

3745-51-04            **Exclusions.**

(A) Materials which are not wastes. The following materials are not wastes for the purpose of Chapter 3745-51 of the Administrative Code:

(1) Domestic sewage; and

(a) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment.

(b) As used in Chapter 3745-51 of the Administrative Code, "domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the "Clean Water Act," as amended.

[Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.]

(3) Irrigation return flows.

(4) "Source material," "special nuclear material," or "by-product material" as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is "accumulated speculatively" as defined in paragraph (C)(8) of rule 3745-51-01 of the Administrative Code.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is "accumulated speculatively" as defined in paragraph (C)(8) of rule 3745-51-01 of the Administrative Code.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

- (a) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
  - (b) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
  - (c) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
  - (d) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.
- (9)
- (a) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and
  - (b) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.
  - (c) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in paragraphs (A)(9)(a) and (A)(9)(b) of this rule, so long as they meet all of the following conditions:
    - (i) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;
    - (ii) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;
    - (iii) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(iv) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in rules 3745-69-40 to 3745-69-45 of the Administrative Code, regardless of whether the plant generates a total of less than one hundred kilograms of hazardous waste per month ~~of hazardous waste~~; and

(v) Prior to operating pursuant to this exclusion, the plant owner or operator prepares one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language:

"I have read rule 3745-51-04 of the Administrative Code establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the rule."

The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the director for reinstatement. The director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions, and that the violations are not likely to recur.

(10) EPA hazardous waste numbers K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the toxicity characteristic specified in rule 3745-51-24 of the Administrative Code when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)

- (a) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process [SIC code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, "gasification" (as defined in rule 3745-50-10 of the Administrative Code), or thermal cracking units (i.e., cokers)] unless the material is placed on the land, or ~~speculatively~~ speculatively accumulated speculatively before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph (A)(12)(b) of this rule, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this rule. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under rules 3745-51-30 to 3745-51-35 of the Administrative Code, are designated as F037 listed wastes when disposed of or intended for disposal.
- (b) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph (A)(12)(a) of this rule. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in rules 3745-51-30 to 3745-51-35 of the Administrative Code; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include "used oil" as defined in rule 3745-279-01 of the Administrative Code.
- (13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.
- (14) Shredded circuit boards being recycled provided that they are:
- (a) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

- (b) Free of mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries.
- (15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.
- (16) Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of rule 3745-51-38 of the Administrative Code.
- (17) "Spent materials" (as defined in rule 3745-51-01 of the Administrative Code) (other than hazardous wastes listed in rules 3745-51-30 to 3745-51-35 of the Administrative Code) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:
- (a) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;
  - (b) The spent material is not accumulated speculatively;
  - (c) Except as provided in paragraph (A)(17)(d) of this rule, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards:
    - (i) A building must be an engineered structure with a floor, walls, and a roof, all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation;
    - (ii) A tank must be free standing, must not be a "surface impoundment" (as defined in rule 3745-50-10 of the Administrative Code), and must be manufactured of a material suitable for containment of its contents;
    - (iii) A container must be free standing and be manufactured of a material suitable for containment of its contents.

- (iv) If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust.
  - (v) Tanks, containers, and buildings must be designed, constructed, and operated to prevent significant releases to the environment of these materials.
- (d) The director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The director must affirm that pads are designed, constructed and operated to prevent significant releases of the spent material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers, and buildings eligible for exclusion.
- (i) The director also must consider if storage on pads poses the potential for significant releases via ground water, surface water, and air exposure pathways. Factors to be considered for assessing the ground water, surface water, air exposure pathways are: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway; and the possibility and extent of harm to human and environmental receptors via each exposure pathway.
  - (ii) Pads must meet the following minimum standards:
    - (a) Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material,
    - (b) Be capable of withstanding physical stresses associated with placement and removal,
    - (c) Have run-on/run-off controls,
    - (d) Be operated in a manner which controls fugitive dust, and



- (b) The oil generated by the organic chemical manufacturing facility is not placed on the land, or ~~speculatively~~ accumulated speculatively before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.
- (19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or "accumulated speculatively" as defined in paragraph (C)(8) of rule 3745-51-01 of the Administrative Code.
- (20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:
- (a) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be "accumulated speculatively," as defined in paragraph (C)(8) of rule 3745-51-01 of the Administrative Code.
- (b) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:
- (i) Submit a one-time notice to the director, which contains the name, address and U.S. EPA identification number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in paragraphs (A)(20) to (A)(20)(e) of this rule.

