility other than one which we own. That means, for example, that Ohio EPA can revoke a landfill permit if we enter into a contract in which a customer contractually is obligated to only use a specific landfill for the disposal of its waste during the term of the contract. The customer and facility have entered into a contract for their own specific reasons. We do not believe Ohio EPA has the authority to prevent us from this type of contractual obligation. (Kathy Trent, WM)**

Response: ORC 3734.45(E) establishes this as a cause for revoking a permit or license.

3745-500-360 Administrative change to a permit to install.

No comments received.

General Comments

Comment: Draft Comment on Rules in which the OEPA has included the term “decline to act” The phrase/authority for the Director (or Board of Health) to decline to act should be removed entirely from the draft rules. Decisions of the Director on requests for action (or the Board of Health) should be explainable, defensible and appealable. Under the draft rules where this phrase is used the Director is not even required to explain the reasons as to why the request is not being approved nor, it is assumed, would the applicant or permittee be able to appeal the —inaction|| of the Director. Thus, the applicant or permittee could spend considerable time, money and effort preparing a request only to ultimately hear that the Director (or Board of Health) has simply decided not act on the request. Worse, the applicant or permittee would have no recourse to challenge the decision of the Director not to allow something this is specifically discussed in the rule as a possibility. (Steve White, Republic; Kathy Trent, WM)

Response: Ohio EPA uses the “decline to act” or “decline” language to concur language only in those situations such as in 3745-500-150(B) where a permittee is seeking agency concurrence with a deviation from a legally issued permit. The agency has historically used an alteration concurrence to provide the permittee with reasonable flexibility to implement a deviation from the permit that is at least equivalent to rule. The alternative to this concurrence process is for the permittee to seek a modification of their permit. Our experience is that this mechanism has

been successful and the issue of appeal rights has not been raised. In this rulemaking, Ohio EPA's intent is to establish simple procedures consistent with this historical practice. The use of the "decline" or "decline to act" language in 3745-500-220 is consistent with ERAC decisions regarding the discretionary authority of the director to issue exemptions under ORC 3734.02(G). No change was made in response to this comment.

Please note that this response is specific to 3745-500-150, and that the comment's concern about the use of "decline" or "decline to act" language in rules 3745-506, 3745-512, and 3745-520 will be addressed in the response to comments for those individual chapters.

Comment: Draft Comment on Rules in which the OEPA has included the term "decline to act" This phrase is used to provide the opportunity for an applicant or permittee to operate at "variance" with an otherwise prescribed action. ORC 3734.02 (A) provides in part that, "The director, in accordance with Chapter 119. of the Revised Code, shall adopt and may amend, suspend, or rescind rules governing the issuance, modification, revocation, suspension, or denial of variances from the director's solid waste rules, including, without limitation, rules adopted under this chapter governing the management of scrap tires. Variances shall be issued, modified, revoked, suspended, or rescinded in accordance with this division, rules adopted under it, and Chapter 3745. of the Revised Code." Nowhere in this section or elsewhere within the statute does it indicate that the Director (or Board of Health) may choose to —decline to act on a request for a variance or on a request for an approval pursuant to a rule. It is acknowledged that the one exception to this may be the inclusion of the phrase "the director may decline to act" in draft OAC 3745-500-200(D). Draft OAC 3745-500-200 (D) provides that the Director may issue an exemption from a solid waste requirement pursuant to ORC 3745.02 (G). (Kathy Trent, WM)

Response: In the definition of "alteration" specific to composting facilities in 3745-560-02, it defines an alteration as a change from the permit or authorizing documents, which is at least equivalent to the rule requirements. Therefore, an alteration is not a variance in accordance with ORC 3734.02(A).

Comment: Section (B)(1) states that, "Ohio EPA may decline to act on the request to alter a permit to install". What form of a response will this take and is it appealable to ERAC? (Mary Helen Smith, Mahoning County District Board of Health)

Response: The decision to decline to act, is not an action of the director and is not appealable to ERAC.

Comment: Section (B) states, "... the director may decline to act on the request to alter a permit to install". What form of a response will this take and is it appealable to ERAC? (Mary Helen Smith, Mahoning County District Board of Health)

Response: Both "alteration" and "modification" for composting facilities are specifically defined in 3745-560-02. Rule 3745- 500-150 is the procedural rule for submitting

an alteration request to obtain agency concurrence with a deviation from a PTI requirement. The agency would respond to an alteration request via written communication with the permittee identifying deficiencies under 3745-500-150(B)(2). Ohio EPA's position is that this decline to concur is not an action appealable to ERAC. Ohio EPA has made a slight clarification change to this rule in response to this comment.

Comment: In numerous places in the draft rules package the DSWIM has included the phrase, " ... the director (or Board of Health) may decline to act. .. "

Often this phrase is used in conjunction with the discussion of an applicant or permittee submitting a request for an approval for an alternate course of action from a course of action prescribed by the rule.

The phrase/authority for the Director (or Board of Health) to decline to act should be removed entirely from the draft rules. Decisions of the Director on requests for action (or the Board of Health) should be explainable, defensible and appealable. Under the draft rules where this phrase is used the Director is not even required to explain the reasons as to why the request is not being approved nor, it is assumed, would the applicant or permittee be able to appeal the "inaction" of the Director. Thus, the applicant or permittee could spend considerable time, money and effort preparing a request only to ultimately hear that the Director (or Board of Health) has simply decided not act on the request. Worse the applicant or permittee would have no recourse to challenge the decision of the Director not to allow something this is specifically discussed in the rule as a possibility.

As noted above often this phrase is used to provide the opportunity for an applicant or permittee to operate at "variance" with an otherwise prescribed action. ORC 3734.02 (A) provides in part that, "The director, in accordance with Chapter 119. of the Revised Code, shall adopt and may amend, suspend, or rescind rules governing the issuance, modification, revocation, suspension, or denial of variances from the director's solid waste rules, including, without limitation, rules adopted under this chapter governing the management of scrap tires. Variances shall be issued, modified, revoked, suspended, or rescinded in accordance with this division, rules adopted under it, and Chapter 3745. Of the Revised Code."

Nowhere in this section or elsewhere within the statute does it indicate that the Director (or Board of Health) may choose to "decline to act" on a request for a variance or on a request for an approval pursuant to a rule. (Steve White, Rebuttal)

Response: The proposed composting rule package consists of the composting program chapter OAC 3745-560 and associated multi-program chapters OAC 3745-500 (general administration), 3745-501 (licensing), and 3745- 503 (financial assurance). Therefore, this response to comment is specific to interested party draft rules OAC 3745-500-150(B)(1) and 3745-500-220(D). The comment as related to interested party draft OAC chapters 3745- 506 (ground water monitoring), 3745-512 (construction), and 3745-520 (new C&DD facilities) will be

addressed in future responsiveness summaries specific to those chapters.

Specific to the comment on OAC 3745-500-150(B)(1), a facility operator is required to comply with the facility permit (such as a Class I composting facility permit). An operator has the ability to seek changes to a permit by means of a permit application and obtain an appealable decision of the director. Consistent with Ohio EPA historical practice of concurring with alterations to a permit, proposed OAC 3745-500-150(B)(1) establishes in rule this practice that allows a permittee to request and Ohio EPA to acknowledge and concur with a minor change to the permit if such change is equivalent to applicable rule and not a modification. Past experience has been that alteration concurrence afforded reasonable flexibility without being subjected to the full permit application review process available to a permittee. While Ohio EPA has not changed this proposed rule in response to this comment, Ohio EPA encourages additional comment during the proposed rule comment period.

Specific to the comment on OAC 3745-500-220(D), both ORC Chapters 3734 and 3714 provide the director (and the approved board of health under ORC 3714) the discretionary authority to exempt any person from the requirements of the statute or rules. The statute does not provide for an application for an exemption and case law has established that while issuance of an exemption is appealable to the Environmental Review Appeals Commission, the director determination not to consider or decline to act in issuing an exemption is not appealable. Proposed OAC rules 3745-500-01(E) and 3745-500-220 address requests for exemptions. Nothing in the proposed composting rule package precludes submittal of a request for an exemption under ORC Chapter 3734.

Ohio EPA has not changed this proposed rule in response to this comment.

