



DSIWM GUIDANCE

SUBJECT: Construction certification, concurrence, and compliance

RULE:	<u>Municipal Solid Waste</u>	<u>Industrial Solid Waste</u>	<u>Residual Waste</u>
	OAC 3745-27-19(D)	OAC 3745-29-19(D)	Not addressed here

DATE: March 31, 1994

Purpose of these Rules:

Landfills must be constructed properly to protect the environment and human health. Construction certification reports are necessary and required to ensure and verify that the landfill components have been constructed in accordance with the authorizing document(s) and applicable rules. Ohio Administrative Code (OAC) Rules **3745-27-19(D)** and OAC 3745-29-19(D) principally accomplish the following two objectives:

- * These rules prohibit the owner or operator from accepting solid waste in a phase until Ohio EPA verifies that the landfill components have been constructed in accordance with the authorizing document(s) and applicable rules. The components requiring Ohio EPA verification are: in-situ foundation preparation; recompacted soil liner and/or geosynthetic clay liner; flexible membrane liner; **leachate** management system; cap system; permanent ground water control structures, if any; and explosive gas control/extraction systems, if any. Waste shall not be accepted in a phase until a construction certification report for that phase has been submitted to Ohio EPA and the approved health department, and the construction certification report has received written concurrence from the appropriate Ohio EPA **district** office.
- * The rule establishes procedures to be followed by the owner or operator when construction is not in accordance with the authorizing document(s) and applicable rules, or upon identification of a failed test. Such alterations may include either intentional changes to address a specific construction problem or an oversight by the owner or operator. This rule includes procedures for identification of alterations both before and after submittal of the construction certification report.

Definitions:

Phase - a discrete area of a sanitary landfill facility, which has been designated to facilitate the systematic construction, operation, and closure of the sanitary **landfill** facility. For a sanitary landfill facility, other than an industrial solid waste landfill facility or a residual waste landfill facility, a phase is a discrete area that is part of a unit.

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Construction certification report - a professionally prepared report that includes the results of all required testing, identification of all alterations or other changes, record drawings, survey information, and a notarized statement attesting that the information is true, accurate, and contains all required information. The requirements for a certification report are specified in OAC Rule 3745-27-08(H) for municipal solid waste landfills and in OAC Rule 3745-29-08(H) for industrial solid waste landfills.

Alteration - changes to a facility from the requirements specified in the facility's authorizing document(s) and applicable rules, other than modifications. Alterations may be authorized by the Ohio EPA through a letter of concurrence or through written **Ohio EPA** concurrence of a construction certification report.

Modifications - are changes to the facility as specified in OAC Rule 3745-31-01 and must be approved through issuance of a solid waste permit.

Procedure:

A. Owner or operator construction certification requirements prior to receiving solid waste into a phase

The owner or operator shall not accept any waste in a phase until Ohio EPA verifies that the landfill components have been constructed in accordance with the authorizing document(s) and applicable rules. The owner or operator may accept waste in the phase upon completion of all of the following:

1. A construction certification report for that phase, prepared in accordance with OAC Rule 3745-27-08(H) for municipal solid waste landfill and OAC Rule 3745-29-08(H) for industrial solid waste landfills has been submitted to Ohio EPA and the approved health department; and
2. The owner or operator has received written concurrence from the appropriate Ohio EPA district office. This requirement does not apply to the installation of interim composite liner system constructed in accordance with OAC Rule 3745-27-08(B) and OAC Rule **3745-27-20(A)**. (Please note: with the exception of the interim composite liner system components, the other components of OAC Rule 3745-27-08(F)(1) do need Ohio EPA concurrence.)

Enforcement Considerations: Acceptance of solid waste in a phase without the owner or operator complying with each of these requirements is a violation of OAC Rule **3745-27-19(D)(1)** for municipal solid waste **landfills** or for industrial solid waste landfills a violation of OAC Rule 3745-29-19(D)(1).

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B. Procedures to be followed by the owner or operator when construction is not in accordance with the authorizing documents and applicable rules.

Such alterations may include either intentional changes to address a specific construction problem or an oversight by the owner or operator. This rule includes procedures for identification of alterations both before and after submittal of the construction certification report. The following scenarios are listed in the rule:

1. **Failed tests during construction are considered alterations.**

For failed tests identified prior to submittal of the construction certification report, the owner or operator shall assess the situation and retest or reconstruct as needed until compliance is achieved with the authorizing document(s) and applicable rules. The owner or operator must fully document the alteration and the steps taken to achieve compliance in the construction certification report's "Results" section. (Note: since any retesting must be done at a frequency acceptable to the Director, contact the appropriate Ohio EPA district office regarding acceptable retest frequencies. See OAC Rule 3745-27-08(G) and OAC Rule 3745-29-08(G).)

