



## Open Dumping and Open Burning

### Applicable Statutes and Rules

Open Dumping: ORC section 3734.02(C)  
3734.03  
3734.05(A)  
3734.05(B)(1)  
3734.11(A)  
3734.11(B)  
OAC Rule 3745-27-03(A)  
3745-27-05(C)

Open Burning: ORC section 3734.03  
3734.11(A)  
3734.11(B)  
OAC Rule 3745-27-05(B)

### Purpose

This guidance is provided to help clarify the definitions of open dumping and open burning and the proper citations to use when a violation occurs. One definition may be more applicable to a particular situation than another, due to the wording of the definition.

### Background

#### Definitions

ORC Section 3734.01(I) -

**Open Dumping** - means the depositing of solid wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under Section 3734.05 of the Revised Code or, if the solid wastes consist of scrap tires, as a scrap tire collection, storage, monocell, monofill, or recovery facility under Section 3734.81 of the Revised Code; the depositing of solid wastes that consist of scrap tires onto the surface of the ground at a site or in a manner not specifically identified in divisions (C)(2) to (5), (7), or (10) of Section 3734.85 of the Revised Code; the depositing of untreated infectious wastes into a body or stream of water or onto the surface of the ground; or the depositing of treated infectious wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under Section 3745.05 of the Revised Code.

OAC Rule 3745-27-01(O)(4) -

**Open Dumping** - means the deposition of solid wastes into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code and Chapters 3745-27 and 3745-37 of the Administrative Code, the depositing of untreated infectious wastes into a body or stream of water or onto the surface of the ground, or the depositing of untreated infectious wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under Section 3734.05 of the Revised Code.

ORC Section 3734.01(H) -

**Open Burning** - means the burning of solid wastes in an open area or burning of solid wastes in a type of chamber or vessel that is not approved or authorized in rules adopted by the director under Section 3734.02 of the Revised Code or, if the solid wastes consist of scrap tires, in rules adopted under division (V) of this Section or section 3734.73 of the Revised

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<sup>1</sup> Note: This document was originally published on the date noted above. DMWM re-issued the document to make it consistent with current formatting and publication standards after evaluating the content and determining it is still relevant and appropriate. No substantive changes were made to the document.

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Code, or the burning of treated or untreated infectious wastes in an open area or in a type of chamber or vessel that is not approved in rules adopted by the director under section 3734.021 [3734.02.1] of the Revised Code.

OAC Rule 3745-27-01(O)(2) -

**Open Burning** - means the burning of solid wastes in an open area or burning solid wastes in a type of chamber or vessel that is not approved in rules adopted by the director under Section 3734.02 of the Revised Code or the burning of treated or untreated infectious wastes in an open area or vessel that is not approved in rules adopted by the director under Section 3734.021 of the Revised Code.

### Exceptions to DMWM Permitting and Licensing Requirements:

**OAC Rule 3745-27-03(A)(1)** - Solid wastes generated on the premises of a single family residence, and disposed of on the premises where generated.

**OAC Rule 3745-27-03(A)(2)** - The temporary storage of solid waste on the premises where the waste was generated, prior to collection for disposal or transfer. Such disposal or transfer shall be in accordance with ORC Chapter 3734. and the rules adopted thereunder. For purposes of OAC Chapters 3745-27 and 3745-37, the temporary storage of putrescible solid waste in excess of seven (7) days, or temporary storage of any solid wastes where such storage causes a nuisance or health hazard in the judgment of the health commissioner or the Director or their authorized representatives, shall be considered open dumping. In addition, OAC Chapters 3745-27 and 3745-37 shall not apply to the temporary storage of waste tires on or off the premises where generated if such storage is conducted in compliance with all applicable local and state fire, health, and zoning codes. Please see 3745-27-60 for proper storage of tires.

Other exceptions are listed in OAC Rule 3745-27-03(A) which may be observed occasionally.

### **Proper Citations of Open Dumping and Open Burning Violations:**

Note: Stating a definition for clarity is acceptable but DO NOT cite a definition as a violation.

Note: An inspector should NOT cite any rules pertaining to the operation of a solid waste facility in a case where open dumping has occurred (e.g., OAC Rules 27-06 through 3745-27-19).

### Open Dumping

**ORC Section 3734.02(C)** - Except as provided in this division, no person shall establish a new solid waste facility or infectious waste treatment facility, or modify an existing solid waste facility or infectious waste treatment facility, without submitting an application for a permit... (please refer to ORC Section 3734.02(C)(1) for exemptions to this division).

**ORC Section 3734.03** - No person shall dispose of solid wastes by open burning or open dumping except as authorized by the director of environmental protection in rules adopted in accordance with Section 3734.02 of the Revised Code. No person shall dispose of treated or untreated infectious waste by open burning or open dumping.

**ORC Section 3734.05(A)** - Except as provided in division (A)(4) of this section, no person shall operate or maintain a solid waste facility without a license issued by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under Section 3734.08 of the Revised Code.

**ORC Section 3734.05(B)(1)** - Each person who is engaged in the business of treating infectious wastes for profit at a treatment facility located off the premises where the wastes are generated that is in operation on August 10, 1988 and who proposes to continue operating the facility shall submit to the board of health of the health district in which the facility is located an application for a license to operate the facility. Thereafter, no person shall operate or maintain an infectious waste treatment facility without a license issued by the board of health...

**ORC Section 3734.11(A)** - No person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.

**ORC Section 3734.11(B)** - No person who holds a permit or license issued under this chapter shall violate any of the terms and conditions of the permit or license.