Comment: **There are a number of topics with specific definitions that should be deleted because they are better suited to be defined within a specific topic chapter, i.e. terms related to ground water monitoring, siting and construction chapters. In addition, there are a number of definitions that are found in non-solid waste chapters and regulated by another Division within Ohio EPA under another statute that should remain with the originating chapter. By adding these types of definitions, it becomes longer and at least now appears to be confusing. Finally, there are terms used that we do not have the corresponding chapter to see how it is used. Many of the terms added to this section will be referred to within the solid waste landfill siting criteria and we do not have that chapter to review therefore knowing how it will be applied and used may influence the way it is defined. I have made comments and suggestions on the attached rules. (Kathy Trent, WM)**

Response: In consideration of this comment, the agency is proposing only those rule chapters necessary for the composting program, chapters 3745-560 and multi-program chapters 3745-500, 3745-501, and 3745-503. The agency has generally removed definitions not necessary for this package. The definitions included in these proposed rules should be either:

1. Terms specifically used in the compost program.
2. Terms utilized in the three multi-program chapters.

3. Definitions of broad use that the agency is not proposing any changes to from current definitions in 3745-27-01.

Comment: Include definition of Waste Acceptance

Since this section is including definitions that are likely used elsewhere there is a long standing need to clarify when a waste is actually accepted and disposed. It is important to note there must be several conditions to be completed before a waste stream is accepted and disposed. The removal of unacceptable waste streams should be able to be conducted without incurring a notice of violation for just having the material go across a scale. We propose the following definition be added:

“Waste acceptance” means all the following steps have occurred:
(a) Delivery of a waste material to a solid waste facility; and
(b) Verification of the delivery in the daily log; and
(c) Off-loading of the waste material either at the unloading area or working face; and
(d) Final disposal of the material in the disposal area and the application of daily cover material has been applied; and
(e) If a material has been off-loaded and removed from the final disposal area, it shall not be deemed as accepted.

(Kathy Trent, WM)

Response: A definition of “accept” or “acceptance” is specific to the program. In response to this comment, Ohio EPA added a definition in 3745-560-02 specific to acceptance of material at a compost facility.

Comment: The proposed multi-program rule package developed by Ohio EPA contains a section (3745-500-02) on General Administration Definitions. A significant difficulty with review and comment on Section 500-02 at this time is that all of the proposed rules affected by the multi-program concept are not yet available for review. Therefore, it is impossible to completely understand the functional relationship between the definitions in Section 500-02 and other pending proposed rules that are not yet available for review. The review period for the multi-program rules should be extended until the entire rule package is available for review and comment so that the Ohio EPA and the regulated community can understand how the entire set of rules will work together. To the extent we are able to consider the incomplete proposed rule package at this time, our comments on the Section 500-02 definitions follow. (Eagon & Associates, Inc.; Michael Born, Shumaker, Loop & Kendrick, LLP; R. Jay Roberts, Rumpke)

Response: In consideration of this comment, the proposed composting rule package only includes definitions necessary for the compost rules and associated multi-program rule chapters. The other definitions that appeared in the interested party draft of the composting rules will be considered when the program rules that use the definition are proposed.

Comment: It is our understanding from correspondence with Ohio EPA that the comment period was extended until May 1, 2011 for a few sections of the

multi-program rule; however, the review period for specific sections - 560, 500, 501 and 503 was not extended. Further, as the rules are inter-related, all of the rules should be evaluated concurrently rather than section by section. (Ryan Elliott, Shumaker, Loop & Kendrick, LLP; Bill Petruzzi, Hull & Associates, Inc.)

Response: The deadline for comments was extended to April 1, 2011. It is important to understand that the release of the draft rules and this May 1st date simply mark the start of your opportunity to ask questions and provide us with your comments, concerns, and information. We will use the comments to guide us in our development of proposed rules. During this period, Ohio EPA is available to answer questions, consider information, and listen to concerns.

Comment: **Please clarify whether a liquid can be a solid waste and if the current solidification basins at solid waste facilities will be regulated by the DSIWM or the Division of Surface Water. (Mary Helen Smith, Mahoning County District Board of Health)**

Response: The statutory definition of solid waste specifies that solid waste is a solid or semi-solid residual material. This is sufficiently clear that a liquid is not a solid waste. No change was made in response to this comment. The agency is separately considering the issue of solidification facilities at solid waste landfills and their regulation. This issue is not a subject of the composting rule package.

Comment: **We feel that Ohio EPA has went too far by proposing to completely change rule language which impact the C&DD, solid waste, residual waste, composting, scrap tire, and industrial waste industries when the Ohio legislature only required improvements to the C&DD rules from legislation enacted during 2005. The nearly 1,000 pages of draft regulations constitute a completely new set of requirements both in language, organization, and format from the current regulations in affect at this time. They also constitute a significant change from the draft rules issued in 2006. (Bruce Schmucker, Cornerstone; Sharon Barns, Barns Nursery, Inc.)**

Response: The following information is from an Ohio EPA presentation titled, "Rule Reorganization Information Session" and can be found at: <http://epa.ohio.gov/Default.aspx?tabid=2574>.

The agency must review its rules every five years in accordance with ORC 119.032 and consider the governor's executive order on common sense initiative, which is driving the revisions to the composting rules as presented in the IP draft. The five year rule review also applies to residual waste, scrap tire, industrial waste, and all regulated facilities. The C&DD rules are also required to undergo a five year review in addition to implementing the legislative changes enacted in 2005.

- The existing structure is very difficult to navigate
- Many, many sublevels to each rule
- Considerable number of unclear references to other rules
- Many references are circular in nature
- Confusing language and directions
- Example: 3745-27-10(D)(5)(a)(i)(b)(ii)(a) [ground water]

- References reader back up the structure to 3745-27-10(D)(5)(a)(i)
- Says you may not have to comply as written if another paragraph in the rules applies
- Rule titles and subject headings don't tell the full story
- Example: Chapter 3745-37 Licenses for Solid Waste, Infectious Waste Treatment, or Construction and Demolition Debris Facilities
- Although not in the title, this chapter also discusses
- Director's approved list of health districts
- Required frequency of facility inspections
- AMDWR Requirements
- The existing rules are significantly multi-subject
- No single place contains all of the requirements for a particular subject
- Example: 3745-27-19 Operations also contains construction provisions
- Example: 3745-37 licensing rule, in addition to licensing, discusses
- Director's approved list of health districts
- Required frequency of facility inspections
- AMDWR Requirements
- One requirement may be spelled out in detail in several places
- Example: Detailed financial assurance requirements are found in many different rules and sub-rules
- Many rules contain conflicting language
- Structure of some language is difficult to follow
- May also result from updating rules that are difficult to navigate
- The existing numbering structure is extremely crowded
- Significant lack of space to insert new rules
- Results in either more sub-headings or out of order rules
- Issues for regulated community and regulators alike
- Compliance impacts
- Lack of understanding can decrease ability to comply
- Poorly structured rules can increase everyone's costs for doing business

The bottom line...

- Unnecessarily high costs attributable to rule structure
- The reorganization goal...
- Reduce rule structure as a cost factor for doing business in Ohio
 - Make the rules easier to navigate
 - Simplify the structure
 - Make shorter, more concise rules with fewer references
 - Provide a consistent format
 - Make the rules easier to understand
 - Simplify language where possible
 - Make more descriptive and accurate titles
 - Create single subject rules
 - Streamline future rule review
 - Provide for more focused reviews
 - Streamline future rule review
 - Provide for more focused reviews
 - Reduce errors during revisions
 - Eliminate repeated revision of any group of rules
 - Improve regulatory consistency to provide for a level playing field for

responsible business

Comment: We believe some of multi-program rule structure falls short of meeting your goals as they apply to ease of navigation—although the links are wonderful, they often take you to more than two references. It can be difficult to follow in some of the sections. (Sharon Barns, Barns Nursery, Inc.)

Response: The proposed rules attempt to minimize the number of cross-references, and there are significantly fewer in the proposed rules than exist in current regulations. We welcome specific examples where cross-references create difficulty or confusion, so that we may focus future reviews on those areas.

Comment: We are concerned that our regulators will also be challenged with this new structure, and we are all looking for consistent regulation from facility to facility. (Sharon Barns, Barns Nursery, Inc.)

Response: The new organization for the composting rules establishes Chapter 3745-560 as the composting program. As a program chapter, any operator or regulator of a compost facility is to begin and refer to Chapter 3745-560 to understand all of the requirements for compost facilities. Chapter 3745-560 includes the applicability of rules for compost facilities and specifies which multi-program chapters are applicable and when they apply. There is no need for a compost facility operator or regulator to read any of the multi-program rules except as directed by Chapter 3745-560, the compost program chapter. Training will be provided to both operators and regulators to emphasize this important point. No change was made in response to this comment.

Comment: Because these rules are NEW, and not revised, it has been more complicated to evaluate the real changes that are in the rules without finding the old reference and matching the wording. We mention this as a comment and to further explain why is more difficult to comment specifically. (Sharon Barns, Barns Nursery, Inc.)

Response: The interested party draft is the start of a conversation with the compost industry and regulators regarding the agency's initial approach to rule revisions. The comments have resulted in revisions to the IP draft; the released proposed composting rule package is another opportunity for the public to review these rules and provide comment to the agency. Prior the filing of effective rules, the agency will provide guidance documents and training to familiarize compost operators and regulators with the new organization.

