



Ohio Administrative Code Rule 109:6-1-02 Disclosure statements.

Effective: March 7, 2013

(A) Who must file.

(1) Every applicant for a permit other than a permit modification or renewal shall file with the attorney general a disclosure statement in accordance with this chapter at the same time the applicant files an application for a permit with the director of environmental protection.

(2) Every applicant that is a prospective owner of an off-site facility shall file with the attorney general a disclosure statement at least one hundred eighty days prior to the proposed change of ownership, when:

(a) The change of ownership is of an off-site facility that has not received a certification of closure;

(b) The change of ownership is of a captive facility such that under new ownership the former captive facility will be converted into and operated as an off-site facility. In this circumstance, a prospective owner shall file a disclosure statement with the attorney general, as required by division (F) of section 3734.42 of the Revised Code.

(c) As defined in division (F) of section 3734.42 of the Revised Code, a change of ownership means a substantive change in the names of the individuals or entities who own the applicant or nonapplicant business concern and does not include a legal change in the business concern's name when its ownership remains the same.

(B) Initial disclosure statements.

(1) Applicant disclosure statement. The applicant disclosure statement shall be completed by the applicant on a form developed by the attorney general. If the applicant has more than one facility in Ohio, it may submit one applicant disclosure statement for all of its Ohio facilities.



(2) Personal history disclosure statement. The personal history disclosure statement shall be completed on a form developed by the attorney general by:

(a) Sole proprietors;

(b) All officers, directors, partners, and key employees of the applicant;

(c) All individuals who own or control the applicant;

(d) All officers, directors, and partners of a business concern that owns or controls the applicant;

(e) All officers, directors, partners, and key employees of an operator of an off-site facility if the applicant is a government entity.

(3) Non-applicant business concern disclosure statement. The non-applicant business concern disclosure statement shall be completed on a form developed by the attorney general by:

(a) All business concerns that directly hold, or are able to control through a subsidiary or holding company, any equity in or debt liability of the applicant, if the applicant is a privately held business concern;

(b) All business concerns that directly hold, or are able to control through a subsidiary or holding company, more than five per cent equity in or debt liability of the applicant, if the applicant is a publicly traded corporation;

(c) Each business concern which is a partner of the applicant;

(d) Each subsidiary of the applicant that collects, transfers, transports, treats, stores, or disposes of solid wastes, infectious wastes, or hazardous wastes;

(e) Each business concern which is the operator of an off-site facility for which the applicant is a government entity;



(f) Each business concern which is a partner of the operator of an off-site facility for which the applicant is a government entity and the operator is not an employee of the government entity.

(4) If a business concern that holds or is able to control an equity interest or debt liability in the applicant holds or is able to control an equity interest or debt liability in other facilities in Ohio, it may submit one non-applicant business disclosure statement for all of its Ohio facilities.

(5) All initial disclosure statements described in this rule shall be completed on a form developed by the attorney general pursuant to division (A)(1) of section 3734.42 of the Revised Code.

(C) Exemption from filing disclosure statements.

(1) An officer, director, or partner of an applicant or non-applicant business concern that qualifies as a secondary business activity concern shall be exempt from the fingerprint and personal history disclosure requirements, provided that the person does not and will not have any responsibility for, or control of, the solid, infectious, or hazardous waste operations of the applicant conducted in Ohio.

(2) When a facility has received a certification of closure its officers, directors, and key employees will no longer be required to submit disclosure statements, releases, and annual updates to the attorney general.

(3) An individual or business concern who purchases an off-site facility that has received a certification of closure is not required to submit disclosure statements, releases, and annual updates to the attorney general when the facility will not be used to dispose of solid, infectious, or hazardous waste.

(4) A chartered lending institution that holds equity in or debt liability of an applicant or nonapplicant business concern and does not exert control over an applicant's operations is not required to submit disclosure statements, releases, and annual updates to the attorney general.

(D) Periodic updates. Within ninety days:

(1) After the addition of the new individual, an applicant shall submit to the attorney general a



release form, fingerprint card, and a personal history disclosure statement for:

(a) New officers, directors, partners, or key employees of the applicant, or if the applicant is a governmental entity that does not run its own facility, new officers, directors, partners, or key employees of the operator of the facility;

(b) New key employees of a governmental entity if the applicant is a governmental entity that operates its own facility.

(2) After the addition of the new business concern, an applicant shall submit to the attorney general a release form and, on a form provided by the attorney general, provide any and all information required by the non-applicant business concern disclosure statement for a business concern which:

(a) Is a new partner of the applicant;

(b) Holds any new interest in the equity or debt liability of the applicant, if the applicant is privately held or holds more than five per cent equity or debt liability in the applicant, if the applicant is publicly held; and

(c) Is a new operator of a facility contracting with a facility owned by a governmental entity.

