



Division of Solid and Infectious Waste Management

Response to Comments

Rule Package: Multi-Program Rules - OAC 3745-500

Agency Contact for this Package

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Ohio EPA held a comment period on August 1, 2006 regarding multi-program rules. This document summarizes the comments and questions received during the comment period, which ended on November 1, 2006.

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

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses. Many comments were paraphrased and combined with similar comments; therefore the comment may not appear exactly as submitted.

General/Overall Concerns

Comment 1: Various interested parties commented that they did not have adequate time to complete a thorough review of the draft rules. (Patrick Loper II, Bowser-Morner Associates, Inc.; Dane Tussel, Cuyahoga County Board of Health; Tim Weaver, City of Springfield; Chuck DeJonckheere, Hamilton County General Health District)

Response 1: Interested parties are given a thirty-day interested party comment period for draft rules. In this case, due to the release of multiple draft rule packages at one time, a sixty-day extension was granted. For the multi-program Chapter 3745-500, a second interested party comment period is being provided with the release of the composting rule package.

Comment 2: It also appears clear to me that the ultimate goal of the Ohio EPA is to “fold” other program chapters in the ground water rules and the multi-program rules. For example I would fully expect that at some time in the future the Ohio EPA would propose to subject solid waste facilities currently subject to OAC Chapter 27 to the multi-program and ground water rules. I think it would have been far more useful to

do so in one action rather than at this time adopting rules which are intended to ultimately impact over program areas but not clearly informing the regulated community that is the long term plan. Thus, I object to the adoption of the ground water and multi-purpose rules being adopted at this time under this draft package. (Steve White, Allied Waste)

Response 2: Ohio EPA is filing the Composting and Multi-program rules at this time. The ground water rules will be filed at a later date. When the agency updates other solid waste program rules, an interested party process for those rules will be held. DSIWM informed the regulated community of the rule reorganization plan on January 20, 2006 and posted the plan on the division website on January 10, 2006. The reorganization plan can be found here:
<http://www.epa.ohio.gov/LinkClick.aspx?fileticket=qDt3qXGjW2Y%3d&tabid=2612> .

Comment 3: Various interested parties commented that the rule packages' organization and amount of cross-referencing is confusing and overly complex. Clearer and more concise rules should be drafted and the amount of cross-referencing should be reduced. The requirements should not be broken down into such fragmented individual rules. The rules should be numbered so that readers will feel confident they have read all applicable requirements. (Robert Bessette, CIBO; Kathy Trent, Waste Management; Steve White, Allied Waste; Michael Cyphert, Walter & Haverfield LLP; Kitt Cooper, Law Offices of Kitt Cooper; Rick Thornburg, Cincinnati Health Department; Chamber of Commerce; Tim Killeen, Ohio Department of Transportation; Daniel Chatfield, Clark County Combined Health District; Dane Tussel, Cuyahoga County Board of Health; David Gubanc, Springfield Landfill, LLC; Beth Bickford, Association of Ohio Health Commissioners; Erv Ball, Ohio Environmental Health Association; Chuck DeJonckheere, Hamilton County General Health District)

Response 3: Steps have been taken to reduce cross referencing and clarify the rules. In many instances, the rules include a description of the subject of a cross reference with the rule number so the reader can understand what the cross referenced rule is about. In addition, where appropriate, some rules have been combined.

Comment 4: The combined publication of proposed C&DD, Industrial Waste, Ground Water and Multi-Program Rules represents a significant change to waste management facilities in Ohio, including C&DD facilities. The complexity and scope of the proposed rules mandate that the Agency develop the draft rules separately or in phases. Separation of the rules is necessary to afford all interested parties a

sufficient time for review and careful analysis. (Jay R. Roberts, Rumpke; Kathy Trent, Waste Management; Michael Cyphert, Walter & Haverfield LLP; Steve White, Allied Waste)

Response 4: The C&DD, industrial waste, and ground water rules are moving at different paces through the rule revision process at Ohio EPA. Currently, multi-program Chapter 3745-500 is being coupled with the composting program as the updated composting rules cite rules in this multi-program chapter.