Enforcement Considerations: A failed test is not a violation. If the owner or operator follows the procedures established in this rule, there is no violation. However, the failure of an owner or operator to **follow** these procedures is a violation of OAC Rule 3745-27-19(D)(2) for municipal solid waste landfills or OAC Rule 3745-29-19(D)(2) for industrial solid waste landfills.

2. **Alterations that are discovered during or after construction but prior to submission of the construction certification report to Ohio EPA.**

The owner or operator shall identify and explain the alteration including any applicable testing results in the construction certification report "Alterations" section prior to submitting the report to the Ohio EPA. The "Alterations" section must also provide a demonstration that the alteration is at least equivalent to the requirements of the applicable authorizing document(s) or rules. The Ohio EPA will not consider giving concurrence until this procedure has been completed.

Enforcement Considerations: Identification of an alteration prior to submittal of a construction certification report is not a violation. If the owner or operator follows the procedures established in this rule, there is no violation. However, the failure of an owner or operator to follow these procedures is a violation of OAC Rule 3745-27-19(D)(2)(b) for municipal solid waste **landfills** or OAC Rule 3745-29-19(D)(2)(b) for industrial solid waste landfills.

3. Discovery of an alteration or failed test for a component in the construction certification report after the report has been submitted to Ohio EPA, but prior to the written concurrence of the appropriate Ohio EPA district office.

The owner or operator shall notify both the appropriate Ohio EPA district office and approved health department within 24 hours by phone and within 7 days in writing of discovery of noncompliance. Within 14 days of submitting the written notification, the owner or operator must either begin assessment of the alteration and determine facility compliance (as outlined in paragraph 1 above), or identify the alteration and demonstrate equivalency (as outlined in paragraph 2 above). In either case, the owner or operator shall amend and resubmit the construction certification report to explain the circumstances and how compliance was achieved. The Ohio EPA will not consider giving concurrence until this process has been completed.

Enforcement Considerations: Discovery of an alteration or failed test contained in a construction certification report after submittal of the report is not a violation of OAC Rule 3745-27-19(D)(2)(c) for municipal solid waste landfills or OAC Rule 3745-29-19(D)(2)(c) for industrial solid waste landfills. However, the failure of an owner or operator to follow these procedures is a violation of OAC Rule 3745-27-19(D)(2)(c) for municipal solid waste landfills or OAC Rule 3745-29-19(D)(2)(c) for industrial solid waste landfills.

Also, under appropriate circumstances, there may be a violation of Ohio Revised Code (ORC) 3734.05(G) which states, “No person shall falsify, or fail to keep or submit any plans, specifications, data, reports, records, manifests or other information required to be kept or submitted to the director or hazardous waste facility board by this chapter or the rules adopted under it.” This pertains to instances where false information was submitted in response to the requirement of OAC Rule 3745-27-08(H) for municipal solid waste landfills or OAC Rule 3745-29-08(H) for industrial solid waste landfills to provide a notarized statement that the report is, to the best knowledge of the owner or operator, true and accurate, and contains all of the required information.

4. Discovery of an alteration or failed test contained in a construction certification report after the written concurrence of the appropriate Ohio EPA district office.

The owner or operator shall notify both the appropriate Ohio EPA district office and approved health department within 24 hours by phone and within 7 days in writing of discovery of noncompliance. Within 14 days of submitting the written notification, the owner or operator must either begin assessment of the alteration and determine facility compliance (as outlined in paragraph 1 above), or identify the alteration and demonstrate equivalency (as outlined in paragraph 2 above). In either case, the owner or operator shall amend and resubmit the construction

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certification report to explain the circumstances and how compliance was achieved.

Enforcement Considerations: Discovery of an alteration or failed test contained in a construction certification report after the written concurrence of the Ohio EPA is not a violation of OAC Rule 3745-27-19(D)(2)(d) for municipal solid waste landfills or OAC Rule 3745-29-19(D)(2)(d) for industrial solid waste landfills. However, the failure of an owner or operator to follow these procedures is a violation of OAC Rule 3745-27-19(D)(2) for municipal solid waste landfills or OAC Rule 3745-29-19(D)(2) for industrial solid waste landfills.

