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Ohio Revised Code

Section 3734.02 Rules for inspection and licensing of solid waste facilities.

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Legislation: House Bill 64 - 131st General Assembly

(A) The director of environmental protection, in accordance with Chapter 119. of the Revised Code, shall adopt and may amend, suspend, or rescind rules having uniform application throughout the state governing solid waste facilities and the inspections of and issuance of permits and licenses for all solid waste facilities in order to ensure that the facilities will be located, maintained, and operated, and will undergo closure and post-closure care, in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, create a health hazard, or violate 40 C.F.R. 257.3-2 or 40 C.F.R. 257.3-8, as amended. The rules may include, without limitation, financial assurance requirements for closure and post-closure care and corrective action and requirements for taking corrective action in the event of the surface or subsurface discharge or migration of explosive gases or leachate from a solid waste facility, or of ground water contamination resulting from the transfer or disposal of solid wastes at a facility, beyond the boundaries of any area within a facility that is operating or is undergoing closure or post-closure care where solid wastes were disposed of or are being disposed of. The rules shall not concern or relate to personnel policies, salaries, wages, fringe benefits, or other conditions of employment of employees of persons owning or operating solid waste facilities. The director, in accordance with Chapter 119. of the Revised Code, shall adopt and may amend, suspend, or rescind rules governing the issuance, modification, revocation, suspension, or denial of variances from the director's solid waste rules, including, without limitation, rules adopted under this chapter governing the management of scrap tires.

Variances shall be issued, modified, revoked, suspended, or rescinded in accordance with this division, rules adopted under it, and Chapter 3745. of the Revised Code. The director may order the person to whom a variance is issued to take such action within such time as the director may determine to be appropriate and reasonable to prevent the creation of a nuisance or a hazard to the public health or safety or the environment. Applications for variances shall contain such detail plans, specifications, and information regarding objectives, procedures, controls, and other pertinent data as the director may require. The director shall grant a variance only if the applicant demonstrates to the director's satisfaction that construction and operation of the solid waste facility in the manner allowed by the variance and any terms or conditions imposed as part of the variance will not create a

nuisance or a hazard to the public health or safety or the environment. In granting any variance, the director shall state the specific provision or provisions whose terms are to be varied and also shall state specific terms or conditions imposed upon the applicant in place of the provision or provisions.

The director may hold a public hearing on an application for a variance or renewal of a variance at a location in the county where the operations that are the subject of the application for the variance are conducted. The director shall give not less than twenty days' notice of the hearing to the applicant by certified mail or by another type of mail accompanied by a receipt and shall publish at least one notice of the hearing in a newspaper with general circulation in the county where the hearing is to be held. The director shall make available for public inspection at the principal office of the environmental protection agency a current list of pending applications for variances and a current schedule of pending variance hearings. The director shall make a complete stenographic record of testimony and other evidence submitted at the hearing.

Within ten days after the hearing, the director shall make a written determination to issue, renew, or deny the variance and shall enter the determination and the basis for it into the record of the hearing. The director shall issue, renew, or deny an application for a variance or renewal of a variance within six months of the date upon which the director receives a complete application with all pertinent information and data required. No variance shall be issued, revoked, modified, or denied until the director has considered the relative interests of the applicant, other persons and property affected by the variance, and the general public. Any variance granted under this division shall be for a period specified by the director and may be renewed from time to time on such terms and for such periods as the director determines to be appropriate. No application shall be denied and no variance shall be revoked or modified without a written order stating the findings upon which the denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or variance holder by certified mail or by another type of mail accompanied by a receipt.

(B) The director shall prescribe and furnish the forms necessary to administer and enforce this chapter. The director may cooperate with and enter into agreements with other state, local, or federal agencies to carry out the purposes of this chapter. The director may exercise all incidental powers necessary to carry out the purposes of this chapter.

(C) Except as provided in this division and divisions (N)(2) and (3) of this section, 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 with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director, except that no permit shall be required under this division to install or operate a solid waste facility for sewage sludge treatment or disposal when the treatment or disposal is authorized by a current permit issued under Chapter 3704. or 6111. of the Revised Code.

No person shall continue to operate a solid waste facility for which the director has denied a permit for which an application was required under division (A)(3) of section 3734.05 of the Revised Code, or for which the director has disapproved plans and specifications required to be filed by an order issued under division (A)(5) of that section, after the date prescribed for commencement of closure of the facility in the order issued under division (A)(6) of section 3734.05 of the Revised Code denying the permit application or approval.