Comment 5: **Various interested parties have requested clarification for when all or some of a list of subparagraphs are applicable. (John Thomas, GM Powertrain; Mary Helen Smith, District Board of Health Mahoning County)**

Response 5: If the rule states that an entity needs to do the following, the “all” is implied. There is not a possible way for them to do the following without doing “all of the following.” When that is not the case the rule might say do “one of” the following, or a requirement might be conditional (e.g. if permitted after a certain date).

3745-500-01 Multi-program – applicability. (new rule)

This rule was added to the second interested party draft to ensure that the applicability of this financial assurance chapter is clearly stated in the rules.

3745-500-01 Multi-program - definitions.

The rule number has been change to: 3745-500-02.

Comment 6: **Various interested parties commented on definitions that belong to the industrial waste program. (Gary Haney, First Energy; Kim Myers, Griffin Wheel; Michael Born, Shumaker, Loop & Kendrick, LLP; Karen Winters, Squire, Sanders, Dempsey LLP; James, McDonald; Mary Helen Smith, District Board of Health Mahoning County)**

Response 6: DSIWM will not be promulgating the Industrial Waste Rules at this time, therefore these definitions have been removed from the rule.

Comment 7: **Additional definitions should be incorporated including, but not limited to, all purpose or all weather access roads, scavenging, Best Management Practices, and substantial compliance. (Michael Stepic, URS)**

Response 7: A definition of “access road” has been added to draft rule 3745-500-01 of the Administrative Code. “Best Management Practices,” “scavenging,” and “substantial compliance” will not be defined in this rule.

Comment 8: **If the intention of the OEPA is to have a centralized and uniform regulation program, it seems to make sense that all definitions applicable to the many programs would be provided in a single location within the regulations. (Michael Stepic, URS; Randall Mills, SCS Engineers; Chuck Satchwill, SCS Engineers)**

Response 8: The organization of the definitions has been adjusted based on the comments. Ohio EPA, DSIWM considered ease of use for the users of the rules, as well as the constraints imposed on Ohio EPA, DSIWM when promulgating rules by section 119.032 of the Revised Code (i.e. the five-year rule review), LSC, and JCARR. The resulting organization for definitions in the rules gives a good balance between the legal and procedural requirements and making it easy for users of the rules to find a definition.

The rules have been changed so that all definitions have been consolidated such that there will only be two places where definitions will be found.

(1) Terms used by more than one chapter will be defined in a multi-program rule which is rule 3745-500-01 of the Administrative Code.

(2) Terms used only by a chapter will be defined in the definition rule of that chapter.

Comment 9: **I wonder why it can not (*sic*) be a stand alone package. In other words when I am reading the rules about C&D waste, I don't have to go to other rules to see what this rule really means. When reading the rules, I often find myself opening 2 rule books so that I can look up the section referenced in the rule I am attempting to read. I would prefer all of the information to be in the one package, even if this means the same word is defined in 3 different rule packages. It might also be nice in this computer age to provide links on the web page so that it takes me to the area that I was referred and then I would be able to use the Back button to get back to the rule I was attempting to understand. (Tim Killeen, Ohio Department of Transportation)**

Response 9: The rules have been organized to cut down on the amount of cross-references and jumps between rules. Once the rules are effective, online versions of the rules will be provided by Ohio EPA and the intention is for these versions to have links provided for easier navigation.