**OAC Rule 3745-27-03(A)(2)** - For purposes of Chapters. 3745-27 and 3745-37 of the Administrative Code, temporary storage of putrescible solid wastes in excess of seven days, or temporary storage of any solid wastes where such storage causes a nuisance or health hazard in the judgement of the health commissioner or the director or their authorized representatives shall be considered open dumping.

**OAC Rule 3745-27-05(C)** - no person shall conduct, permit, or allow open dumping.

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## Open Burning

**ORC Section 3734.03** - No person shall dispose of solid wastes by open burning or open dumping except as authorized by the director of environmental protection in rules adopted in accordance with Section 3734.02 of the Revised Code. No person shall dispose of treated or untreated infectious waste by open burning or open dumping.

**ORC Section 3734.11(A)** - No person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.

**ORC Section 3734.11(B)** - No person who holds a permit or license issued under this chapter shall violate any of the terms and conditions of the permit or license.

**OAC Rule 3745-27-05(B)** - Solid waste disposal by means of open burning, as defined in Chapter 3745-19 of the Regulations of the Ohio EPA, is permitted only as provided therein.

## Other Applicable Rules:

ORC Chapter 3704 -- Air Pollution Control

OAC Rule 3745-19 -- Open Burning Standards

## Potential Penalties:

{for Ohio EPA and approved health departments}

**ORC Section 3734.99(A)** - States in part... whoever recklessly violates any section of this chapter...of the Revised Code, is guilty of a felony and shall be fined at least ten thousand dollars, but not more than twenty-five thousand dollars, or imprisoned for at least two years but not more than four years, or both.

{for local health departments}

**ORC Section 3709.99** - States in part... whoever violates section 3709.20, 3709.21, or 3709.22 of the Revised Code or any order or regulation of the board of health... shall be fined not more than one hundred dollars or imprisoned not more than ninety days, or both. No person shall be imprisoned for the first offense, and the prosecution shall always be for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a subsequent offense.

**ORC Section 3767.99 (B)** - Whoever violates section 3767.12 or 3767.29, or being an association, violates section 3767.30 of the Revised Code is guilty of a misdemeanor of the fourth degree.

**ORC Section 3767.99 (C)** - Whoever violates section 3767.13, 3767.19, or 3767.32 or, being a natural person, violates section 3767.30 of the Revised Code is guilty of a misdemeanor of the third degree. The sentencing court may, in addition to or in lieu of the penalty provided in this division, require a person who violates section 3767.32 of the Revised Code to remove litter from any public or private property, or in or on waters of the state.

## **Frequently Asked Questions**

Q1: Should landfill operational rules be cited at open dumping sites?

A1: Open dumping, by statutory prohibition and regulations, cannot occur at a licensed landfill, therefore, landfill operational regulations should not be cited at an open dumping site.

Q2: What citations can be used by health departments other than those specified in ORC Chapter 3734 and OAC

Rule 3745? Note: ORC Chapters 3709 (Health Districts) and 3767 (Nuisances) are statutes that are enforceable by health departments. OEPA does not enforce health department statutes.

A2: ORC Section 3709.20 states in part, “that the board of health may make orders and regulations as are necessary for the public health, the prevention, abatement, or suppression of nuisances.”

ORC Section 3767.13(B) states, “No person shall cause or allow offal, filth, or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public.”

ORC Section 3767.29 states, “No person shall abandon, discard, or knowingly permit to remain on premises under his control, in a place accessible to children, any abandoned or discarded icebox, refrigerator, or other airtight container... without rendering said equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein.”

## Open Dumping and Open Burning

ORC Section 3767.32(A) states, “No person shall, regardless of intent, throw, drop, discard, place, or deposit litter or cause litter to be thrown, dropped, discarded, placed, or deposited on any public waters of the state...”.

ORC Section 3767.32(B) states, “As used in this section, “litter” means garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons boxes, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature thrown, dropped, discarded, placed, or deposited by a person on public property, on private property not owned by him, or in or on waters of the state...”.

[Q3: How long can materials which are intended to be recycled remain “stockpiled” before it is considered open dumping?](#)

A3: There is not a defined length of time for stockpiling materials to be recycled. OAC Rule 3745-27-01(R)(1) defines recycling as the process of collecting, sorting, cleansing, treating, and reconstituting solid waste that would otherwise be disposed in a solid waste disposal facility and returning reconstituted materials to commerce as commodities for use or exchange in a reasonable amount of time.

If the stockpiled material is putrescible, it must be removed in seven (7) days, or it is considered open dumping. If the stockpiled material is not part of a process, then it would be considered open dumping. Do not cite a violation unless the entity cannot provide an explanation and evidence that a recycling process is occurring.

### Contact

If you have questions regarding this document or would like additional information, please contact:

Central District Office DMWM Supervisor (614) 728-3778

Northeast District Office DMWM Supervisor (330) 963-1200

Northwest District Office DMWM Supervisor (419) 352-8461

Southeast District Office DMWM Supervisor (740) 385-8501

Southwest District Office DMWM Supervisor (937) 285-6357

Central Office Land Management/Closure Program Unit (614) 644-2621

### Disclaimer

This document is intended for guidance purposes only. Completion of the activities and procedures outlined in this document shall not release an owner or operator from any requirement or obligation for complying with Ohio Revised Code (ORC) Chapter 3734 or 3714 if appropriate, the OAC rules adopted thereunder, or any authorizing documents or orders issued thereunder, nor shall it prevent Ohio EPA from pursuing enforcement actions to require compliance with ORC Chapter 3734 or 3714, the OAC rules or any authorizing documents or orders issued thereunder.