Also, upon discovery of an alteration or failed test contained in a construction certification report after submittal of the report and after written concurrence of the Ohio EPA, the failure of an owner or operator to follow these procedures is a violation of OAC Rule 3745-27-19(C) for municipal solid waste landfills or OAC Rule 3745-29-19(C) for industrial solid waste landfills. Rules "19(C)" require owners and operators to conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing document(s).

Also, under appropriate circumstances, there may be a violation of Ohio Revised Code (ORC) 3734.05(G) which states, "No person **shall** falsify or fail to keep or submit any plans, specifications, data, reports, records, manifests or other information required to be kept or submitted to the director or hazardous waste facility board by this chapter or the rules adopted under it." This pertains to instances where false information was submitted in response to the requirement of OAC Rule 3745-27-08(H) for municipal solid waste landfills or OAC Rule 3745-29-08(H) for industrial solid waste landfills to provide a notarized statement that the report is, to the best knowledge of the owner or operator, true and accurate, and contains all of the required information.

5. Submittal of a construction certification report or written concurrence of the report **by the Ohio EPA does not relieve the owner or operator from the liability for failure to obtain an approved permit to install prior to beginning construction of a new landfill or modifying an existing landfill.**

Enforcement Considerations: Beginning construction of a new landfill or modifying an existing landfill without obtaining approval of a permit to install is a violation of OAC Rule 3745-27-06(A) and OAC Rule 3745-31-02(A) for **municipal** solid waste landfill or OAC Rule 3745-29-06(A) and OAC Rule 3745-31-02(A) for industrial solid waste landfills. OAC Rules 3745-27-19 and **3745-29-19** put the burden of obtaining an approved permit to **install** on the owner or operator of a facility, prior to modifying an existing facility or constructing a new facility, regardless of whether the owner or operator submitted a certification report to the Ohio EPA.

C. Additional Enforcement Considerations:

OAC Rule 3745-27-08(H) for municipal solid waste landfills and OAC Rule 3745-29-08(H) for industrial solid waste landfills pertains to the requirement for submitting a notarized statement which states the construction certification report is, to the best knowledge of the owner or operator, true and accurate, and contains all of the required information. As mentioned previously, an owner or operator who submits false information in a certification report may be subject to enforcement action. Under appropriate circumstances, the violations may be considered civil and/or criminal in nature. Ohio Revised Code (ORC) 3734.05(G) states, “No person shall falsify or fail to keep or submit any plans, specifications, data, reports, records, manifests or other information required to be kept or submitted to the director or hazardous waste facility board by this chapter or the rules adopted under it.”

The Ohio EPA considers false certifications a serious matter. Following a thorough investigation and after receiving concurrence from the DSIWM Enforcement Coordinator, DSIWM district office staff will cite an owner or operator for this violation. DSIWM may also consider escalating enforcement action for an owner’s or operator’s submittal of a false certification.

Common Questions and Answers (Q & A):

Q1: What is an approved health department’s responsibility regarding review of construction certification reports?

A1: The approved health department is not responsible for reviewing construction certification reports. While the owner or operator is required to submit a copy of reports to the health department, this is for informational purposes and for the health department to track compliance with the rule.

The review of construction certification reports is the responsibility of the appropriate Ohio EPA district office.

Q2: What is an approved health department’s responsibility and **Ohio** EPA’s responsibility regarding tracking compliance with these rules?

A2: Specifically, the approved health department is responsible for tracking compliance for the following:

1. OAC Rule 3745-27-19(D)(1) for municipal solid waste landfills, and
2. OAC Rule 3745-29-19(D)(1) for industrial solid waste landfills.

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The approved health department is expected to verify that the owner or operator has submitted a construction certification report (the owner/operator is required to send a copy of the certification to the health department), and that the phase has been inspected by and received written concurrence from the Ohio EPA prior to accepting solid waste in a phase. The Ohio EPA will send a copy of the concurrence letter to the approved health department. The health department shall cite the owner or operator who fails to comply with this rule by accepting solid waste in a phase without first following the requirements specified in this rule.

The appropriate Ohio EPA district office is responsible for tracking compliance and citing violations of the following:

1. OAC Rule 3745-27-19(D)(2) for municipal solid waste landfills, and
2. OAC Rule 3745-29-19(D)(2) for industrial solid waste landfills.

Q3: Is prior written concurrence by the appropriate Ohio EPA district office required for all components of a municipal solid waste landfill (MSW) or an industrial solid waste landfill (ISW)?