In drafting rules, Ohio EPA seeks a balance. Ease of use depends on the perspective of various users, including the regulated community, consultants, lawyers, health departments, and citizens. Some are working with a specific type of facility and may prefer complete stand alone rules as suggested by the comment. Others are focused on a specific subject common to various facilities and prefer a single rule that applies to various facility types such as ground water monitoring, engineering design, and construction standards. Some prefer a single rule dealing with a process common to any facility such as procedures for applying for or issuing a permit or a license or establishing financial assurance. For many, the sheer quantities of rule language and duplication as well as any slight wording difference create difficulties in trying to stay informed and better able to advise clients and citizens. Ohio EPA's experience is that duplication of definitions and rule language in various packages going through separate rule adoptions over time suffer from slight differences. This draft package represents Ohio EPA's effort to balance these perspectives

Comment 10: **A definition of 'watercourse' should be provided. Possibly this could be addressed by incorporating the definition of 'natural waterways' as it is referenced in ODNR regulations. (Michael Stepic, URS)**

Response 10: A watercourse is one feature listed in the definition of "waters of the state:"

"Waters of the state" means all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters, including those waters that are presently used, have been used, or are susceptible to use for transporting interstate commerce up to the head of navigation.

Many of the other features listed as "waters of the state" are not defined. The term "waters of the state" is defined in Section 6111.01 of the Revised Code and has been promulgated into rule. Because "waters of the state" is statutorily defined, Ohio EPA cannot adopt a different definition that includes "natural waterways" instead of "watercourses." No change has been made in consideration of this comment.

Comment 11: **The Multi-Program rules should include definitions that clearly and appropriately define "recycling" and "legitimate recycling facilities" to assure that materials collected and/or segregated for the purpose of recycling will not be classed as solid waste and that recycling facilities will not be treated as though they are engaged in disposal. (Mary Wiard, Waste Alternatives, Inc.)**

Response 11: The draft rules contain a definition for recycling and for transfer facility. Within the definition of transfer facility is an exclusion that describes a legitimate recycling facility. The exclusion was moved from the exclusion rule to the definition to make it clear that such a facility is not a transfer facility. No change has been made in consideration of this comment.

Comment 12: **A definition of "submittal" or "submitted" to Ohio EPA and the approved health department should be added to the draft proposed rules. This term has been interpreted in several different ways throughout the district offices and has resulted in notices of violation in some instances. The interpretations have ranged from being post-marked by the required date, to being received and stamped at the district office, to receiving the document at the regulator's desk by the required date. Submittal should be defined as postmarked by the regulatory deadline. If the deadline falls on a weekend or a holiday, the submittal must be postmarked by the following Monday or business day. (Karen Winters, Squire, Sanders, Dempsey LLP)**

Response 12: This term will not be added to the definitions for these rules, however instructions regarding submittals are being clarified regarding deadlines and what constitutes submitted/received (e.g. date of received stamp).

Comment 13: **(A)(7): The definition of "aquifer system" is the same as in HB 397. However, HB-397 does not contain the additional "for the purposes of this definition. . ." description. This additional definition does not belong in the multi-program definitions. There are no text books, ASTM standards, or other sources of scientific literature that define an aquifer system in this manner. We believe that the qualifiers given for this definition are too prescriptive. They eliminate the possibility for any alternative reasonable common sense interpretation based on site specific conditions and site setting. (Christopher Cobel, Eagon and Associates, Inc.)**

Response 13: It should be noted that one of the goals of including such qualifying language for "aquifer system" is to interpret what a "significant amount of water" is and to rule out some geologic formations/units from consideration as an aquifer system. However, Ohio EPA is charged with protecting ground water resources in Ohio and deems the qualifying language for aquifer system described in the comment as necessary for

protecting those low-yielding units in areas where alternative, cost-effective water supplies are not available. No change has been made in consideration of this comment.

Comment 14: (A)(7): The term “yield significant amounts of water” has been added to the proposed rules. This was previously defined in the Ohio EPA Guidance Document DDAGW-02-05-100 (7/29/97). The proposed rule and the previous guidance document are not consistent. Using the wording in the 1997 guidance document, if Unit A produces less than 1.25 gallons per minute (gpm) and Unit B produces 2.50 gpm and is the likely source of water used for potable purposes, Unit B would be the uppermost aquifer system, and Unit A would be a significant zone of saturation. Under the proposed rule, Unit A would be the uppermost aquifer system because Unit B does not yield more than 3 gpm, per 500-01(A)(7)(b). This could require major changes to the design criteria at some permitted or planned facilities. The requirement included in proposed 500-01(A)(7)(c) is also not in the guidance document, and 500-01(A)(7)(d) now states “any purpose” rather than “potable purposes” as defined in the guidance document. The proposed rule should be modified to be consistent with existing guidance documents. (Karen Winters, Squire, Sanders, Dempsey LLP; Gary Haney, First Energy)