On and after the effective date of the rules adopted under division (A) of this section and division (D) of section 3734.12 of the Revised Code governing solid waste transfer facilities, no person shall establish a new, or modify an existing, solid waste transfer facility without first submitting an application for a permit with accompanying engineering detail plans, specifications, and information regarding the facility and its method of operation to the director and receiving a permit issued by the director.

No person shall establish a new compost facility or continue to operate an existing compost facility that accepts exclusively source separated yard wastes without submitting a completed registration for the facility to the director in accordance with rules adopted under divisions (A) and (N)(3) of this section.

This division does not apply to a generator of infectious wastes that does any of the following:

(1) Treats, by methods, techniques, and practices established by rules adopted under division (B)(2)(a) of section 3734.021 of the Revised Code, any of the following:

(a) Infectious wastes that are generated on any premises that are owned or operated by the generator;

(b) Infectious wastes that are generated by a generator who has staff privileges at a hospital as defined in section 3727.01 of the Revised Code;

(c) Infectious wastes that are generated in providing care to a patient by an emergency medical services organization as defined in section 4765.01 of the Revised Code.

(2) Holds a license or renewal of a license to operate a crematory facility issued under Chapter 4717. and a permit issued under Chapter 3704. of the Revised Code;

(3) Treats or disposes of dead animals or parts thereof, or the blood of animals, and is subject to any of the following:

(a) Inspection under the "Federal Meat Inspection Act," 81 Stat. 584 (1967), 21 U.S.C.A. 603, as amended;

(b) Chapter 918. of the Revised Code;

(c) Chapter 953. of the Revised Code.

(D) Neither this chapter nor any rules adopted under it apply to single-family residential premises; to infectious wastes generated by individuals for purposes of their own care or treatment; to the temporary storage of solid wastes, other than scrap tires, prior to their collection for disposal; to the storage of one hundred or fewer scrap tires unless they are stored in such a manner that, in the judgment of the director or the board of health of the health district in which the scrap tires are stored, the storage causes a nuisance, a hazard to public health or safety, or a fire hazard; or to the collection of solid wastes, other than scrap tires, by a political subdivision or a person holding a franchise or license from a political subdivision of the state; to composting, as defined in section 1511.01 of the Revised Code, conducted in accordance with section 1511.022 of the Revised Code; or to any person who is licensed to transport raw rendering material to a compost facility pursuant to section 953.23 of the Revised Code.

(E)(1) As used in this division:

(a) "On-site facility" means a facility that stores, treats, or disposes of hazardous waste that is generated on the premises of the facility.

(b) "Off-site facility" means a facility that stores, treats, or disposes of hazardous waste that is generated off the premises of the facility and includes such a facility that is also an on-site facility.

(c) "Satellite facility" means any of the following:

(i) An on-site facility that also receives hazardous waste from other premises owned by the same person who generates the waste on the facility premises;

(ii) An off-site facility operated so that all of the hazardous waste it receives is generated on one or more premises owned by the person who owns the facility;

(iii) An on-site facility that also receives hazardous waste that is transported uninterruptedly and directly to the facility through a pipeline from a generator who is not the owner of the facility.

(2) Except as provided in division (E)(3) of this section, no person shall establish or operate a hazardous waste facility, or use a solid waste facility for the storage, treatment, or disposal of any hazardous waste, without a hazardous waste facility installation and operation permit issued in accordance with section 3734.05 of the Revised Code and subject to the payment of an application fee not to exceed one thousand five hundred dollars, payable upon application for a hazardous waste facility installation and operation permit and upon application for a renewal permit issued under division (H) of section 3734.05 of the Revised Code, to be credited to the hazardous waste facility management fund created in section 3734.18 of the Revised Code. The term of a hazardous waste facility installation and operation permit shall not exceed ten years.

In addition to the application fee, there is hereby levied an annual permit fee to be paid by the permit holder upon the anniversaries of the date of issuance of the hazardous waste facility installation and operation permit and of any subsequent renewal permits and to be credited to the hazardous waste facility management fund. Annual permit fees totaling forty thousand dollars or more for any one facility may be paid on a quarterly basis with the first quarterly payment each year being due on the

anniversary of the date of issuance of the hazardous waste facility installation and operation permit and of any subsequent renewal permits. The annual permit fee shall be determined for each permit holder by the director in accordance with the following schedule:

TYPE OF BASIC MANAGEMENT UNIT	TYPE OF FACILITY	FEE
Storage facility using:		
Containers	On-site, off-site, and satellite	$500
Tanks	On-site, off-site, and satellite	500
Waste pile	On-site, off-site, and satellite	3,000
Surface impoundment	On-site and satellite	8,000
	Off-site	10,000
Disposal facility using:		
Deep well injection	On-site and satellite	15,000
	Off-site	25,000
Landfill	On-site and satellite	25,000
	Off-site	40,000
Land application	On-site and satellite	2,500
	Off-site	5,000
Surface impoundment	On-site and satellite	10,000
	Off-site	20,000
Treatment facility using:		
Tanks	On-site, off-site, and satellite	700
Surface impoundment	On-site and satellite	8,000
	Off-site	10,000
Incinerator	On-site and satellite	5,000
	Off-site	10,000
Other forms of treatment	On-site, off-site, and satellite	1,000

A hazardous waste disposal facility that disposes of hazardous waste by deep well injection and that pays the annual permit fee established in section 6111.046 of the Revised Code is not subject to the permit fee established in this division for disposal facilities using deep well injection unless the director determines that the facility is not in compliance with applicable requirements established

under this chapter and rules adopted under it.

In determining the annual permit fee required by this section, the director shall not require additional payments for multiple units of the same method of storage, treatment, or disposal or for individual units that are used for both storage and treatment. A facility using more than one method of storage, treatment, or disposal shall pay the permit fee indicated by the schedule for each such method.

The director shall not require the payment of that portion of an annual permit fee of any permit holder that would apply to a hazardous waste management unit for which a permit has been issued, but for which construction has not yet commenced. Once construction has commenced, the director shall require the payment of a part of the appropriate fee indicated by the schedule that bears the same relationship to the total fee that the number of days remaining until the next anniversary date at which payment of the annual permit fee is due bears to three hundred sixty-five.

The director, by rules adopted in accordance with Chapters 119. and 3745. of the Revised Code, shall prescribe procedures for collecting the annual permit fee established by this division and may prescribe other requirements necessary to carry out this division.

(3) The prohibition against establishing or operating a hazardous waste facility without a hazardous waste facility installation and operation permit does not apply to either of the following:

(a) A facility that is operating in accordance with a permit renewal issued under division (H) of section 3734.05 of the Revised Code, a revision issued under division (I) of that section as it existed prior to August 20, 1996, or a modification issued by the director under division (I) of that section on and after August 20, 1996;

(b) Except as provided in division (J) of section 3734.05 of the Revised Code, a facility that will operate or is operating in accordance with a permit by rule, or that is not subject to permit requirements, under rules adopted by the director. In accordance with Chapter 119. of the Revised Code, the director shall adopt, and subsequently may amend, suspend, or rescind, rules for the purposes of division (E)(3)(b) of this section. Any rules so adopted shall be consistent with and equivalent to regulations pertaining to interim status adopted under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, except as otherwise provided

in this chapter.

If a modification is requested or proposed for a facility described in division (E)(3)(a) or (b) of this section, division (I)(7) of section 3734.05 of the Revised Code applies.

(F) No person shall store, treat, or dispose of hazardous waste identified or listed under this chapter and rules adopted under it, regardless of whether generated on or off the premises where the waste is stored, treated, or disposed of, or transport or cause to be transported any hazardous waste identified or listed under this chapter and rules adopted under it to any other premises, except at or to any of the following:

(1) A hazardous waste facility operating under a permit issued in accordance with this chapter;

(2) A facility in another state operating under a license or permit issued in accordance with the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended;

(3) A facility in another nation operating in accordance with the laws of that nation;

(4) A facility holding a permit issued pursuant to Title I of the "Marine Protection, Research, and Sanctuaries Act of 1972," 86 Stat. 1052, 33 U.S.C.A. 1401, as amended;

(5) A hazardous waste facility as described in division (E)(3)(a) or (b) of this section.

(G) The director, by order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes, infectious wastes, or hazardous waste, or processing solid wastes that consist of scrap tires, in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a registration certificate, permit, or license or comply with the manifest system or other requirements of this chapter. Such an exemption shall be consistent with and equivalent to any regulations adopted by the administrator of the United States environmental protection agency under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, except as otherwise provided in this chapter.

(H) No person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or a solid waste facility, was operated without prior authorization from the director, who shall establish the procedure for granting such authorization by rules adopted in accordance with Chapter 119. of the Revised Code.

