

3745-50-40

**Submittal of hazardous waste permit applications.****(A) New hazardous waste facilities.**

- (1) No person shall begin physical construction of a new hazardous waste facility without having submitted "Part A" and "Part B" of a permit application to the director and having received an effective Ohio hazardous waste facility installation and operation permit. An application must be submitted to the director at least one hundred eighty days before physical construction is expected to commence.
- (2)
  - (a) Prior to the submittal of a complete application for a hazardous waste facility installation and operation permit, the applicant must hold at least one meeting in the township or municipal corporation in which the facility is proposed to be located, whichever is geographically closer to the proposed location of the facility. The meeting must be open to the public and must be held to inform the community of the proposed hazardous waste management activities and to solicit questions from the community concerning the activities. The applicant must provide to the director evidence of the meeting and document community questions concerning the proposed activities. The pre-application notice requirements are further specified in paragraphs (A) to (A)(4)(b)(v) of rule 3745-50-39 of the Administrative Code.
  - (b) If the application is for a proposed hazardous waste disposal or thermal treatment facility, the applicant also must give actual notice of the general design and purpose of the facility to the legislative authority of each municipal corporation, township, and county in which the facility is proposed to be located at least ninety days before the permit application is submitted to the director.
- (3) Upon receipt of a complete application for a hazardous waste facility installation and operation permit, the director will consider the application and accompanying information to determine whether the application complies with the requirements of division (D)(2) of section 3734.05 of the Revised Code and with the hazardous waste rules. The director will also consider such other information as is relevant to the installation and operation of the facility.
- (4) Upon completion of the review pursuant to paragraph (A)(3) of this rule, the director will:

- (a) Issue a draft permit or a notice of intent to deny the permit application;  
and
- (b) Give public notice, in a newspaper having general circulation in the county in which the facility is located, and over a local radio station, of the following:
  - (i) The issuance of the draft permit or notice of intent to deny the permit application; and
  - (ii) An announcement of a sixty day comment period, and the name and address of an agency contact person to whom comments must be sent; and
  - (iii) The date for a public meeting which must be held in the county in which the facility is located, not fewer than thirty days after the public notice. At the public meeting, any person may submit written or oral comments relevant to the permit application and draft permit or notice of intent to deny the permit application; and
  - (iv) The public notice in paragraph (A)(4)(b) of this rule must also contain:
    - (a) A summary of the application and the draft permit or notice of intent to deny the permit application;
    - (b) The location of the facility;
    - (c) A description of the hazardous waste activity;
    - (d) The location where a copy of the application and draft permit or notice of intent to deny the permit application are available; and
    - (e) The statement that any person may submit written comments relevant to the permit application and draft permit or notice of intent to deny the permit application.
- (5) Not later than one hundred eighty days after the end of the public comment period in paragraph (A)(4)(b)(ii) of this rule, the director, without prior

hearing, will issue or deny the permit in accordance with Chapter 3734. of the Revised Code. If the director approves an application for a hazardous waste installation and operation permit, he will issue the permit upon such terms and conditions as he finds are necessary to ensure the construction and operation of the hazardous waste facility are in accordance with the standards of division (D) of section 3734.05 of the Revised Code.

(B) Permitted facilities subject to hazardous waste requirements due to additional statutory or regulatory changes.

(1) An owner or operator holding a hazardous waste permit who is treating, storing, or disposing of hazardous waste on the effective date of statutory or regulatory changes under Chapter 3734. of the Revised Code that render the owner or operator subject to additional hazardous waste permitting requirements for newly regulated hazardous waste or hazardous waste management unit(s), shall be deemed to have a permit by rule for such newly regulated activity provided that the owner or operator complies with paragraph (H) of rule 3745-50-51 of the Administrative Code.

(2) The permit by rule established under paragraph (B)(1) of this rule terminates upon final administrative disposition of the "Class 2" or "Class 3" modification application submitted pursuant to paragraph (H)(1)(d) of rule 3745-50-51 of the Administrative Code.

(C) Owners or operators of facilities without a hazardous waste installation and operation permit who become subject to hazardous waste permitting requirements due to statutory or regulatory changes.