Response 14: Regarding the requirement for the underlying/overlying unit to yield more than three gallons per minute, it should be noted that under the DRAFT rule and in the scenario described in the comment, only Unit A would need to be monitored, but under the existing Ohio EPA Guidance Document DDAGW-02-05-100 (7/29/97) both Unit A (as a significant zone of saturation) and Unit B (as an uppermost aquifer system) would need to be monitored. Therefore, in some circumstances the DRAFT rule would include fewer requirements than existing rules and guidance. Furthermore, there are numerous hydrogeologic settings in Ohio as described in the example provided in the comment where there are two low-yielding units that are stratigraphically close to one another and the numeric range of their yields is common, thereby making it very difficult to determine which unit is or would be the most productive and/or the most cost effective for a domestic well near the facility. The concept of an “uppermost aquifer system” as defined in this rule is a zone that is distinctly more productive than other zones, such that in most scenarios a homeowner, business, or industry would find it significantly more beneficial to screen a well in that zone as compared to other zones beneath their site. A three gallon per minute minimum yield requirement for designating a saturated zone as an uppermost aquifer system as distinct from other saturated zones beneath the potential sources of contamination reflects this concept of a “distinctly more productive” zone.

Regarding the requirement that both the unit in question and the underlying/overlying unit described in 3745-500-01(A)(8)(b) be “present under the potential source of contamination,” this clause is implied in paragraph (C) of the Ohio EPA Policy Document DDAGW-02-05-100 (7/29/97) where it describes “...another zone of saturation under the property...” The proposed wording in 3745-500-01(A)(8)(c) is simply more explicit than the policy document.

The requirement that the water merely be used “for any purpose...” was added due to at least two reasons: 1) a release to ground water from potential sources of contamination can have more than just human health impacts; it can have economic impacts on agriculture, businesses, and industries that may utilize the ground water for cooling, heating, washing, and many other uses; 2) the potential for water from “non-potable” wells to be used as drinking water exists in spite of any regulations prohibiting such use. No change has been made in consideration of this comment.

Comment 15: **(A)(7): If there are yield limitations for a significant zone of saturation, they should be clearly spelled out. Does this definition mean that a yield of >1/10 gpm represents an uppermost aquifer system or do the other limitations apply (<3 gpm etc.)? The definition seems to want to distinguish something but it is not clear what. (David Silbaugh, Silbaugh Hydrogeological Services)**

Response 15: “Significant zone of saturation” is defined in paragraph (S) of this rule and does not include any yield limitations but merely the requirement that the saturated zone “may act as a preferential pathway of migration away from potential sources of contamination.” No change has been made in consideration of this comment.

Comment 16: **(A)(9): Includes a specified conversion factor between tons and cubic yards of one ton to three yards. This specified conversion factor for solid waste of one ton to three cubic yards is not applicable to all industrial and residual solid wastes. This draft proposed definition should be revised to allow conversion factors based upon site specific waste streams as demonstrated by the owner of the disposal facility. (Karen Winters, Squire, Sanders, Dempsey LLP; Gary Haney, First Energy)**

Response 16: The definition for ‘authorized maximum daily waste receipt’ has been removed from this package at this time.