A public utility that has main or distribution lines above or below the land surface located on an easement or right-of-way across land where a solid waste facility was operated may engage in any such activity within the easement or right-of-way without prior authorization from the director for purposes of performing emergency repair or emergency replacement of its lines; of the poles, towers, foundations, or other structures supporting or sustaining any such lines; or of the appurtenances to those structures, necessary to restore or maintain existing public utility service. A public utility may enter upon any such easement or right-of-way without prior authorization from the director for purposes of performing necessary or routine maintenance of those portions of its existing lines; of the existing poles, towers, foundations, or other structures sustaining or supporting its lines; or of the appurtenances to any such supporting or sustaining structure, located on or above the land surface on any such easement or right-of-way. Within twenty-four hours after commencing any such emergency repair, replacement, or maintenance work, the public utility shall notify the director or the director's authorized representative of those activities and shall provide such information regarding those activities as the director or the director's representative may request. Upon completion of the emergency repair, replacement, or maintenance activities, the public utility shall restore any land of the solid waste facility disturbed by those activities to the condition existing prior to the commencement of those activities.

(I) No owner or operator of a hazardous waste facility, in the operation of the facility, shall cause, permit, or allow the emission therefrom of any particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substance that, in the opinion of the director, unreasonably interferes with the comfortable enjoyment of life or property by persons living or working in the vicinity of the facility, or that is injurious to public health. Any such action is hereby declared to be a public nuisance.

(J) Notwithstanding any other provision of this chapter, in the event the director finds an imminent and substantial danger to public health or safety or the environment that creates an emergency situation requiring the immediate treatment, storage, or disposal of hazardous waste, the director may issue a temporary emergency permit to allow the treatment, storage, or disposal of the hazardous

waste at a facility that is not otherwise authorized by a hazardous waste facility installation and operation permit to treat, store, or dispose of the waste. The emergency permit shall not exceed ninety days in duration and shall not be renewed. The director shall adopt, and may amend, suspend, or rescind, rules in accordance with Chapter 119. of the Revised Code governing the issuance, modification, revocation, and denial of emergency permits.

(K) Except for infectious wastes generated by a person who produces fewer than fifty pounds of infectious wastes at a premises during any one month, no owner or operator of a sanitary landfill shall knowingly accept for disposal, or dispose of, any infectious wastes that have not been treated to render them noninfectious.

(L) The director, in accordance with Chapter 119. of the Revised Code, shall adopt, and may amend, suspend, or rescind, rules having uniform application throughout the state establishing a training and certification program that shall be required for employees of boards of health who are responsible for enforcing the solid waste and infectious waste provisions of this chapter and rules adopted under them and for persons who are responsible for the operation of solid waste facilities or infectious waste treatment facilities. The rules shall provide all of the following, without limitation:

(1) The program shall be administered by the director and shall consist of a course on new solid waste and infectious waste technologies, enforcement procedures, and rules;

(2) The course shall be offered on an annual basis;

(3) Those persons who are required to take the course under division (L) of this section shall do so triennially;

(4) Persons who successfully complete the course shall be certified by the director;

(5) Certification shall be required for all employees of boards of health who are responsible for enforcing the solid waste or infectious waste provisions of this chapter and rules adopted under them and for all persons who are responsible for the operation of solid waste facilities or infectious waste treatment facilities;

(6)(a) All employees of a board of health who, on the effective date of the rules adopted under this division, are responsible for enforcing the solid waste or infectious waste provisions of this chapter and the rules adopted under them shall complete the course and be certified by the director not later than January 1, 1995;

(b) All employees of a board of health who, after the effective date of the rules adopted under division (L) of this section, become responsible for enforcing the solid waste or infectious waste provisions of this chapter and rules adopted under them and who do not hold a current and valid certification from the director at that time shall complete the course and be certified by the director within two years after becoming responsible for performing those activities.

No person shall fail to obtain the certification required under this division.

(M) The director shall not issue a permit under section 3734.05 of the Revised Code to establish a solid waste facility, or to modify a solid waste facility operating on December 21, 1988, in a manner that expands the disposal capacity or geographic area covered by the facility, that is or is to be located within the boundaries of a state park established or dedicated under Chapter 1541. of the Revised Code, a state park purchase area established under section 1541.02 of the Revised Code, any unit of the national park system, or any property that lies within the boundaries of a national park or recreation area, but that has not been acquired or is not administered by the secretary of the United States department of the interior, located in this state, or any candidate area located in this state and identified for potential inclusion in the national park system in the edition of the "national park system plan" submitted under paragraph (b) of section 8 of "The Act of August 18, 1970," 84 Stat. 825, 16 U.S.C.A. 1a-5, as amended, current at the time of filing of the application for the permit, unless the facility or proposed facility is or is to be used exclusively for the disposal of solid wastes generated within the park or recreation area and the director determines that the facility or proposed facility will not degrade any of the natural or cultural resources of the park or recreation area. The director shall not issue a variance under division (A) of this section and rules adopted under it, or issue an exemption order under division (G) of this section, that would authorize any such establishment or expansion of a solid waste facility within the boundaries of any such park or recreation area, state park purchase area, or candidate area, other than a solid waste facility exclusively for the disposal of solid wastes generated within the park or recreation area when the director determines that the facility will not degrade any of the natural or cultural resources of the

park or recreation area.