Comment: The EPA has had several years to become familiar with this new structure; we have just seen it over the past three months. We recognize the solution is NOT to do nothing. ORAO would like the opportunity to learn more about your challenges, have you recognize our challenges and concerns, and work together to make these rules better. (Sharon Barns, Barns Nursery, Inc.; Therese Schoch; Bill Wendel)

Response: Ohio EPA and ORAO have met to discuss the new structure and its benefits prior to filing proposed rules. While the rules are proposed and available for public comment, Ohio EPA is available for further discussion upon ORAO's request. Ohio EPA recognizes that the agency needs to conduct educational outreach to operators and regulators prior to and following adoption of final rules. This is necessary to assist in a smooth transition to the new composting program chapter and associated multi-program chapters.

Comment: We view the current draft C&DD regulations as an unfunded mandate to the Ohio Health Departments (Health Departments) which have Ohio EPA's authorization to execute the C&DD regulations. The regulations will require Health Departments to hire technical staff (engineers and scientists) to review and implement the proposed regulations. The proposed C&DD regulations pose a significant upgrade in technical requirements which mimic the current solid waste regulations. In addition to the financial burden to be imposed on the Health Departments, it is strongly believed that a significant number of the smaller C&DD facilities will not be financially able to implement the new rules and continue their small businesses. They can only increase pricing marginally, or they will be competing with the pricing of solid waste facilities. Further, the existing C&DD facilities located in the border areas of our state will not be able to compete with their competition located in neighboring states which do not and are not proposing to increase the environmental standards beyond existing levels. As a potential consequence of C&DD volumes either being diverted to Ohio solid waste facilities or out-of-state disposal facilities, fees collected will be substantially reduced resulting in the need for Health Departments and/or further increase to Ohio EPA budget demands. Therefore, the very limited environmental benefits that may result from these draft regulations do not justify the costs to the Health Departments, Ohio EPA, the C&DD Industry, individual C&DD facilities, or the Solid Waste Industry.

We do not believe that the Ohio legislature intended for the new regulations to eliminate the C&DD industry in Ohio, but merely to improve the environmental standards. (Eagon & Associates, Inc.; R. Jay Roberts, Rumpke; Bruce Schmucker, Cornerstone; Mary Helen Smith, Mahoning County District Board of Health; Kathy Trent, WM; Steve White, Republic; Holly Christmann, Hamilton County Recycling and Solid Waste District)

Response: This comment is specific to the C&DD industry and is not being addressed with the compost rule package responsiveness summary.

Rules Pertaining to Chapter 3745-501 Multi-Program Licensing

Agency Contact for this Package

Division Contact: Barry Chapman, Division of Materials and Waste Management (DMWM), (614) 728-5344, barry.chapman@epa.ohio.gov.

Ohio EPA held a public comment period from December 3, 2010 to April 1, 2011 regarding composting rules, including the multi-program regulations in Chapter 3745-501. This document summarizes the comments and questions received during the comment period pertaining to Chapter 3745-501 and the composting program.

The composting rule package to be filed with the Joint Committee on Agency Rule Review (JCARR) will include only those multi-program rules necessary to administer the composting program.

3745-501 Licensing - General Comments

Comment: The draft licensing rules are written in a negative tone. In Section 3745-501-10, enforcement actions including landfill closure are included for a late routine annual application. Section 3745-501-15 gives Ohio EPA broad and subjective powers to deny a license. In Section 3745-501-35, transfers of a license would be subject the same denial language included in Section 3745-501-15. Section 3745-501-40 "Suspension or revocation of a license," contains more enforcement language. The Utilities have a working relationship with the OEPA Districts and County Health Departments. The negative language could negatively affect these relationships. These new negative changes should be scaled back significantly. Ohio EPA should demonstrate the need for these changes. (Michael Born, Shumaker, Loop, & Kendrick LLP)

Response: The draft is written in a tone very similar to that of Ohio Administrative Code Chapter 3745-37 and Ohio Revised Code 3734 currently applicable to solid and residual waste landfills.

3745-501-01 Licensing - applicability.

No comments were received.

3745-501-02 Licensing - definitions.

Comment: Definition of Facility 3745-501-02 (F)

The definition of facility includes three types of facilities. Under current OAC 3745-37-01 there are many more facilities that are required to obtain a license. Will Chapter OAC 3745-37-01 stay in place for these facilities until they are developed under the new multi-program rules? Overall, this may

be confusing and difficult to administer and determine which section of the code is applicable to your facility type. It is preferred to retain one licensing section for all solid waste facilities. Solid waste facility is defined in the new 3745-500-02 (S) (10) and include landfill, composting, incineration. It does not include a transfer station. Do transfer stations follow this licensing rule? (Kathy Trent, WM)

Response: Except in some limited circumstances, the process of submitting an annual license, the criteria for issuance or denial, and the procedures approved health districts and Ohio EPA are to follow in acting on a license application are the same for all solid waste, infectious waste, and C&DD licenses. These similar license functions are grouped to facilitate consistent understanding by the health departments taking license actions. Within the multi-program licensing chapter 3745-501, the defined term “facility” is used when referring to all facilities simply to substitute the repetitive verbage “solid waste, infectious waste, or C&DD facilities” throughout Chapter 3745-501. In the limited circumstances where a requirement or process is unique to just one type of facility, the language identifies the specific type of facility. Note that the requirement to comply with multi-program licensing chapter 3745-501 is found in the individual program chapter. For example, the interested party draft of OAC 3745-560-200(B) requires that a license be obtained in accordance with chapter 3745-501 prior to operating a Class II composting facility. Therefore, when the composting program chapter OAC 3745-560 becomes effective and existing composting rules in OAC chapter 3745-27 are rescinded, it will be clear from the new composting program chapter 3745-560 that a Class II composting facility is only to comply with multi-program licensing chapter 3745-501. Note that facilities continuing to be regulated under OAC chapter 3745-27 continue to be directed to obtain a license in accordance with OAC chapter 3745-37. This is unchanged by the proposed composting program chapter and proposed associated multi-program chapters. As individual program chapters are separately transitioned from OAC chapter 3745-27 into their own program chapters, the new program chapter will direct that program facility to obtain a license in accordance with chapter 3745-501. In anticipation of these future transitions, proposed OAC Chapter 3745-501 uses the defined term “facility”. The proposed OAC Chapter 3745-500-02(S)(10) definition of “Solid waste facility” does specifically include transfer facilities as follows: “a site, location, tract of land, installation, or building used for.....or for the transfer of solid wastes.” The operation of solid waste transfer facilities will continue to be regulated under OAC chapter 3745-27-23 and required to obtain a license in accordance with OAC chapter 3745-37 until that rule is rescinded and replaced by a new separate transfer facility program chapter.

In response to this comment, the multi-program chapters were revised to only address the composting program.

Comment: **Section 3745-501-02 does not define residual waste or residual waste facility. Facility is defined as a solid waste facility, infectious waste facility and C&DD facility. This definition does not specifically include residual waste landfills. Section 3745-501-10 describes the annual fees associated with the solid waste landfills. The fee structure for residual waste landfills has been left out of the rules. (Michael Born, Shumaker, Loop, & Kendrick LLP)**

Response: Those definitions will be defined at a later date because the definition is not necessary for composting rules.” 501-02 defines “facility” broadly for the purposes of the multi-program licensing rule. The proposed rule will deal specifically with composting facilities. Residual waste landfills will continue to be regulated under Chapter 30 and subject to licensing under Chapter 37. When the agency proposed a new residual waste chapter, it will include a definition of residual waste and reference to complying with chapter 501 for licensing. At that time, those referenced requirements will be open for comment as they apply to residual waste landfills.

3745-501-05 Licensing required for solid waste, infectious waste treatment, and construction and demolition debris facilities.

No comments were received.

3745-501-10 License applications, application procedures, and remittal of fees after license issuance.

Comment: License Applications for Existing CDD 3745-501-10(A)(3) Will this section also apply to existing CDD facilities under Chapter 3745-400? (Kathy Trent, WM)

Response: Existing C&DD facilities regulated under Chapter 400 will continue to comply with Chapter 37 for licensing.

Comment: Comment following (A)(4)(c)
This item is supported and should be retained as an existing facility that has timely submitted a license application in a timely manner should be allowed to continue to operate while a final action is under consideration and until a final appeal decision has been issued. (Kathy Trent, WM)

Response: Thank you for your support of this regulation.

Comment: Section 3745-501-10-(B)(3) references section 3745-500-50 which requires a vice president of the corporation or their designee to sign license applications and certifications. The contents of the license application for residual waste landfills are fairly routine and similar each year. These signatory requirements are excessive. This section should not be included with respect to residual waste landfills. (Michael Born, Shumaker, Loop, & Kendrick LLP)

Response: The rule provides that the Vice President of the corporation can have a designee sign the license application. This should not represent an unreasonable burden. Chapter 501 does not currently apply to residual waste landfills. When the agency proposed a new residual waste chapter, it will include a licensing requirements and reference to complying with Chapter 501 for licensing. At that time, those referenced requirements will be open for comment as they apply to residual waste landfills.