(1) Any owner or operator of a facility without a hazardous waste installation and operation permit who becomes subject to hazardous waste permitting requirements due to statutory or regulatory changes under Chapter 3734. of the Revised Code, who previously was not required to obtain a hazardous waste facility installation and operation permit, will be deemed to have a permit by rule for the newly regulated hazardous waste or hazardous waste management unit(s) to the extent the owner or operator has:

(a) Complied with the requirement to notify Ohio EPA or U.S. EPA of regulated waste activity; and

(b) Submitted a "Part A" permit application to the director no later than thirty days after the owner or operator first becomes subject to the hazardous waste permitting requirements. The "Part A" permit application must meet the requirements of rule 3745-50-43 of the Administrative Code.

- (2) Within ninety days after receipt of a "Part A" permit application submitted pursuant to paragraph (C)(1)(b) of this rule, the director will make a determination of whether the owner or operator has complied with paragraphs (C)(1)(a) and (C)(1)(b) of this rule. If the director finds upon examination of a "Part A" application that it fails to meet the requirements of rule 3745-50-43 of the Administrative Code, the director will notify the owner or operator in writing of the apparent deficiency or deficiencies. Such notice will specify the grounds for the director's determination that the application is deficient. The owner or operator has thirty days from receipt to respond to such a notification and to explain or cure the alleged deficiency or deficiencies in the "Part A" application. If, after such notification and opportunity for response, the director determines that the application remains deficient, the director will notify the owner or operator that the owner or operator has failed to qualify for permit by rule.
- (3) Within one hundred eighty days after the director's determination of compliance with paragraphs (C)(1)(a) and (C)(1)(b) of this rule, the director will give public notice that the owner or operator has qualified for permit by rule. The public notice must appear in a newspaper having general circulation in the county in which the facility is located and over a local radio station. The notice will contain a summary of the permit by rule, the location of the facility, a description of the facility, and the location where a copy of the "Part A" permit application is available for inspection.
- (4) Paragraph (C)(1) of this rule does not apply to:
  - (a) The owner or operator of a hazardous waste facility when the facility has been previously denied a hazardous waste facility installation and operation permit under Chapter 3734. of the Revised Code or RCRA; or
  - (b) The owner or operator of a hazardous waste facility, if the authority of the owner or operator to operate the facility under Chapter 3734. of the Revised Code or RCRA has been previously terminated.
- (5) During the duration of the permit by rule provided for under paragraph (C)(1) of this rule, the owner or operator must conduct the newly regulated activity in accordance with the "Part A" permit application and in compliance with Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code. The owner or operator may make changes or alterations to the facility. Such changes or alterations will be considered modifications to the "Part A" permit application and must be submitted, classified, and approved or disapproved in accordance with rule 3745-50-51 of the Administrative Code in the same manner as an application for a modification to a hazardous waste facility

installation and operation permit.

(6) An owner or operator of a hazardous waste facility deemed to have a permit by rule under paragraph (C)(1) of this rule must submit a "Part B" application in accordance with paragraph (A) of rule 3745-50-41 of the Administrative Code.

(7) The permit by rule established in paragraph (C)(1) of this rule terminates:

(a) When the permittee by rule fails to furnish a requested "Part B" hazardous waste facility installation and operation permit application in accordance with paragraph (A) of rule 3745-50-41 of the Administrative Code, or to furnish in full the information required in the "Part B" application; or

(b) Upon final administrative disposition of the "Part B" permit application submitted in accordance with paragraph (C)(6) of this rule. "Final administrative disposition" means that the director must approve or disapprove the "Part B" application in accordance with paragraphs (D)(5) and (D)(6) of this rule. In accordance with division (J) of section 3734.05 of the Revised Code, the director must not disapprove the "Part B" permit application for the thermal treatment activity on the basis of the criteria set forth in division (D)(2)(g) or (D)(2)(h) of section 3734.05 of the Revised Code.

(D) Permit renewal.

(1) An application to renew a hazardous waste facility installation and operation permit, or renewal permit, must be submitted at least one hundred eighty days before the expiration date of the effective permit unless permission for a later submittal date has been authorized by the director upon a showing of good cause. The director must not authorize applications to be submitted later than the expiration date of the existing permit.

(2) An owner or operator of a hazardous waste facility holding a hazardous waste facility installation and operation permit, or renewal permit, must submit a renewal application in accordance with paragraph (D)(1) of this rule. The renewal application must include the information required by rule 3745-50-41 of the Administrative Code.

(3) An owner or operator of a hazardous waste facility holding a hazardous waste facility installation and operation permit, or renewal permit, must comply

with all terms and conditions of the existing permit until final administrative disposition of the renewal permit application.