A3: Prior written concurrence by the appropriate Ohio EPA district office is **not** required for:

1. the installation of a MSW landfill's interim composite liner system constructed in accordance with OAC Rule 3745-27-08(B) and OAC Rule 3745-27-20(A).
2. the installation of a MSW landfill's interim final cover constructed in accordance with OAC Rule 3745-27-19(H) and OAC Rule **3745-27-08(C)(17)** or an ISW landfill's interim **final** cover constructed in accordance with OAC Rule 3745-29-19(H) and OAC Rule **3745-29-08(C)(17)**.
3. the installation of the final cap system constructed in accordance with OAC Rule 3745-27-11(G) for a MSW landfill and OAC Rule 3745-29-11(G) for an ISW landfill.
4. the commencement of post-closure care activities in accordance with OAC Rule 3745-27-14 for a MSW landfill or OAC Rule 3745-29-14 for an ISW landfill, following the submittal of the **final** closure certification submitted in accordance with OAC Rule 3745-27-11(G) (MSW landfill) or OAC Rule 3745-29-11(G) (ISW landfill).

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Q4: Following an owner or operator's completion of construction of a final cap system over a phase(s) or unit(s) at a **MSW landfill** in accordance with OAC Rule 3745-27-19(H), is the owner or operator required to submit a construction **certification** report to the Ohio EPA and the operating record to fulfill the requirements of OAC Rule 3745-27-19(D)?

A4: No. OAC Rule 3745-27-19(D) does **not** require the submittal of a construction certification report following the construction of a **final** cap system over a phase or unit.

However, OAC Rule 3745-27-19(J) **does require** the submittal of closure certification reports which are submitted to ensure that closure activities were conducted in accordance with the closure plan. These closure **certification** reports are required to be submitted to the Ohio EPA and the approved health department not later than sixty (60) days after completion of closure activities. There are **basically** two types of closure certification reports:

- a. noncontiguous unit closure certification report - required to be submitted when the appropriate closure activities have been completed as each noncontiguous unit closes; and
- b. facility final closure **certification** report - required to be submitted when all **final** closure activities have been completed for the landfill facility.

Please note that owners or operators are not precluded from placing a construction certification report for a contiguous unit's **final** cap system, or as a cap is placed on a phase, in the operating record. It **may** be beneficial for an owner or operator to place these **final** cap system construction certification **reports** into the operating record, upon placement of the **final** cap system, to document that the work has been properly completed. This may save the owner or operator considerable **time** in the future when trying to document and certify **final** cap construction. This is particularly true when considering that the facility may be operational for a number of decades after a particular phase or contiguous unit has been capped and the **final** closure **certification** report is not required to be submitted until closure of the entire landfill facility.

Q5: Following an owner or operator's completion of construction of a **final** cap system over a phase(s) at an **ISW landfill** in accordance with OAC Rule 3745-29-19(H), is the owner or operator required to submit a **construction** certification report to the Ohio EPA and the operating record to **fulfill** the requirements of OAC Rule 3745-29-19(D)?

A5: No. OAC Rule 3745-29-19(D) does **not** require the submittal of a construction certification report following the construction of a **final** cap system over a phase.

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However, OAC Rule **3745-29-11(J)** does require the submittal of a facility final closure **certification** report which is to be submitted to ensure that closure activities were conducted in accordance with the closure plan. This facility final closure certification report is required to be submitted to the Ohio EPA and the approved health department not later than sixty (60) days after completion of all **final** closure activities for the landfill facility.

Please note that owners or operators are not precluded from preparing, or submitting to Ohio EPA, a construction certification report as a final cap system is placed on a phase. It may be beneficial for an owner or operator to prepare a **final** cap system construction certification report upon placement of the **final** cap system to document that the work has been properly completed. This may save the owner or operator considerable time in the future when trying to document and certify **final** cap construction. This is particularly true when considering that the facility may be operational for a number of decades after a particular phase has been capped and the final closure certification report is not required to be submitted until closure of the entire landfill facility.

Guidance Note:

This document is intended to be used for guidance purposes only. Completion of the activities and procedures outlined in this document shall not be construed to release an owner or operator from any requirement or obligation for complying with Ohio Revised Code (ORC) Chapters **3734.**, the OAC rules adopted thereunder, or any authorizing document(s) or orders issued thereunder, nor shall it prevent Ohio EPA from pursuing enforcement actions to require an owner's or operator's compliance with ORC Chapter **3734.**, the OAC rules, or any authorizing document(s) or orders issued thereunder.