Comment: Section 3745-501-10-(B)(4) License applications, application procedures,

and remittal of fees after license issuance. This Section of the proposed rules contains strong penalty language. If the owner/operator forgets to apply for a license application by the deadline, closure of the facility can result. This seems excessive. Perhaps a late fee penalty would be more appropriate than closure of the landfill if an application is late. (Michael Born, Shumaker, Loop, & Kendrick LLP)

Response: The statute provides a late fee for submittal of a license renewal between September 30 to December 31. There is no authority to extend the late fee beyond that required by the statute. Failure to apply for an annual license within the statutory timeframes triggers closure requirements.

Comment: Section 3745-501-10(C) does not include a licensing fee for residual solid waste landfills. The current fee schedule for residual solid waste landfills is contained in Revised Code Section 3734.06. The current fee schedule specifies a \$100.00 application fee and a \$5000.00 operating license fee for captive residual solid waste landfills. The draft rule contains a general fee requirement "For a solid waste facility other than a solid waste transfer facility, the highest authorized maximum daily waste receipt that will be in effect in the year to which the license pertains." Residual Waste should have separate rules and the current fee regulatory language should be added to Section 3745-501-10. (Michael Born, Shumaker, Loop, & Kendrick LLP)

Response: Chapter 501 does not currently apply to residual waste landfills. When the agency proposed a new residual waste chapter, it will include a licensing requirements and reference to complying with Chapter 501 for licensing. At that time, license fee requirements will be open for comment as they apply to residual waste landfills.

3745-501-15 Criteria for issuing or denying facility licenses.

Comment: Criteria for issuing or denying licenses 3745-501-15(A) (10) and (11) These subsections attempt to expand upon the statutory language on this topic, which is set forth at ORC 3734.44(D). The language, which is set forth in subsections (10) and (11) attempts to provide additional clarity to how substantial compliance is determined. We do not believe it is helpful and is redundant. The rule should track the statutory definition, and then add the following language, which provides some clarity to what is meant by "substantial compliance":
"An owner is not in substantial compliance if:
1) There is any significant and material violation pending at a facility which is owned or operated by the applicant,
2) The applicant has not, to the extent reasonably possible, taken measures to correct the violation, and
3) The applicant has committed numerous violations of environmental laws, which reveal a practice of noncompliance."
(Kathy Trent, WM)

Response: The proposed language in paragraphs (A)(10) and (A)(11) clarify substantial compliance and enforcement action for the purposes of licensing criteria is

consistent with the agency's practice and consistent with ERAC decisions. The agency believes that this clarification in rule is appropriate and necessary for state-wide consistency by the various licensing authorities. No change was made in response to this comment.

Comment: Grounds for Denial 3745-501-15(B)(1)

This subsection says that a license can be denied if "Any of the criteria in this rule that are applicable to the facility are not met." This does not make sense because it says any "criteria" not met are grounds for denial. What specific criteria are they referring to? (Kathy Trent, WM)

Response: The rule has been changed to specifically refer to the criterion in paragraph (A) of 501-15.

Comment: 3745-501-15(B)(4)(b) "A violation of Chapter 3734 of the Revised Code, any rule adopted under that chapter, including a term or condition of the facility's license has occurred." should be deleted as it is not currently listed in 3745-37-03. This language would allow for denial of a license for any minor violation of a rule and does not allow for a demonstration of "substantial compliance". (R. Jay Roberts, Rumpke; Michael Born, Shumaker, Loop & Kendrick, LLP; Mary Helen Smith, Mahoning County District Board of Health; Kathy Trent, WM)

Response: Section 3714.10 of the Ohio Revised Code states, The board of health of the health district in which a construction and demolition debris facility is located or the director of environmental protection may deny, suspend, or revoke a license for the facility under section 3714.06 of the Revised Code for violation of any section of this chapter, a rule adopted under it, or a term or condition of the facility's license. 501-15 is consistent with the statute.

This particular rule 501-15(B)(3)(c), the licensing authority MAY deny an application for these reasons. A single violation does not require that the licensing authority deny an application. The applicable standard for issuance of a license is substantial compliance. However, the statute does provide the licensing authority this discretionary authority to deny for any violation. However, any action to deny a license is subject to appeal to ERAC and the standard of burden for the licensing authority is that the action is both legal and reasonable.

3745-501-20 Procedures for the licensing authority for reviewing and considering license applications.

Comment: Section 3745-501-20(B) states the facility will be inspected no more than 60 days prior to issuing a license and that the operator must be in compliance with the solid waste rules and permit requirements.

The inspection report could contain violations that, in order to resolve, would need time to design, permit, and construct. The rule should be flexible and provide time to resolve issues identified during the pre-license inspection. This section should allow time for items identified as non-compliance to be resolved. (Michael Born, Shumaker, Loop, & Kendrick LLP)

Response: The standard for issuing a license is substantial compliance. A single violation or minor violations identified during the inspection prior to license issuance may not rise to a level of substantial non-compliance and could be issued by the licensing authority. However, the licensing authority may, at its discretion, may make a determination that a violation is significant can delay issuance of a license or deny issuance of a license.

Comment: **Section (C)(4)(a) indicates that the licensing authority shall either issue or deny a renewal license not later than ninety days after the date upon which a complete application is received. Local health districts actually need up to 120 days to act. At times one of our facilities will send an application that is complete on September 7th but another facility may not send a complete application until September 29th. The Mahoning County Board of Health meets regularly on the fourth Wednesday. In this case we would have to hold a special board meeting to act on the first application. (Mary Helen Smith - Mahoning County District Board of Health)**

Response: Current rule matches the statutory requirement that the license renewal application be submitted by the last day of September. Since the current license expires on December 31, this is the historic basis for the 90 days.

Comment: **Section (D) states that the licensing authority shall stamp all copies of the license application and the approved plans and specification. Please clarify that this is for C&DD facilities. (Mary Helen Smith - Mahoning County District Board of Health)**

Response: (D) is applicable to all licenses issued under Chapter 501 since it is not stated otherwise in the rule.

3745-501-25 Criteria for authorizing leachate recirculation and asbestos-containing waste material disposal at a construction and demolition debris facility.

Comment: **Criteria for authorizing leachate recirculation at CDD sites 3745-50-25(A)(4) Please confirm if this Chapter includes a section describing criteria for authorizing leachate recirculation and asbestos containing material disposal at CDD sites. Perhaps this section would be better included in the specific CDD rules rather than in a licensing chapter. Realizing the CDD facilities are typically reviewed by local Boards of Health that may not have access to the technical staff at Ohio EPA it would seem that the standards should be reviewed by the agency. Waste Management is opposed to allowing the recirculation of leachate at CDD sites that typically contain large volumes of wallboard with gypsum. Historically, this has created significant environmental concerns and should be regulated and controlled with the review of the agency before providing the authority to allow this through a board of health license. This should be removed from this rule. (Kathy Trent, WM; Sandra Petty; Mary Helen Smith, Mahoning County District Board of Health)**

Response: Rule 3745-501-25 is specific to new C&DD facilities and will be included in the new C&DD facility (Chapter 520) rule package. It has been removed from the

composting rule package.

3745-501-30 Modification of a C&DD facility license.

Comment: Section (B) states that the licensing authority may, by order, modify a C&DD license.... This language should say 'the licensing authority may act to modify a C&DD license'. Sometimes, a LHD will act by resolution rather than order and LHD's should retain the ability to decide. (Mary Helen Smith, Mahoning County District Board of Health)

Response: Rule 3745-501-30 is specific to new C&DD facilities and will be included in the new C&DD facility (Chapter 520) rule package. It has been removed from the composting rule package.

3745-501-35 Transfer of licenses.

Comment: Section 3745-501-35 states that at least 120 days prior to the date of a license transfer the licensee shall notify the director and that the prospective license transfer includes financial assurance information. In the case of a corporate merger the required financial information may be difficult to submit under these timelines. The combined financial reports are typically not available until after the merger. This section should allow more time for transfers involved in corporate mergers. (Michael Born, Shumaker, Loop, & Kendrick LLP)

Response: The 120 days does not apply to the submittal of financial assurance. The criteria for approving a transfer of license requires that financial assurance be established at the time of the approval of a license transfer. The 120 day timeframe is derived from current rule OAC 3745-37-06. Historically, this has not been an issue.

Comment: Section (A)(3) speaks to disclosure information for a C&DD facility but not disclosure requirements for solid waste facilities. Why? (Mary Helen Smith, Mahoning County District Board of Health)

Response: ORC 3734.42 specifically addresses submittal of disclosure information to the Attorney General's Office regarding transfer of ownership.