- (4) Upon receipt of a completed renewal application, the director will consider such application, inspection reports of the facility, results of performance tests, records regarding the compliance or noncompliance of the owner or operator with the terms and conditions of the permit and with the rules adopted by the director pursuant to Chapter 3734. of the Revised Code, and such other information as is relevant to the operation of the facility.
- (5) Upon completion of the review pursuant to paragraph (D)(4) of this rule, the director will:
  - (a) Issue a draft renewal permit or a notice of intent to deny the permit application; and
  - (b) Give public notice of the issuance of the draft renewal permit or notice of intent to deny the permit application in a newspaper having general circulation in the county in which the facility is located and over a local radio station. The notice must contain a summary of the application and the draft renewal permit or notice of intent to deny the permit application, the location of the facility, a description of the hazardous waste activity, the location where a copy of the application and draft renewal permit or notice of intent to deny the permit application are available, and the statement that any person may submit written comments relevant to the permit application and draft renewal permit or notice of intent to deny the permit application.
  - (c) The director will schedule a public meeting in the county in which the facility is located if significant interest is shown. If a public meeting is to be held, the director will promptly give public notice, in a newspaper having general circulation in the county in which the facility is located and over a local radio station, of a date for a public meeting which must be held in the county in which the facility is located, not fewer than thirty days after the public notice of the public meeting. At the public meeting, any person may submit written or oral comments relevant to the permit application and draft renewal permit or notice of intent to deny the permit application.
  - (d) Within sixty days after the public meeting or close of the public comment period, the director will issue or deny the permit.
  - (e) The director will not issue a renewal permit unless he determines that

during the term of the existing permit, the owner or operator of the facility has maintained a history of compliance with Chapter 3734. of the Revised Code, rules adopted thereunder, the existing permit, and orders entered to enforce such requirements that demonstrates sufficient reliability, expertise, and competency to operate the facility in compliance with Chapter 3734. of the Revised Code, rules adopted thereunder, and the renewal permit.

- (6) If the director approves an application for a renewal permit, he will issue the permit upon such terms and conditions as he finds are reasonable to ensure that continued operation, maintenance, closure, and post-closure care of the hazardous waste facility are conducted in accordance with Chapter 3734. of the Revised Code and the hazardous waste rules, and such additional terms and conditions he determines are necessary to protect human health and the environment.
  - (7) Those portions of a renewal application which contain proposed facility modifications must be processed in accordance with paragraph (D) of rule 3745-50-51 of the Administrative Code.
- (E) Exposure information. A "Part B" permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents resulting from a release from the unit. At a minimum, such information must address:
- (1) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;
  - (2) The potential pathways of human exposure to hazardous wastes or hazardous constituents resulting from releases described in paragraph (E)(1) of this rule; and
  - (3) The potential nature and magnitude of the human exposure resulting from such releases.
- (F) If an owner or operator fails or refuses to submit a permit application to the director as required by paragraph (A) or (D) of this rule, or fails or refuses to correct application deficiencies identified by Ohio EPA, the director will notify the applicant and:

- (1) Deny the requested permit; or
  - (2) Return the application to the applicant as incomplete; or
  - (3) Revoke the existing permit; and
  - (4) Take appropriate enforcement action.
- (G) Recordkeeping. Applicants must keep records of all data used to complete a permit application and any supplemental information required by the director in accordance with rules 3745-50-43 and 3745-50-44 of the Administrative Code for a period of at least three years from the effective date of the permit.
- (H) The director may require a permittee or an applicant to submit information necessary to enable the director to evaluate the application or to establish permit conditions under this rule and rule 3745-50-51 of the Administrative Code.
- (I) If the director concludes, based on one or more of the factors in paragraphs (I)(1) to (I)(1)(i) of this rule that compliance with the standards of 40 CFR Part 63 subpart EEE alone may not be protective of human health or the environment, the director will require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.
- (1) The director will base the evaluation of whether compliance with the standards of 40 CFR Part 63 subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:
- (a) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;
  - (b) Identities and quantities of emissions of persistent, bioaccumulative, or toxic pollutants considering enforceable controls in place to limit those pollutants;
  - (c) Identities and quantities of nondioxin products of incomplete combustion

most likely to be emitted and to pose significant risk based on known toxicities;

(d) Identities and quantities of other off-site sources of pollutants in proximity to the facility that significantly influence interpretation of a facility-specific risk assessment;

(e) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(f) Volume and types of wastes, for example wastes containing highly toxic constituents;

(g) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(h) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(i) Such other factors as may be appropriate.

(2) Reserved.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]

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Certification

01/13/2009

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Date

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