Comment 17: **(C)(5): Definition of Construction Demolition Debris. Within that definition it states that construction demolition debris includes particles and dust created during demolition activities. I believe the words, “and transport” should be also be included. (Michael Stepic, URS)**

- Response 17:** This definition is taken from the statutory language of section 3714.01(C) of the Revised Code. The statutory definition of C&DD does not include “transport.” No change has been made in consideration of this comment.
- Comment 18:** **(C)(7): This rule would disallow storage of material for more than two years without being considered "illegal disposal". Common materials such as concrete, asphalt, and clean brick would be (sic). Common sense would suggest that the current rules do not need the proposed changes. (Michael Dinneen, Agg Rok Materials)**
- Response 18:** The proposed changes directly reflect the statutory language of section 3714.01(C) of the Revised Code. Two years is the statutory time limit for storage of clean hard fill. No change has been made in consideration of this comment.
- Comment 19:** **(C)(10): There are two different definitions: 1) for solid waste and industrial waste facilities, and 2) construction demolition debris facilities. Why are there two different definitions? (Michael Stepic, URS)**
- Response 19:** The C&DD program does not use this term, so the definition now only applies to solid waste facilities. The definition was also moved to Chapter 503 Financial Assurance.
- Comment 20:** **(D)(2): Includes “the director of environmental protection or a representative delegated by the director to act on the director’s behalf.” There are numerous references to the director throughout the proposed regulations. The draft proposed regulations should provide some clarification as to who the delegated representative or representatives of the director will be and what the scope of the delegated responsibilities will be. (Karen Winters, Squire, Sanders, Dempsey LLP; Gary Haney, First Energy)**
- Response 20:** When the director delegates authority to an individual it is done via a written delegation document. This document specifies both the individual to whom authority is given and the scope of the authority delegated. Delegation documents are public records and are available for public inspection. No change has been made in consideration of this comment.
- Comment 21:** **(D)(3)(a): Defines disposal by excluding ‘storage’. Clarify that CDD storage really means temporary storage as defined in 3745-520. (Mary Helen Smith, District Board of Health Mahoning County)**
- Response 21:** The definition was revised to state “storage of C&DD” to emphasize its difference from storage of other materials and to serve as a pointer to the C&DD chapter. Should the term “storage” ever be defined in the multi-

program definitions, it would be unlikely that it would cause a conflict as the C&DD chapter will provide further details on implementing regulatory requirements regarding disposal and storage of C&DD.

Comment 22: **(D)(3)(b) defines solid waste disposal. OAC 3745-500-06(B)(2) and (B)(14) address the temporary solid waste storage beyond that of putrescible solid waste for no more than seven days prior to collection. Some property owners hide behind storage during enforcement actions. Please clarify whether solid waste can be stored. (Mary Helen Smith, District Board of Health Mahoning County)**

Response 22: Solid waste and C&DD can be stored in accordance with provisions of the applicable statutes and rules. The definition rule in each chapter will dictate how the definitions in rule 3745-500-01 of the Administrative Code are applicable to the respective program chapter. No change has been made in consideration of this comment.

Comment 23: **(G)(1): GM recommends that Ohio EPA remove all of the (a) text and add the words “or consolidated” to the (b) text after the word “consolidated” for clarity. (John Thomas, GM Powertrain)**

Response 23: The definition of “geologic unit or formation” provided in this rule reflects the definition in the 1970 Code of Stratigraphic Nomenclature. No change has been made in consideration of this comment.

Comment 24: **(G)(2), GM recommends that Ohio EPA incorporate a reasonable minimum yield of water. As stated, a teaspoon of water in a sand lens could meet the Ohio EPA draft definition. (John Thomas, GM Powertrain)**

Response 24: Regarding the definition for “ground water,” it may be possible for a “teaspoon of water in a sand lens” to meet the definition of ground water, but the geologic formation/unit would not be considered significant zone of saturation unless it acts as a “preferential pathway of migration away from potential sources of contamination” and is not part of the capillary zone, nor would it be considered an aquifer system unless it yields one-tenth of a gallon for a twenty-four hour period and the other criteria are satisfied. No change has been made in consideration of this comment.