3745-501-40 Suspension or revocation of a license.

Comment: Suspension or revocation of license 3745-501-40(A)(1) and (3) These subsections would allow the "licensing authority" to suspend or revoke our license if entry is "refused, hindered or thwarted". We understand the agency and licensing authority has the right to enter a facility but we also have the right to obtain to require that the Agency obtain an administrative subpoena under certain circumstances, and to require other reasonable precautions, such as those pertaining to site safety be applied. We suggest the words hindered or thwarted be removed as it could apply to making sure the entry is done safely when waiting for appropriate safety equipment

or personal. While this has not been a concern in the past the addition of these terms are a concern. (Kathy Trent, WM)

Response: The language, “hindered and thwarted”, in rule 3745-501-40 is taken directly from ORC 3734.07(C) and 3714.08(C). No change was made in response to the comment.

Comment: **3745-501-40 Suspension or revocation of a license. Same concern as expressed for 3735-500-15(B)(4)(b) and 3745-500-350. (R. Jay Roberts, Rumpke)**

Response: The requirement is statutory under ORC 3734.09 and 3714.10.

Comment: **Section (B)(1) should be modified to include the following authority for boards of health:**

- **OAC Chapter 119,**
- **ORC Chapter 3709.21 for general health districts,**
- **And verification that this is sufficient to cover combined (city-general) health districts**

(Mary Helen Smith, Mahoning County District Board of Health)

Response: The Association of Ohio Health Commissioners has partnered with Ohio EPA regarding these appropriate references. No change was made to the rules.

Rules Pertaining to Chapter 3745-503 Multi-Program Financial Assurance

Agency Contact for this Package

Division Contact: Fanny Haritos, Division of Materials and Waste Management (DMWM), (614) 728-5343, fanny.haritos@epa.ohio.gov.

Ohio EPA held a public comment period from December 3, 2010 to April 1, 2011 regarding composting rules, including the multi-program regulations in Chapter 3745-503. This document summarizes the comments and questions received during the comment period pertaining to Chapter 3745-503 and the composting program.

The composting rule package to be filed with the Joint Committee on Agency Rule Review (JCARR) will include only those multi-program rules necessary to administer the composting program.

Ohio EPA revised rule 3745-503-20 to allow entities that may have both a solid waste facility regulated under OAC Chapter 3745-27 and a composting facility regulated under OAC Chapter 3745-560 to use one financial assurance instrument for both facilities as the current rules allow. A revision to rule 3745-27-17 will follow to match 3745-503-20.

3745-503-01 Financial assurance - applicability.

No comments were received.

3745-503-02 Financial assurance - definitions.

No comments were received.

3745-503-05 Financial assurance for a solid waste facility or scrap tire transporter closure.

Comment: Section (B)(5) Class II composting facilities that compost material from the business operations where the waste is generated on property owned by the business and is limited in the size of the material placement facility of less than 600-square feet is an acceptable limitation for exempting these facilities from meeting the financial assurance requirements of this chapter. If the material is within a larger area or the business accepts materials other than what is generated on site there is a need for the facility to provide financial assurance. (Kathy Trent, WM)

Response: The comment describes the intent of the rule correctly. If the facility does not meet the restrictions for size established in 3745-560-01(D), then the facility must establish financial assurance in accordance with rule.

Comment: Section (C)(1)(c)(i) and (ii) requires closure cost estimates for Class II composting facilities specified in 3745-560-210. We support the

requirement to maintain a financial assurance instrument based on a closure cost estimate. (Kathy Trent, WM)

Response: Thank you for your support of this regulation.

Comment: **Section (D)(3) does not require Class II facilities annually review and adjusting the closure cost estimate and financial assurance. We believe this should be required for these facilities as conditions may have changed that should be reviewed. Class II facilities accept solid waste materials that can become a source of odors and contribute to other environmental concerns. A closure cost estimate should be reviewed annually to assure the facility is controlling the material as required by chapter 560. Assuring annual cost estimate review will provide the Ohio EPA the opportunity to maintain the adequate financial assurance to properly close a facility if needed. (Kathy Trent, WM)**

Response: Closure for a compost facility is the removal of all of the additives, compost, and solid wastes intended for composting. The closure cost estimate for a compost facility is based solely on the maximum storage capacity as specified in the authorizing document for all additives, compost, and solid wastes intended for composting. The dollar estimate is the cost of removal, transportation and proper management. Unless the authorizing document or the maximum storage capacity is changed, an annual review of financial assurance is not necessary.

The rule was not changed in response to this comment.

Comment: **Section (F)(3)(d)(i) allows a number of solid waste facilities (excluding sanitary landfills) to fund closure up to 5 years from the date of startup. These facilities should have to fund closure in the same period as other solid waste facilities. (Kathy Trent, WM)**

Response: The proposed language specific to composting facilities, transfer facilities, solid waste incinerators and solid waste energy recovery facilities would be a minimum of a five year pay-in period because waste is ultimately removed from the facility during closure. Ohio EPA believes that this requirement is reasonable. It should be noted that solid waste landfills also have a pay-in period. A landfill's pay-in period is calculated using the AMDWR and the approved volume contained in the permit as referenced in 3745-503-05(F)(3) and is consistent with existing rule requirements. This results in a pay-in period typically greater than five years for a solid waste landfill. The difference in facilities is that solid waste remains in landfills for perpetuity.

The rule was not changed in response to this comment.

Comment: **Section (G)(4)(a): The standby trust fund should only be funded when the owner/operator does not perform its obligation. This should either be deleted or insert "Perform final closure or" at the beginning of the sentence. (Kathy Trent, WM)**

Response: A financial guarantee surety bond guarantees that the trust fund will be funded prior to closure. 3745-503-05(G)(4)(b) merely clarifies that should the owner or

operator choose to fund the standby trust fund as stated in the rule, then the surety bond company guaranteeing the bond is no longer liable. 3745-503-05(G)(5) clarifies that the surety is not liable unless the owner or operator fails to perform its obligation. The rule was not changed in response to this comment.

3745-503-10 Financial assurance for a solid waste facility post-closure care.

Comment: Section (G)(4)(a): The standby trust fund should only be funded when the owner/operator does not perform its obligation. This should either be deleted or insert “Perform post-closure care or” at the beginning of the sentence. (Kathy Trent, WM)

Response: A financial guarantee surety bond guarantees that the trust fund will be funded prior to closure. 3745-503-10(G)(4)(b) merely clarifies that should the owner or operator choose to fund the standby trust fund as stated in the rule, then the surety bond company guaranteeing the bond is no longer liable. 3745-503-10(G)(5) clarifies that the surety is not liable unless the owner or operator fails to perform its obligation. The rule was not changed in response to this comment, but was removed since composting facilities are not required to perform post-closure care.

3745-503-20 Wording of financial assurance instruments.

Comment: Section (A)(1), Section 13: Delete current language and replace with —The Trustee may resign and be discharged from its duties or obligations hereunder by giving sixty (60) days advance notice in writing of such resignation to the grantor and the licensing authority specifying a date when such resignation shall take effect. If the licensing authority fails to appoint a successor trustee prior to the effective date of the resignation, the trustee may petition any court of competent jurisdiction for the appointment of a successor trustee or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto. Trustee’s sole responsibility after the effective date of its resignation shall be to hold the fund (without any obligation to reinvest the same) and to deliver the same to a designated substitute trustee, if any, or in accordance with the directions of a final order or judgment of a court of competent jurisdiction, at which time of delivery trustee’s obligations hereunder shall cease and terminate, subject to the provisions of Section 9. In accordance with Section 9, the trustee shall have the right to withhold an amount equal to any amount due and owing to the trustee, plus any costs and expenses the trustee shall reasonably believe may be incurred by the trustee in connection with the termination of the agreement. (Kathy Trent, WM)

Response: Section 13 is consistent with USEPA RCRA requirements for wording of financial assurance instruments. It is the obligation of the owner or operator, not Ohio EPA or the licensing authority, to appoint a successor trustee. Ohio EPA has significant concerns with the comment’s suggested language that allows the delivery trustee the right to withhold “any amount due and owing to the trustee, plus any costs and expenses the trustee shall reasonably believe may be incurred by the trustee in connection with the termination of the agreement.” The rule was not changed in response to this comment.

Comment: Section (A)(1), Section 15.: Insert after “mail” in second line “or other form accompanied by a receipt”. (Kathy Trent, WM)

Response: The rule was changed in response to this comment. “...or any other form of mail accompanied by a receipt...” was added.

Comment: Section (E), First paragraph of Certificate, first line: Move “policy” after insurance and delete “of”. (Kathy Trent, WM)

Response: The use of the term “policy of insurance” is consistent with USEPA RCRA requirements for wording of financial assurance instruments. The rule was not changed in response to this comment.

