



Ohio Administrative Code Rule 3745-50-15 Non-waste determinations.

Effective: June 12, 2023

(A) An applicant may apply to the director for a formal determination that a hazardous secondary material is not discarded and therefore not a waste. The determinations will be based on the criteria contained in paragraph (B) or (C) of this rule, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a waste variance or exclusion (for example, one of the waste variances under rule 3745-50-24 of the Administrative Code). Determinations also may be granted by Ohio EPA if the following conditions are met:

- (1) Ohio EPA determines the hazardous secondary material meets the criteria in paragraph (B) or (C) of this rule, as applicable;
- (2) Ohio EPA requests that U.S. EPA review Ohio EPA's determination; and
- (3) U.S. EPA approves Ohio EPA's determination.

(B) The director may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in rule 3745-50-17 of the Administrative Code and on the following criteria:

- (1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;
- (2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);



(3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under rule 3745-51-02 or 3745-51-04 of the Administrative Code.

(C) The director may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in rule 3745-50-17 of the Administrative Code and on the following criteria:

(1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

(2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

(3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the



AUTHENTICATED,
OHIO LEGISLATIVE SERVICE
COMMISSION
DOCUMENT #305256

conditions of an exclusion under rule 3745-51-02 or 3745-51-04 of the Administrative Code.