(N)(1) The rules adopted under division (A) of this section, other than those governing variances, do not apply to scrap tire collection, storage, monocell, monofill, and recovery facilities. Those facilities are subject to and governed by rules adopted under sections 3734.70 to 3734.73 of the Revised Code, as applicable.

(2) Division (C) of this section does not apply to scrap tire collection, storage, monocell, monofill, and recovery facilities. The establishment and modification of those facilities are subject to sections 3734.75 to 3734.78 and section 3734.81 of the Revised Code, as applicable.

(3) The director may adopt, amend, suspend, or rescind rules under division (A) of this section creating an alternative system for authorizing the establishment, operation, or modification of a solid waste compost facility in lieu of the requirement that a person seeking to establish, operate, or modify a solid waste compost facility apply for and receive a permit under division (C) of this section and section 3734.05 of the Revised Code and a license under division (A)(1) of that section. The rules may include requirements governing, without limitation, the classification of solid waste compost facilities, the submittal of operating records for solid waste compost facilities, and the creation of a registration or notification system in lieu of the issuance of permits and licenses for solid waste compost facilities. The rules shall specify the applicability of divisions (A)(1), (2)(a), (3), and (4) of section 3734.05 of the Revised Code to a solid waste compost facility.

(O)(1) As used in this division, "secondary aluminum waste" means waste material or byproducts, when disposed of, containing aluminum generated from secondary aluminum smelting operations and consisting of dross, salt cake, baghouse dust associated with aluminum recycling furnace operations, or dry-milled wastes.

(2) The owner or operator of a sanitary landfill shall not dispose of municipal solid waste that has been commingled with secondary aluminum waste.

(3) The owner or operator of a sanitary landfill may dispose of secondary aluminum waste, but only in a monocell or monofill that has been permitted for that purpose in accordance with this chapter and rules adopted under it.

(P)(1) As used in divisions (P) and (Q) of this section:

(a) "Natural background" means two picocuries per gram or the actual number of picocuries per gram as measured at an individual solid waste facility, subject to verification by the director of health.

(b) "Drilling operation" includes a production operation as defined in section 1509.01 of the Revised Code.

(2) The owner or operator of a solid waste facility shall not accept for transfer or disposal technologically enhanced naturally occurring radioactive material if that material contains or is contaminated with radium-226, radium-228, or any combination of radium-226 and radium-228 at concentrations equal to or greater than five picocuries per gram above natural background.

(3) The owner or operator of a solid waste facility may receive and process for purposes other than transfer or disposal technologically enhanced naturally occurring radioactive material that contains or is contaminated with radium-226, radium-228, or any combination of radium-226 and radium-228 at concentrations equal to or greater than five picocuries per gram above natural background, provided that the owner or operator has obtained and maintains all other necessary authorizations, including any authorization required by rules adopted by the director of health under section 3748.04 of the Revised Code.

(4) The director of environmental protection may adopt rules in accordance with Chapter 119. of the Revised Code governing the receipt, acceptance, processing, handling, management, and disposal by solid waste facilities of material that contains or is contaminated with radioactive material, including, without limitation, technologically enhanced naturally occurring radioactive material that contains or is contaminated with radium-226, radium-228, or any combination of radium-226 and radium-228 at concentrations less than five picocuries per gram above natural background. Rules adopted by the director may include at a minimum both of the following:

(a) Requirements in accordance with which the owner or operator of a solid waste facility must monitor leachate and ground water for radium-226, radium-228, and other radionuclides;

(b) Requirements in accordance with which the owner or operator of a solid waste facility must develop procedures to ensure that technologically enhanced naturally occurring radioactive material accepted at the facility neither contains nor is contaminated with radium-226, radium-228, or any combination of radium-226 and radium-228 at concentrations equal to or greater than five picocuries per gram above natural background.

(Q) Notwithstanding any other provision of this section, the owner or operator of a solid waste facility shall not receive, accept, process, handle, manage, or dispose of technologically enhanced naturally occurring radioactive material associated with drilling operations without first obtaining representative analytical results to determine compliance with divisions (P)(2) and (3) of this section and rules adopted under it.