Rules Pertaining to Chapter 3745-560 Composting

Agency Contact for this Package

Division Contact: Angel Arroyo-Rodriguez, Division of Materials and Waste Management (DMWM), (614) 728-5336, angel.arroyo-rodriguez@epa.ohio.gov.

Ohio EPA held a public comment period from December 3, 2010 to April 1, 2011 regarding composting rules in Chapter 3745-560. This document summarizes the comments and questions received during the comment period pertaining to Chapter 3745-560.

The composting rule package to be filed with the Joint Committee on Agency Rule Review (JCARR) will include only those multi-program rules necessary to administer the composting program.

3745-560 Composting - General Comments

Comment: ORAO would like to know what exactly are the Authorizing Documents for each class of composting facility. (Sharon Barnes, Barnes Nursery)

Response: "Authorizing document" is defined in OAC 3745-500-02(A)(11) and includes but is not limited to, a permit, license, registration, acknowledgment of registration, plan, alteration, approval to use an alternative material, approval to use an alternative infectious waste treatment method, and order. Which authorizing documents a composting facility will have is dependent on its class, referenced in OAC 3745-560-100, 3745-560-200, 3745-560-300, 3745-560-400, and whatever alternative material approvals they have obtained or orders issued to the facility. No change was made in response to this comment.

Comment: I recommend that the new rules require class IV sites with 50 cubic yards or more be regulated. This is consistent with City regulations in the Dayton-Montgomery County area and with Wisconsin DNR rules and I believe is a reasonable size. An exemption for community gardens could also be included and I recommend the 50 cubic yard figure for exemption. (David Secor)

Response: Any compost site under 300 square feet is no longer regulated by Ohio EPA. This includes currently registered class IVs.

Comment: Support for assuring proper air quality and odor controls are in place. While the regulations do not provide prescriptive measures for air quality or odor management there is some recognition that a facility must control this. We support the following:

- Compost facility establishment. An odor management plan is required. The plan must include methods for minimizing odors and methods to mitigate the impact of odors.
- Operational Requirements. —Prevents the creation of air pollution as to not violate Chapter 3704 (XXX) of the Revised

Code or any rules promulgated there under.||

- **Termination Section. Under the termination section of the Code, the “director” may revoke a facility permit when the criteria of the code have not been met.**

(Kathy Trent, WM)

Response: Thank you for your support of these regulations.

Comment: **This letter requests time extension during which Ohio EPA will accept comments on the referenced Draft Regulations-until 30 JUN 2011. This time extension is necessary to fully explore why the referenced rules should not be abandoned. (Al Bordelon)**

Response: A response to the requests for an extension to the comment period was sent via Ohio EPA's listserv on January 20, 2011. The interested party period was extended to April 1, 2011.

Comment: **On any given day; Mother Nature processes her compost in plain sight on the grass lands and forest floors of the nation's pristine watersheds; without let, hindrance or harm, where She carries her discharges into the ground and groundwater and into nurturing streams. The proposed rule package seeks to portray this natural process as a "threat" and not beneficial to the environment, and fly's in the face of Mother Nature's primacy in this endeavor. (Al Bordelon)**

Response: Composting is defined in statute ORC 3734.01(N) as a solid waste disposal facility and therefore the director of Ohio EPA shall adopt rules to regulate operations. Although composting is a natural process, composting facilities are businesses accepting a wide range of solid wastes, which, if not handled properly, can impact the environment, public health, safety, and create a nuisance.

Comment: **Could the Ohio EPA address facilities that may want to collect class II materials, size reduce the material and send uncured, unfinished compost to another class II facility for final processing and subsequent testing? (Holly Christmann, Hamilton County Recycling and Solid Waste District)**

Response: The activities described here constitute the transfer of solid waste and not composting and are better addressed in the transfer facility regulations 3745-27-23. The definition of transfer facility in 3745-27-01 excludes the transfer of solid waste containers of 50 cubic yards or less.

Comment: **The District requests clarification from the Ohio EPA if feedstocks can be obtained from commercial establishments. For example, can coffee shops distribute coffee grounds to customers for use in their backyard compost pile? (Holly Christmann, Hamilton County Recycling and Solid Waste District)**

Response: Ohio EPA's intent is to ensure that composting is done in an environmentally protective manner. Our focus is on composting feedstocks that represent a significant pathological or contaminant concern and commercial disposal

operations as disposal is defined as composting. This concern includes residential property becoming a commercial composting operation providing a disposal service. In response to this comment, Ohio EPA is proposing to change 3745-560-01(C)(1) to specifically limit the size of a residential compost instead of the source of the material used for composting.

Comment: We do not feel we should regulate how much material an operator must distribute on an annual basis. As long as the operator has adequate space on his site and the material is not causing a nuisance, he should be able to control his own market and distribute the material as he desires. (Dane Tussel, Cuyahoga County Board of Health)

Response: Ohio EPA has retained this requirement to address situations where facilities have accumulated large stock piles of material for an extended period of time without distributing or utilizing any product. We believe that the minimum requirement will be easily met by facilities that are distributing product.

Comment: **General comment: We would like some clarity on the daily, weekly, monthly log of operation requirements for the different class facilities.** (Dane Tussel, Cuyahoga County Board of Health)

Response: Each class facility has a specific recordkeeping rule that directly states what the log of operation requirements are for that class of facility. Each rule establishes the frequency required of an active facility versus inactive facility for that class of facility.

Comment: **Ohio EPA should ensure that there is no unnecessary overlap in the regulation of manure composting with the Ohio Department of Agriculture.** (Unknown)

Response: No change is necessary. 3745-560-01(C)(2) is an existing rule exclusion that excludes on farm composting. This language was developed with the ODA and Ohio Farm Bureau.

Comment: I have a comment on the annual compost reports. Would it not make sense that the rule give the agency some flexibility and add language to require other information as necessary to determine the total quantity of solid waste managed at a Class II, III or IV facility? Specifically I am talking about wood waste. Why do solid waste districts have to send a separate survey to the compost facilities to get their wood waste processing totals. This is really important during a bad storm year. If we can obtain it in the Annual Report it will be easier for everyone. (Michael Greenberg, GT Environmental, Inc.)

Response: In consideration of this comment, Ohio EPA is changing this rule to match the information required in the log of operations, 3745-560-04(A)(3). Wood waste would be considered a sub-category of yardwaste, or a bulking agent.

Comment: I am writing this letter in support of the OEPA's new Administrative Code Chapter 3745-560 that you made an announcement on recently. Please utilize this letter as a vote of confidence for the proposed changes in favor

of compost related waste diversion expansion for the state of Ohio. (Mario Parisi; Holly Christmann, Hamilton County Recycling and Solid Waste District; Kathy Trent, WM)

Response: Thank you for your support of the regulations.

3745-560-01 Composting facilities - applicability.

Comment: 3745-560-01(C) This rule exempts certain businesses from having to register yard waste composting operations as long as they can meet certain requirements. If a city/village can meet these same requirements, we feel that they should also qualify for the exemption. (Dane Tussel, Cuyahoga County Board of Health)

Response: A change has been made in response to the comment. The change now allows municipalities and public institutions to take advantage of this exclusion. The rule does clarify that the exclusion will not include general collection of yardwaste and material from residences. The exclusion does now provide that municipalities and institutions can compost their own landscaping waste on their own city owned properties.

Comment: The ORAO requests that number 3(a) further define that materials are generated by a landscapers' own business operation. We do not want to see a landscaper who has chosen to manage his own material on his own property permitted to include materials taken in from other landscaping businesses. We suggest the following wording change:

(a) The owner or operator composts only yard waste and bulking agents generated by the owner's business operations engaged in providing lawn mowing or landscaping services or business operations that generate yard waste while lawn mowing or landscaping on the business operation's premises.

(Sharon Barnes, Barnes Nursery)

Response: The rule was changed accordingly to clarify the requirement.

Comment: 3745-560-01 (D) outlines class II facilities that are exempt from the license requirement and financial assurance requirement of the Administrative Code. The District appreciates Ohio EPA easing restrictions for facilities that compost their own material on site. However, the District is concerned with schools that compost small amounts of food waste on-site. From the District's interpretation of the draft compost regulations, schools that want to compost small amounts of food waste on-site would be exempt from the license and financial assurance requirements, but would be required to have a registration and follow the requirements of that registration including, but not limited to: daily logs, annual reports, inspections, and testing of the finished compost. It is the District's opinion that this would place a significant burden on school composting programs when, in actuality, the school composting programs are similar to residential backyard composting, which are exempt from regulations. Not only does the registration requirement and testing place an undue burden on

schools, it also places a burden on health departments to conduct inspections at school composting programs. (Holly Christmann, Hamilton County Recycling and Solid Waste District)

Response: In response to comment, Ohio EPA is proposing a size-based exemption that would allow schools, community gardens, and any organization or person to have a small area to compost materials regardless if the waste materials are generated on-site or off-site. The composting area must be no larger than 300 square feet (20'x15', 30'x10', etc.) Assuming an average pile height of 4.5 feet, an area of 300 square feet would be needed to accommodate 50 cubic yards. The 300 square feet exemption will allow schools and others to compost the same materials allowed at a Class II facility without having to comply with OAC Chapter 3745-560. There would be no requirement for an exempt facility to have a registration, license, financial assurance, or follow the requirements of that registration including, but not limited to: daily logs, annual reports, inspections, and testing of the finished compost. While the proposed exemption means that Ohio EPA considers such limited composting as posing a minimal environmental and public health threat, composting some materials near residential lots may result in an odor nuisance to neighbors. Local governments may have different considerations, such as zoning requirements, and may set stricter requirements as they deem necessary.