Comment 25: **(G)(2): Need to redefine "groundwater" so that it is consistent with other programs, i.e., VAP, etc. (Michael Born, Schumaker, Loop, and Kendrick, LLP)**

Response 25: The Voluntary Action Program (VAP) and its rules exist under a statute (ORC Chapter 3746) that differs from the statutes under which the ground water monitoring rules are being promulgated (ORC Chapters 3714, 3734,

and 6111). The goals of the VAP program differ from DSIWM's and the Division of Drinking and Ground Waters' (DDAGW) goals of containing waste and C&DD to prevent contamination of ground water. Furthermore, the federal solid waste regulations define ground water as "water below the land surface in a zone of saturation." Because the majority of the waste disposal facilities required to conduct ground water monitoring are in fact solid waste facilities, it makes sense to use the federal definition. Also, the definition in DDAGW's OAC Rule 3745-34-01 states that ground water "means water below the land surface in a zone of saturation." Ohio EPA's definition of ground water in the draft rules is consistent with federal definitions and other definitions in the Administrative Code. No change has been made in consideration of this comment.

Comment 26: (L)(4): It does not seem to include the Ohio EPA in the role of licensing authority. This should be revised to incorporate. (Michael Stepic, URS)

Response 26: Ohio EPA has been added to the definition of licensing authority.

Comment 27: (O)(2): This definition needs to be reviewed in light of the indiscriminate storage of solid waste as a wanted material. (Mary Helen Smith, District Board of Health Mahoning County)

Response 27: No change has been made in consideration of this comment. However, the comment has been cataloged for review when the municipal solid waste rules are reviewed.

Comment 28: (O)(2)(c): Discusses scrap tires in a building or trailer, or vehicle as open dumping. This would preclude race car drivers from having spare sets of tires, etc. A limit should be set to this regulation, such as ten similar to a tire transporter or 100 in accordance with OAC 3745-500-06(B)(17). (Mary Helen Smith, District Board of Health Mahoning County)

Response 28: The race car driver or racing team has not discarded the tires since they are saving them for future use on their race car. Therefore, the tires are not scrap tires and the rule does not apply to these tires. The tires are still in use by the original owner even when they are not mounted on the race car and have not been open dumped. No change has been made in consideration of this comment.

Comment 29: (P)(9): GM recommends that the Ohio EPA remove the words "a surface representing the total head (the sum of elevation head, pressure head, and velocity head) of ground water in a significant saturated zone, aquifer, or aquifer system, and defined by" for clarity. Without these words, the definition is complete. (John Thomas, GM Powertrain)

- Response 29:** Ohio EPA agrees that the definition is sufficient without the phrase “the sum of elevation head, pressure head, and velocity head” and has removed it from the rule.
- Comment 30:** **(R)(1): Use of the phrase "established and legitimate market" apparently refers to the only acceptable outlet for a converted material to be classified as legitimate recycling. This stifles all efforts at innovations for developing and implementing new markets and technologies for the recovery/recycling for the waste materials that are generated within Ohio. Draft a better definition for the term "Recycling" than what is proposed. If Ohio EPA has some justification for insisting that all recycled materials be returned to commerce into an established market, please explain the reasoning that has led to this proposal. (Larry E. Hardesty)**
- Response 30:** The proposed language is consistent with other regulatory definitions of recycling. In this regulatory context and definition, recycling is to result in the return of the converted material to commerce as a commodity for use or exchange. This necessitates the existence of an established and legitimate market. No change has been made in consideration of this comment.
- Comment 31:** **(S)(1)(b): GM recommends that Ohio EPA remove the “ground water monitoring system” as part of the sanitary landfill facility definition since this system is used to monitor upgradient/downgradient to a facility. (John Thomas, GM Powertrain)**
- Response 31:** Ohio EPA considers the ground water monitoring system as an integral part in the monitoring of facility operation. No change has been made in consideration of this comment.
- Comment 32:** **(S)(4): To avoid numerous problems, the term "significant zones of saturation" should be clearly defined in scientifically verifiable terms. The definition should clearly differentiate between the "Uppermost Aquifer System" and "Significant Zones of Saturation." If it cannot be clearly defined, it should not be regulated. (Cox-Colvin & Associates, Inc.)**
- Response 32:** "Significant zone of saturation" is defined in this rule as “a zone of saturation that may act as a preferential pathway of migration away from potential sources of contamination” and "zone of saturation" is defined in this rule as “part of the earth's crust in which all voids are filled with water” but “does not include the capillary zone.” With these two definitions taken together, a "significant zone of saturation" would be:

“Part of the earth's crust in which all voids are filled with water (excluding the capillary zone) that may act as a preferential pathway of migration away from potential sources of contamination.”

