

3745-51-02 Definition of waste.

(A)

- (1) A "waste" is any discarded material that is not excluded by paragraph (A) of rule 3745-51-04 of the Administrative Code or that is not excluded by variance granted under rules 3745-50-23 and 3745-50-24 of the Administrative Code.
- (2) A "discarded material" is any material which is:
 - (a) Abandoned, as explained in paragraph (B) of this rule; or
 - (b) Recycled, as explained in paragraph (C) of this rule; or
 - (c) Considered inherently waste-like, as explained in paragraph (D) of this rule; or
 - (d) A military munition identified as a waste in rule 3745-266-202 of the Administrative Code.

(B) Materials are waste if they are abandoned by being:

- (1) Disposed of; or
- (2) Burned or incinerated; or
- (3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(C) Materials are wastes if they are recycled or accumulated, stored, or treated before recycling, as specified in paragraphs (C)(1) to (C)(4) of this rule.

- (1) Used in a manner constituting disposal.
 - (a) Materials noted with an asterisk in column 1 of the table in this rule are wastes when they are:
 - (i) Applied to or placed on the land in a manner that constitutes disposal; or
 - (ii) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a waste).

- (b) However, commercial chemical products listed in rule 3745-51-33 of the Administrative Code are not wastes if they are applied to the land and that is their ordinary manner of use.
 - (2) Burning for energy recovery.
 - (a) Materials noted with an asterisk in column 2 of the table in this rule are wastes when they are:
 - (i) Burned to recover energy; or
 - (ii) Used to produce a fuel, or are otherwise contained in fuels (in which cases the fuel itself remains a waste).
 - (b) However, commercial chemical products listed in rule 3745-51-33 of the Administrative Code are not wastes if they are themselves fuels.
 - (3) Reclaimed. Materials noted with an asterisk in column 3 of the table in this rule are wastes when reclaimed [except as provided in paragraph (A)(17) of rule 3745-51-04 of the Administrative Code]. Materials noted with a dash in column 3 of the table in this rule are not wastes when reclaimed.
 - (4) Accumulated speculatively. Materials noted with an asterisk in column 4 of the table in this rule are wastes when accumulated speculatively.
- (D) Inherently waste-like materials. The following materials are wastes when they are recycled in any manner:
- (1) Hazardous wastes numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.
 - (2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste, as ~~defined~~described in rules 3745-51-20 to 3745-51-24 of the Administrative Code, or are listed as a hazardous waste, as ~~defined~~described in rules 3745-51-30 to 3745-51-35 of the Administrative Code, except for brominated material that meets the following criteria:
 - (a) The material must contain a bromine concentration of at least forty-five per cent; and

- (b) The material must contain less than a total of one per cent of toxic organic compounds listed in the appendix to rule 3745-51-11 of the Administrative Code; and
 - (c) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).
- (3) The director will use the following criteria to add wastes to that list:
- (a)
 - (i) The materials are ordinarily disposed of, burned, or incinerated; or
 - (ii) The materials contain toxic constituents listed in the appendix to rule 3745-51-11 of the Administrative Code and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
 - (b) The material may pose a substantial hazard to human health and the environment when recycled.
- (E) Materials that are not waste when recycled.
- (1) Materials are not wastes when they can be shown to be recycled by being:
 - (a) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
 - (b) Used or reused as effective substitutes for commercial products; or
 - (c) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found in paragraph (A)(17) of rule 3745-51-04 of the Administrative Code apply rather than this provision.

- (2) The following materials are wastes, even if the recycling involves use, reuse, or return to the original process [described in paragraphs (E)(1)(a), (E)(1)(b), and (E)(1)(c) of this rule].
 - (a) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or
 - (b) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or
 - (c) Materials accumulated speculatively; or
 - (d) Materials listed in paragraphs (D)(1) and (D)(2) of this rule.

- (F) Documentation of claims that materials are not wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations adopted under Chapter 3734. of the Revised Code who raise a claim that a certain material is not a waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

Table				
	Use Constituting Disposal [paragraph (C)(1) of rule 3745-51-02 of the Administrative Code]	Energy Recovery/Fuel [paragraph (C)(2) of rule 3745-51-02 of the Administrative Code]	Reclamation [paragraph (C)(3) of rule 3745-51-02 of the Administrative Code] [except as provided in paragraph (A)(17) of rule 3745-51-04 of the Administrative Code for processing secondary materials]	Speculative Accumulation [paragraph (C)(4) of rule 3745-51-02 of the Administrative Code]
	1	2	3	4
Spent materials	(*)	(*)	(*)	(*)
Sludges (listed in rule 3745-51-31 or 3745-51-32 of the Administrative Code)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	--	(*)
By-products (listed in rule 3745-51-31 or 3745-51-32 of the Administrative Code)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	--	(*)
Commercial chemical products listed in rule 3745-51-33 of the Administrative Code	(*)	(*)	--	--

Table				
	Use Constituting Disposal	Energy Recovery/Fuel	Reclamation	Speculative Accumulation
	[paragraph (C)(1) of rule 3745-51-02 of the Administrative Code]	[paragraph (C)(2) of rule 3745-51-02 of the Administrative Code]	[paragraph (C)(3) of rule 3745-51-02 of the Administrative Code] [except as provided in paragraph (A)(17) of rule 3745-51-04 of the Administrative Code for processing secondary materials]	[paragraph (C)(4) of rule 3745-51-02 of the Administrative Code]
	1	2	3	4
Scrap metal other than that is not excluded scrap metal [see paragraph- (C)(9)(A)(13) of rule 3745-51-04 of the Administrative Code]	(*)	(*)	(*)	(*)
Note: The terms "spent material," "sludge," "by-product," "scrap metal," and "excluded scrap metal" are defined in rule 3745-51-01 of the Administrative Code.				

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