Comment: **3745-560-01(D) This rule exempts business from having to obtain a class I food scrap composting license if they can meet certain requirements. However these businesses would still have to be registered with OEPA and abide to limited operational rules. We feel that there is no need to even make these facilities register. We do not believe that a compost area of 600 sq. ft. can create enough of a health concern to justify the registration. As Boards of Health, we have nuisance codes which we could use if a site did pose an environmental or public health hazard. (Dane Tussel, Cuyahoga County Board of Health)**

Response: No change was made in response to this comment. These facilities are composting animal waste and food scraps, which if not composted correctly for pathogen destruction, can pose a health hazard. Ohio EPA does not view the "no fee registration" as an unreasonable burden to have contact information and the ability to provide technical assistance.

Comment: **3745-560-01(E) states, "The compost distribution requirements of rules 3745-560-220 and 3745-560-320 of the Administrative Code shall not apply to the owner or operator of a class II or class III composting facility provided that the following condition are met: The owner or operators composts only yard waste, agricultural waste, animal waste, bulking agents and additives. All compost produced is utilized exclusively on property owned by the owner of the facility." To alleviate the burden of testing on class II facilities that would be exempt from the license requirement and financial assurance, the District suggests adding language that testing is only required for finished compost that is used for food production or if the material is used off-site. (Holly Christmann, Hamilton County Recycling and Solid Waste District)**

Response: Changes were made in response to this comment. The intent was to not limit a Class II's acceptance of food waste under this exclusion.

Comment: **(F) On-farm mortality composting. Composting facilities that compost animal carcasses pursuant to Section 1511.022 of the Revised Code and distribute for use or give away compost are subject to the compost quality standards requirements established in rules 3745-560-220, 3745-560-225, and 3745-560-230 of the Administrative Code. ORAO finds the location of section (F) confusing as it is found in and around sections that are exemptions and might be misinterpreted as exempt. We have interpreted this section to mean on-farm mortality composting must meet compost quality standards and be tested accordingly. Are we correct? (Sharon Barnes, Barnes Nursery)**

Response: In response to this comment 3745-560-01 has been reorganized to first list applicability related paragraphs followed by the exclusions from the chapter. Applicability related paragraphs are A, B, F (becomes the new C) G (becomes the new D). Limited applicability related paragraphs are E (becomes the new F). Excluded from complying with chapter: C (becomes the new G). Paragraph D was removed.

3745-560-02 Composting facilities – definitions.

Comment: **3745-560-02(A)(12) defines cross-contamination as " ... includes but is not limited to contact with the surface of a machine, the mixture of tested ... ". The utilization of different material handling equipment or decontamination of equipment when handling different classes of feedstock is overly costly and impractical. The compost product testing required for distribution of compost will provide more than adequate safeguards of product quality. (R. Jay Roberts, Rumpke)**

Response: The definition of cross-contamination is not changed. The comment's concern is more directly regarding operational rules specific to requirements addressing cross-contamination. Paragraphs (O) of 110, 210, and 310 are the operational requirements addressing cross-contamination. These requirements do not require separate equipment or require cleaning of equipment but does require testing to the more stringent standard. It is the operator's choice to prevent cross-contamination by cleaning equipment between handling different feedstocks and thereby avoiding testing to the more stringent feedstock requirement.

Comment: **3745-560-02(A)(5) defines alteration as " ... changes in the type of waste received, replacement of equipment, and repair of the facility". Replacement of equipment with equivalent equipment and repair of facilities consistent with the authorizing documents should not require an alteration. (Kathy Trent, WM)**

Response: Upon consideration of the comment, Ohio EPA has clarified our intent that it does not include routine equipment replacement and repair.

3745-560-03 Composting registration application call-in schedules.

Comment: 3745-560-03 This rule would require a registered facility to submit a plan view drawing of their facility along with their annual report which is due on April 1st 2011. Need to change the April 1st, 2011 date to at least April 1st, 2012 depending on when the rules become effective. (Dane Tussel, Cuyahoga County Board of Health)

Response: The date on the annual report will change accordingly based on the date that the rules become effective.

3745-560-04 Composting – log of operations and annual report forms.

No comments were received.

3745-560-100 Class I composting facility establishment.

No comments were received.

3745-560-101 Criteria and procedures for approval, termination, revocation, and administrative change of a class I composting facility permit to install.

No comments were received.

3745-560-102 Facility preparation requirements for class I composting facilities.

Comment: 3745-560-102(A)(1) states: "Materials placement areas shall be located within enclosed buildings or structures. The solid waste handling area where solid waste is received at the composting facility shall be located within structures that may have one open side." These sentences are conflicting since solid waste handling areas are included in the definition of materials placement areas. (R. Jay Roberts, Rumpke)

Response: The rule was revised in response to the comment. "solid waste handling" was removed from the second sentence in 3745-560-102(A)(1).

3745-560-105, 3745-560-205 Alternative materials request for class I and class II composting facilities.

Comment: 3745-560-105 & 205 establish the process for seeking approval to accept alternative materials at Class I and II facilities. Elevating these decisions to the Director for approval in every case seems unnecessary. Some alternative material may be of a known benign nature and carry a reduced known risk. A list of known material or material types with known risks could be graded and listed into categories that require the more restrictive analysis and greater scrutiny. (R. Jay Roberts, Rumpke)

Response: This concept is currently in rule, OAC 3745-27-40. Feedstocks have been defined broadly to include similar types of organics. Ohio EPA's receives around five requests for alternative materials per year. Most of the requests are regarding the use of an industrial waste-water sludge or medium material needing a case-specific review. Rarely has Ohio EPA gotten a request for the use of an off-spec product that does not fit under the definition of "feedstock" and

needed an alternative material approval. No change was made in response to this comment.

Comment: 3745-560-105 & 205 state: "The submitted analytical data demonstrates that the alternative material does not exceed the parameters specified in rule 3745-560-230 of the Administrative Code." The parameters specified in 3745-560-230 are for final compost product. Applying these standards to feed-stock material is overly restrictive. (R. Jay Roberts, Rumpke)

Response: Ohio EPA has revised the rule in response to this comment. The rule language in the interested party draft did not match the agency's intent. The revised rule will read, 3745-560-105, 205 (B)(8) The submitted analytical data demonstrates that the alternative material exceeds the parameters specified in rule 3745-560-130/230 of the Administrative Code, but the applicant has demonstrated that the compost produced with that material will meet the compost quality standards specified in 3745-560-130/230.

3745-560-110, 3745-560-210, 3745-560-310, 3745-560-410 Operational requirements for class I, class II, class III, and class IV composting facilities.

Comment: 3745-560-110, 210 and 310 (E) state: "The owner or operator shall distribute compost product at a minimum rate of one fourth the amount of material received the previous calendar year." It is unclear if this volume is solely prior year feed stock or does it also include bulking agents and additives. Also, can this volume be expressed in tons or cubic yards? (R. Jay Roberts, Rumpke)

Response: The amount of material received includes all feedstocks, bulking agents, and additives. The rule requires an amount of material, and the owner or operator may choose whether to determine the amount in terms of mass or volume. No change is necessary in response to this comment.

Comment: 3745-560-110, 210 and 310 (F) state: The owner or operator shall ensure that the technical operation and maintenance of the composting facility is under the responsible charge of an operator certified by the director as having completed the operator training required by Chapter 3734 of the Revised Code and rules adopted thereunder. Until such time as Ohio EPA implements operator training required by Chapter 3734 of the Revised Code and rules adopted thereunder, this requirement should be eliminated from the proposed rules. (R. Jay Roberts, Rumpke; Holly Christmann, Hamilton County Recycling and Solid Waste District; Dane Tussel, Cuyahoga County Board of Health)

Response: The agency will explore posting the rules on the web with a notation that the certification program is not currently available. No change was made in response to this comment.

Comment: 3745-560-110, 210 & 310(D) allow the Director to approve alternative uses for Class I, II and III compost that doesn't meet final product standards.