(E) Triennial updates. The attorney general shall require all applicants to provide updates to their disclosure statements once every three years limited to the information described under division (F)(2) of section 3734.42 of the Revised Code. The attorney general shall determine the number of applicants who shall submit disclosure statements each year of the triennium. Applicants shall provide updates on the date set forth in the compliance schedule provided by the attorney general. An applicant shall submit to the attorney general the triennial update on a form provided by the attorney general with the following information:

(1) A listing of any administrative enforcement orders issued to the applicant or non-applicant business concern establishing any violation of any federal or state environmental protection laws, rules, or regulations during the previous three-year period;



(2) A listing of any civil action in which the applicant or non-applicant business concern was determined to be liable for any violation of any federal or state environmental protection laws, rules, or regulations or was the subject of injunctive relief order, a civil penalty order or another type of civil relief in connection with any violation of any federal or state environmental protection laws, rules, or regulations during the previous three-year period;

(3) A listing of any criminal conviction for a violation of any federal or state environmental protection laws, rules, or regulations that has been committed knowingly or recklessly by the applicant or non-applicant business concern during the previous three-year period.

(4) A release authorizing the attorney general to request information from the federal bureau of investigation regarding a criminal conviction with respect to the business concern and each officer, director, partner, or key employee of an applicant, permittee, or prospective owner. The applicant is not required to submit a fingerprint card to the attorney general pursuant to this rule for any person for whom a completed and readable fingerprint card previously has been submitted to the attorney general pursuant to rules 109:6-1-01 to 109:6-1-05 of the Administrative Code;

(5) If, in the immediately preceding three years, there have been no administrative enforcement orders, civil actions, or criminal convictions as described under divisions (F)(2)(a) to (F)(2)(c) of section 3734.42 of the Revised Code, the applicant or non-applicant business concern shall submit to the attorney general an affidavit stating that no such enforcement orders, civil actions, or criminal convictions have occurred.

(F) Any person supplying any information in response to a requirement of this chapter may supplement the answer with a written explanation of the answer.

(1) A person may incorporate by reference information previously filed in a disclosure statement by identifying:

(a) The specific previously filed disclosure statement and, if necessary, the paragraph number(s) therein; and

(b) The name of the particular individual or business concern.



(H) The attorney general shall comply with section 7(b) of the Privacy Act of 1974, 5 U.S.C. section 552(a), regarding disclosure of social security numbers.

(I) Confidentiality.

(1) Whenever a person submitting information in a disclosure statement believes that specific information contained in the statement is confidential and excepted from disclosure by section 149.43 of the Revised Code, the person shall:

(a) Request in writing that specific information contained in the disclosure statement be treated as confidential and excepted from disclosure;

(b) Provide an explanation including citations to specific statutory, regulatory or precedential authority to support the claim of confidentiality; and

(c) Provide sufficient evidence necessary to meet the burden of proof that the information is excepted from disclosure.

(2) The information specified in the request shall be kept confidential until seven days after the date upon which the attorney general determines that the material is not within the exceptions to disclosure contained in section 149.43 of the Revised Code.

(J) If an applicant needs interpretive assistance in completing a disclosure statement, it may submit in writing to the attorney general a regulatory guidance request seeking an informal, nonbinding interpretation of a regulatory requirement imposed by sections 3734.40 to 3734.47 of the Revised Code and the rules adopted thereunder.

(1) The submission of a regulatory guidance request shall in no way alter the obligation of an applicant to fully comply with all requirements imposed by sections 3734.40 to 3734.47 of the Revised Code and the rules adopted thereunder.

(2) There is no obligation upon the attorney general to respond to a regulatory guidance request other



than as the attorney general determines in his or her sole discretion based upon available human resources and the need to employ those resources to perform the mandatory obligations imposed by sections 3734.40 to 3737.47 of the Revised Code and the rules adopted thereunder.

(3) The response provided by the attorney general to any regulatory guidance request shall be used by the applicant solely as a guidance to assist in the preparation of a disclosure statement. The response of the attorney general shall not be binding upon anyone, including, but not limited to, the applicant, the attorney general, the director of environmental protection, a local board of health, or the hazardous waste facility board. The response may be accorded such deference as is usually provided to the administrative interpretation of a statutory requirement.

(K) The information required to be submitted in the disclosure statement pursuant to this rule is intended to be the information necessary to begin the background investigation required by sections 3734.40 to 3734.47 of the Revised Code. In limiting the scope of information required to be included in the disclosure statement, it is expressly contemplated that in individual investigations the attorney general may have reasonable cause to believe that the procedures contained in section 3734.43 of the Revised Code should be employed to review additional information. Nothing contained in this chapter shall be construed to restrict or limit the scope of the information the attorney general may seek pursuant to the procedures established in section 3734.43 of the Revised Code.