The definition of “aquifer system” includes at least seven qualifying terms including numeric terms for yield that differentiate an aquifer system from a significant zone of saturation. Ohio EPA thinks that the qualifying terms included in these definitions are sufficient for a Qualified Ground Water Scientist to differentiate between a “significant zone of saturation” and an “uppermost aquifer system” at a facility. No change has been made in consideration of this comment.

Comment 33: (S)(5): Eliminate the repeated phrase “and includes but is not limited to garbage, scrap tires, combustible and noncombustible material, street dirt and debris”. Also, there is such a thing as a liquid solid waste (i.e. lime sludge or products that need to be solidified prior to disposal). (Mary Helen Smith, District Board of Health Mahoning County)

Response 33: In response to this comment, the repeated phrase “and includes but is not limited to garbage, scrap tires, combustible and noncombustible material, street dirt and debris” has been deleted from this definition.

Ohio solid waste landfill rules as well as federal municipal solid waste landfill rules prohibit the disposal of containerized bulk liquids or non-containerized liquids in landfills. The Ohio statutory definition of solid waste in ORC Chapter 3734 lists “...solid or semisolid material...” Liquids are not within the ORC Chapter 3734 definition of solid waste and liquids would need to be solidified prior to disposal in a solid waste landfill.

3745-500-02 Signatures.

(This rule has been moved to rule 3745-500-50)

Comment 34: Signatory language in these draft rules appears to make the signatory strictly liable for all errors and omissions that may appear in an application or document submittal even in those instances where the signatory exercised due diligence, made reasonable inquiry, and took all reasonable means available to ensure the accuracy and truthfulness of the submittal. The statement should be qualified with a statement similar to the “best of my knowledge” or other language deemed acceptable for other programs (e.g. the Clean Air Act and Clean Water Act). (Cox-Colvin & Associates, Inc.; Dominic Hanket, City of Columbus)

Response 34: The rule has been changed to add the phrase “to the best of my knowledge and belief”.

3745-500-03 Incorporation by reference.

Comment 35: The rule states, in part, that several listed materials are “made part of the rules” in the new Chapters, while the text of the materials are not. It is not at all clear what legal effect this distinction has in the applicability and enforceability of the provisions. Moreover, the proposed rule appears inconsistent with the language and intent of R.C. Section 121.72. This law prescribes how “text” and “materials” are to be incorporated into the rule. Two points are noted here. First, nowhere in this law is there mention of incorporating whole sections of currently effective laws and rules. It certainly could not have been the intent of the Legislature by adopting this law to suggest that agencies carte blanche incorporate all potentially applicable laws, rules and guidance.

Second, to incorporate by reference the language of several major federal statutes (the Clean Water Act, CERCLA, RCRA and TSCA) is not helpful to the regulated community in understanding its obligations under the new rules and adopting measures to implement them. The City strongly encourages the Agency to reduce unnecessary references while identifying as specifically as possible what provisions of relevant laws and rules it intends to apply.
(Dominic Hanket, City of Columbus)

Response 35: OAC 3745-500-03 is included in order to comply with ORC Section 121.72 and to give the regulated community a location where detailed information regarding where to obtain copies of statutory, regulatory and other industry standards cited elsewhere in the rules can be obtained. It also gives the date of the rule, statute or standard as required by ORC Section 121.72. Specific paragraphs or sections of statutes, where appropriate, are cited in other areas of the rules. Those citations are intended to be as specific as possible. No change has been made in consideration of this comment.

3745-500-04 Procedures for acting on licenses and permits to install.