Allowance needs to be made in the regulations for a compost facility to ship off-spec compost to other approved compost facilities for further processing. This would eliminate the need for expensive monitoring and testing while providing a low-cost local alternative for managing organic wastes. (R. Jay Roberts, Rumpke)

Response: The rule has been clarified in response to this comment. The clarification is that a composting facility may ship off-spec compost to another appropriate class of composting facility for further processing.

Comment: **3745-560-210 (P)(2) requires grinding of compostable service ware prior to incorporating into the composting process. We ... question the practicality of separating it from food waste for grinding prior to composting. This requirement appears to place an additional burden on class II facilities. (Holly Christmann, Hamilton County Recycling and Solid Waste District; Kathy Trent, WM; Dane Tussel, Cuyahoga County Board of Health)**

Response: Upon consideration of the comment, the requirement to grind compostable serviceware has been removed. However industry practice is to grind large serviceware for size reduction and increase the available surface area for efficient composting. The agency will rely upon the compost quality standard requirement for foreign matter. Compost that doesn't meet the foreign matter standard may be re-introduced into the composting process.

Comment: **3745-560-410(D)(4). Under the methods of composting for class IV facilities, the draft regulations state that static piles shall be turned at a minimum two times per year to reintroduce oxygen into the composting process. What is the rationale for turning a static pile that consists of primarily leaves? This could place an additional burden on local governments' class IV facilities. (Holly Christmann, Hamilton County Recycling and Solid Waste District; Sharon Barnes, Barnes Nursery; Dane Tussel, Cuyahoga County Board of Health)**

Response: The rule will change to emphasize that turning is necessary to mix materials, distribute moisture, heat, increase porosity, and change the location of materials in a pile or windrow to ensure consistent composting. Rule will read:

"Windrows shall be constructed..... mix materials, distribute moisture, heat, increase porosity, and change the location of materials in a pile or windrow to ensure consistent composting. If a windrow is in place for at least twelve months, it shall have been turned a minimum of four times during that that period."

ORAC suggested a meeting to discuss turning frequencies. Ohio EPA is open to this meeting.

3745-560-115 Record keeping requirements for class I composting facilities.

No comments were received.

3745-560-120 Compost distribution requirements for class I composting facilities.

No comments were received.

3745-560-125, 3745-560-225, 3745-560-325 Compost sampling and testing requirements for class I, class II, and class III composting facilities.

Comment: A problem with this rule is that it has been improperly enforced. Health departments often insist on following the 8 hour rule and do not allow option b. The 8 hour rule is unnecessary in that the conditions in the sampled piles are similar to those of the sample in transit. There is no clear reason for an 8 hour time limit. This limit is especially onerous in that samples must be essentially taken and received by the analytical lab within a few hours. Because of the distance between analytical labs and composting facilities throughout the state, it is often very costly to abide by this unnecessary rule. Furthermore by the time samples are received by a lab tests must commence immediately, often at hours when the lab may usually be closed. For these reasons we suggest shortening and changing this rule to the following:

(5) Samples collected for testing of Table 2 in rule 3745-560-330 of the Administrative Code shall be prepared and analysis started no later than seventy two hours after the collection of the sample.
(Sharon Barnes, Barnes Nursery)

Response: Existing rule has the eight hour requirement or the option of obtaining an approved alternative sampling timeframe. The draft rule eliminates the need to obtain approval of an alternative timeframe by providing the forty-eight hour refrigeration option. Paragraph (B) of rule 3745-560-125, 3745-560-225, and 3745-560-325 continues to provide an approval for alternative frequencies of sampling, sampling methods, or testing. Ohio EPA will provide clear direction to health departments that this is an option that no longer requires an approval. The 48 hour time period specified in the second option was adopted from the sampling methods specified in The Test Methods for Evaluation of Compost and Composting (TMECC) developed by the United States Composting Council.

No change was made in response to this comment.

3745-560-130, 3745-560-230, 3745-560-330 Compost quality standards for class I, class II, and class III composting facilities.

Comment: The second row of this table is confusing and establishes a limit that is impossible to meet. The table states that the concentration limit for "Organic constituents" is "practical quantitation limits". So any organics that are detected would make the compost exceed the concentration limits of the regulation. This row should be removed. In row 5 of the table, the concentration limit value for benzene is set at 0.006 mg/kg (6 ppb). This value is too low and disproportionate with the other concentration limits in the list. On the basis of known releases of benzene into the environment and its modeled behavior the European commission has estimated that the background soil concentration of Benzene is 0.020 mg/kg (Environment Agency, 2003). So to have a concentration limit value for compost of 0.006

mg/kg would be specifying a limit potentially 1/3 of the background concentration. Background inhalation exposure to benzene from its presence in ambient air is estimated to be approximately 0.2 mg/day for an adult weighing 70 kg and inhaling 20 m³/day. The background oral exposure from its presence in food and water is estimated at 0.003 mg/day (Environment Agency, 2009d). So the amount of benzene in a kg of compost at the concentration limit would be 1/3 of the amount taken in daily by an average human being. Yet few people would eat a kg of compost daily or be able to absorb the benzene in it if they did. The analytical limits of detection for benzene range from 0.001 to 0.010 mg/kg DW, with limits of quantification ranging from 0.005 to 0.050 mg/kg DW. Thus the amount of benzene specified in the composting regulations of 0.006 mg/kg is near or below the limits of detection and quantification. To detect benzene at the concentration limit would be expensive. Finally, it makes no sense to have a PCB limit of 1 ppm (row 6) and a benzene limit of 0.006 ppm. PCBs are xenobiotic chlorinated aromatics, essentially they are chlorinated di-benzenes. PCBs bio accumulates, are immobile and likely pose much more of a health threat. Benzene is naturally occurring, volatile, mobile and biodegradable. Why are PCBs allowed to be present in composts at 150 times greater concentrations than benzene in the regulations? (Sharon Barnes, Barnes Nursery)

Response: In response to the comments, Ohio EPA has reconsidered specifying compost quality standards for alternative materials requests in rule. The revised rule has eliminated paragraph (B) and table 5 from OAC 3745-560-130 and 3745-560-230. Review of an alternative materials request is a case-specific review and the approval will address any necessary compost product standards for use of that material.

Comment: The "percentage of Foreign Matter" testing procedure and quality standard specified in 3745-560-130, 230 and 330 appear to be subjective and we question the practicality of conducting the test and satisfying the standard. Please identify the Ohio EPA's basis for establishing the procedure and your "real-world" experience with its application. (R. Jay Roberts, Rumpke)

Response: The foreign matter compost quality standard has been in existing rule since 2003 and was derived from established industry standards and procedures for foreign matter testing, such as the U.S. Composting Council's Seal of Testing Assurance Program. No change was made in response to this comment.

Comment: The Table 4 - General Parameters specified in 3745-560-130, 230 and 330 should be deleted. They do not relate to protection of human health and the environment, but rather compost material marketability and quality. This type of testing should be left to the discretion of the supplier and user. (R. Jay Roberts, Rumpke; Holly Christmann, Hamilton County Recycling and Solid Waste District)

Response: ORC 3734.028 states "...rules establishing standards of quality for compost products produced by composting facilities subject to this chapter 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.

The rules may establish differing standards of quality for compost products, in accordance with their various uses, if the director considers such standards to be necessary or appropriate to protect public health and safety and the environment.” Table 4 contains those compost quality standards that provide information for the user to appropriately use the compost in accepted agricultural or horticultural practices. No change was made in response to this comment.

3745-560-135 Closure requirements for class I composting facilities.

No comments were received.

3745-560-200 Class II composting facility establishment.

No comments were received.

3745-560-201 Criteria for approval and termination of a class II composting facility registration.

No comments were received.

3745-560-202 Facility preparation requirements for class II composting facilities.

No comments were received.

3745-560-215 Record keeping requirements for class II composting facilities.

No comments were received.

3745-560-220 Compost distribution requirements for class II composting facilities.

No comments were received.

3745-560-235 Closure requirements for class II composting facilities.

No comments were received.

3745-560-300 Class III composting facility establishment.

No comments were received.

3745-560-301 Criteria for approval and termination of a class III composting facility registration.

No comments were received.

3745-560-302 Facility preparation requirements for class III composting facilities.

No comments were received.

3745-560-315 Record keeping requirements for class III composting facilities.

No comments were received.

3745-560-320 Compost distribution requirements for class III composting facilities.

No comments were received.

3745-560-335 Closure requirements for class III composting facilities.

No comments were received.

3745-560-400 Class IV composting facility establishment.

No comments were received.

3745-560-401 Criteria for approval and termination of a class IV composting facility registration.

No comments were received.

3745-560-402 Facility preparation requirements for class IV composting facilities.

No comments were received.

3745-560-415 Record keeping requirements for class IV composting facilities.

No comments were received.

3745-560-435 Closure requirements for class IV composting facilities.

No comments were received.

End of Response to Comments