



Ohio Revised Code

Section 3734.123 Assessment of commercial hazardous waste incinerator capacity in state.

Effective: April 4, 2023

Legislation: House Bill 364

(A) As used in this section and section 3734.124 of the Revised Code, "commercial hazardous waste incinerator" means an enclosed device that treats hazardous waste by means of controlled flame combustion and that accepts for treatment hazardous waste that is generated off the premises on which the device is located by any person other than the one who owns or operates the device or one who controls, is controlled by, or is under common control with the person who owns or operates the device. "Commercial hazardous waste incinerator" does not include any "boiler" or "industrial furnace" as those terms are defined in rules adopted under section 3734.12 of the Revised Code.

(B) Not sooner than three years after April 15, 1993, and triennially thereafter, the director of environmental protection shall prepare, publish, and issue as a final action an assessment of commercial hazardous waste incinerator capacity in this state. However, after the issuance as a final action of a determination under division (A) of section 3734.124 of the Revised Code that terminates the restrictions established in division (C) of this section, the director shall cease preparing, publishing, and issuing the periodic assessments required under this division. The assessment shall determine the amount of commercial hazardous waste incinerator capacity needed to manage the hazardous waste expected to be generated in this state and imported into this state for incineration at commercial hazardous waste incinerators during the next succeeding twenty calendar years. The assessment shall include at least all of the following:

- (1) A determination of the aggregate treatment capacity authorized at commercial hazardous waste incinerators located in this state;
- (2) A determination of the quantity of hazardous waste generated in this state that is being treated at commercial hazardous waste incinerators located in this state and projections of the quantity of hazardous waste generated in this state that will be treated at those facilities;
- (3) A determination of the quantity of hazardous waste generated outside this state that is being



treated at commercial hazardous waste incinerators located in this state and projections of the quantity of hazardous waste generated outside this state that will be treated at those facilities;

(4) A determination of the quantity of hazardous waste generated in this state that is being treated at commercial hazardous waste incinerators located outside this state, and projections of the quantity of hazardous waste generated in this state that will be treated at those facilities;

(5) The amount of commercial hazardous waste incinerator capacity that the director reasonably anticipates will be needed during the first three years of the planning period to treat hazardous waste generated from the remediation of sites in this state that are on the national priority list required under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2767, 42 U.S.C.A. 9601, as amended; as a result of corrective actions implemented under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended; and as a result of clean-up activities conducted at sites listed on the master sites list prepared by the environmental protection agency;

(6) Based upon available data, provided that the data are reliable and are compatible with the data base of the environmental protection agency, an identification of any hazardous waste first listed as a hazardous waste in regulations adopted under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, on or after April 15, 1993, and of any hazardous waste that has been proposed for such listing by publication of a notice in the federal register on or before December 1 of the year immediately preceding the triennial assessment;

(7) An analysis of other factors that may result in capacity changes over the period addressed by the assessment.

(C) Except as otherwise provided in section 3734.124 of the Revised Code, none of the following shall occur on or after April 15, 1993:

(1) The director shall not do any of the following:

(a) Issue any hazardous waste facility installation and operation permit under division (D) of section 3734.05 of the Revised Code for the establishment of a new commercial hazardous waste



incinerator, or issue any modified hazardous waste facility installation and operation permit under division (I) of that section that would authorize an increase in either the treatment capacity of a commercial hazardous waste incinerator or the quantity of hazardous waste authorized to be treated by it;

(b) Issue any permit pursuant to rules adopted under division (F) of section 3704.03 of the Revised Code, division (J) of section 6111.03 of the Revised Code, or the solid waste provisions of this chapter and rules adopted under those provisions, that is necessary for the establishment, modification, or operation of any appurtenant facility or equipment that is necessary for the operation of a new commercial hazardous waste incinerator, or the modification of such an existing incinerator to increase either the treatment capacity of the incinerator or the quantity of hazardous waste that is authorized to be treated by it. Upon determining that an application for any permit pertains to the establishment, modification, or operation of any appurtenant facility or equipment, the director shall cease reviewing the application and return the application and accompanying materials to the applicant along with a written notice that division (C)(1)(b) of this section precludes the director from reviewing and acting upon the application.

(c) Issue any exemption order under division (G) of section 3734.02 of the Revised Code exempting the establishment of a new commercial hazardous waste incinerator; the modification of an existing facility to increase either the treatment capacity of the incinerator or the quantity of hazardous waste that is authorized to be treated by it; or the establishment, modification, or operation of any facility or equipment appurtenant to a new or modified commercial hazardous waste incinerator, from divisions (C)(1)(a) or (b) or (C)(2) of this section.

(2) If the director determines that an application for a hazardous waste facility installation and operation permit submitted under division (D) of section 3734.05 of the Revised Code pertains to the establishment of a new commercial hazardous waste incinerator, or a request for a modification of an existing incinerator submitted under division (I) of that section pertains to an increase of either the treatment capacity of the incinerator or the quantity of hazardous waste that is authorized to be treated by it, the director shall cease reviewing the application or request and shall return it and the accompanying materials to the applicant along with a written notice that division (C)(2) of this section precludes the review of the application or request.



(D) Division (C) of this section does not apply to an application for a modified hazardous waste facility installation and operation permit under division (I) of section 3734.05 of the Revised Code for any hazardous waste incinerator in operation before April 15, 1993, if both of the following apply to the application:

(1) The application seeks to install an improved air emission control system designed to achieve compliance with 40 C.F.R. 63, Subpart EEE.

(2) The application does not seek to increase the treatment capacity of the hazardous waste incinerator or the quantity of waste to be treated by it.

(E) Division (C) of this section does not apply to an application for a modified hazardous waste facility installation and operation permit under division (I) of section 3734.05 of the Revised Code for any hazardous waste incinerator in operation before April 15, 1993, if all of the following apply to the application:

(1) The application seeks to increase the treatment capacity of the hazardous waste incineration operations or the quantity of waste to be treated by it.

(2) The hazardous waste incinerator is at or near its actual maximum operating capacity on the effective date of this amendment.

(3) The application seeks to install an improved air emission control system designed to achieve compliance with 40 C.F.R. 63, Subpart EEE.

(4) The owner or operator of the hazardous waste incinerator has not been issued any other permit allowing for the expansion of the hazardous waste incinerator or construction of a new hazardous waste incinerator prior to the effective date of this amendment.