(This rule has been moved to rule 3745-500-120)

Comment 36: It is quite common for owners/operators that have submitted documentation that require acknowledgement or approval from OEPA to not receive a response for up to, or exceeding, one year. There are many time frames incorporated into the proposed rules

that require an action by the facility, but nothing is included for OEPA. A section or sections should be incorporated into the proposed rules (similar to OAC 3745-32-03[D]) that requires OEPA to respond within a timely manner. (Gary Haney, First Energy Corporation; Karen Winters, Squire, Sanders, Dempsey LLP)

Response 36: Ohio EPA does not find it necessary to include internal performance standards into the regulations. No change has been made in consideration of this comment.

Comment 37: How does this section relate to the licensing found in proposed OAC 3745-501? It appears as if 501 govern solid waste facilities and CDD facilities. Then why is there a multi-program rule which is different under 500-04? All the license issuance should be left under the current Chapter 37. (Kathy Trent, Waste Management)

Response 37: This rule specifies the procedures to be followed by Ohio EPA and approved health districts when taking specified actions on a license or permit, whereas proposed Chapter 3745-501 of the Ohio Administrative Code contains the requirement to obtain a license and generally addresses the timing and content of license applications, as well as approval and denial criteria. No change has been made in consideration of this comment.

3745-500-05 Actions to be taken by the owner or operator of a facility if an engineered component fails.

(This rule has been moved to 3745-512-60)

3745-500-06 Exclusions.

(This rule has been moved to 3745-500-10)

Comment 38: The draft rules provide that Administrative Code Chapters 3745-501 and 3745-525 shall not apply to "Section 3745-500-06 (B) (4) [t]he beneficial use of coal combustion byproducts at coal mining operations and abandoned mine lands that are regulated and authorized by the Ohio department of natural resources pursuant to section 1513.02 of the Revised Code."

How these exclusions are to be implemented is also unclear. The language in Section 1513.02 references sections within the Ohio EPA Code. How will these references be modified, if at all? In addition, while Chapters 3745-501 and 3745-525 do not apply, does Chapter 3745-30-01 apply? (Robert Bessette, CIBO)

Response 38: Ohio Revised Code Chapter 1513, last revised in 2007, specifically vests the regulation of the beneficial use of coal combustion byproducts at coal mining and reclamation operations and abandoned mine lands with the Division of Mineral Resources Management at the Ohio Department of Natural Resources (ODNR). ODNR should be contacted regarding implementation of the ORC Chapter 1513 regulatory program.

Adoption of the proposed rule does not necessitate any modification of statutory references. ORC Section 1513.02 provides that such regulated activity is not subject to specified provisions of ORC Chapter 3734. This includes certain rules adopted under ORC Chapter 3734, including OAC Chapter 3745-30. The proposed rule merely serves as a reference to this existing statutory provision. No change has been made in consideration of this comment.

Comment 39: **(B)(4) Exclusions: This proposed rule excludes the beneficial use of coal combustion byproducts at coal mining and reclamation operations from 3745-501 and 3745-525. This exclusion should not be limited to only coal mining and reclamation operations, but should include all beneficial uses of coal combustion byproducts. (Gary Haney, First Energy)**

Response 39: The proposed paragraph merely serves as a reference to ORC Section 1513.02, last revised in 2007, which specifically vests the regulation of beneficial use of coal combustion byproducts at coal mining and reclamation operations and abandoned mine lands with the Division of Mineral Resources Management at the Ohio Department of Natural Resources. The proposed rule merely serves as a reference to this existing limited statutory provision. No change has been made in consideration of this comment.

Comment 40: **Proposed Rule OAC 3745-500-06(B)(2) and (14) states "or temporary storage of any solid waste....". Except the reference to the temporary storage of putrescible solid waste for no more than seven days prior to collection, there is no definition of temporary storage. Remove this language or define solid waste storage. (Mary Helen Smith, District Board of Health Mahoning County)**

Response 40: The proposed rule is consistent with existing rule language and no change has been made in consideration of this comment. While the Agency is not proposing a time-frame for the storage of non-putrescible solid wastes, the proposed rule retains the requirement that such temporary storage does not create a nuisance or health hazard in the judgment of the director or approved board of health.

End of Response to Comments