- (ii) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:
  - (a) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and
  - (b) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and
  - (c) Prevent run-on into the containment system.
- (iii) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of paragraphs (A)(20) to (A)(20)(e) of this rule.
- (iv) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:
  - (a) Name of the transporter and date of the shipment;
  - (b) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and
  - (c) Type and quantity of excluded secondary material in each shipment.

- (c) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:
- (i) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (A)(20)(b)(ii) of this rule.
  - (ii) Submit a one-time notification to the director that, at a minimum, specifies the name, address and U.S. EPA identification number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in paragraphs (A)(20) to (A)(20)(e) of this rule.
  - (iii) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.
  - (iv) Submit to the director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(es) from which they were generated.
- (d) Nothing in this rule preempts, overrides, or otherwise negates the provision in rule 3745-52-11 of the Administrative Code, which requires any person who generates a waste to determine if that waste is a hazardous waste.
- (e) Permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submittal of the one-time notice described in paragraph (A)(20)(b)(i) of this rule, and that afterward will be used only to store hazardous secondary materials excluded under paragraphs (A)(20) to (A)(20)(e) of this rule, are not subject to the closure requirements of Chapters 3745-54 to 3745-57, 3745-65 to 3745-69, 3745-205, or 3745-256 of the Administrative Code.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraphs (A)(20) to (A)(20)(e) of this rule, provided that:

(a) The fertilizers meet the following contaminant limits:

(i) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, Per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(ii) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(b) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(c) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph (A)(21)(b) of this rule. Such records must at a minimum include:

- (i) The dates and times product samples were taken, and the dates the samples were analyzed;
- (ii) The names and qualifications of the person(s) taking the samples;
- (iii) A description of the methods and equipment used to take the samples;
- (iv) The name and address of the laboratory facility at which analyses of the samples were performed;
- (v) A description of the analytical methods used, including any cleanup and sample preparation methods; and
- (vi) All laboratory analytical results used to determine compliance with the contaminant limits specified in paragraphs (A)(21) to (A)(21)(c)(iv) of this rule.

(22) Used cathode ray tubes (CRTs).

- (a) Used, intact "CRTs" as defined in rule 3745-50-10 of the Administrative Code are not wastes within the United States unless they are disposed, or unless they are ~~speculatively~~ "accumulated speculatively" as defined in paragraph (C)(8) of rule 3745-51-01 of the Administrative Code by CRT collectors or glass processors.
- (b) Used, intact "CRTs" as defined in rule 3745-50-10 of the Administrative Code are not wastes when exported for recycling provided that they meet the requirements of rule 3745-51-40 of the Administrative Code.
- (c) Used, broken "CRTs" as defined in rule 3745-50-10 of the Administrative Code are not wastes provided that they meet the requirements of rule 3745-51-39 of the Administrative Code.
- (d) Glass removed from CRTs is not a waste provided that it meets the requirements of paragraph (C) of rule 3745-51-39 of the Administrative Code.

(23) Reserved.

(24) Reserved.

(25) Reserved.

(B) Wastes which are not hazardous wastes. The following wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. As used in Chapter 3745-51 of the Administrative Code, "household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, 3745-270, 3745-273, and 3745-279 of the Administrative Code, if such facility:

(a) Receives and burns only:

(i) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(ii) Waste from commercial or industrial sources that does not contain hazardous waste; and

(b) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Wastes generated by any of the following and which are returned to the soils as fertilizers:

(a) The growing and harvesting of agricultural crops.

(b) The raising of animals, including animal manures.

- (3) Mining overburden returned to the mine site.
- (4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by rule 3745-266-112 of the Administrative Code for facilities that burn or process hazardous waste.
- (5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.
- (6)
  - (a) Wastes which fail the test for the toxicity characteristic because chromium is present or are listed as a hazardous waste in rules 3745-51-30 to 3745-51-35 of the Administrative Code due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:
    - (i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
    - (ii) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
    - (iii) The waste is typically and frequently managed in non-oxidizing environments.
  - (b) Specific wastes which meet the standards in paragraphs (B)(6)(a)(i), (B)(6)(a)(ii), and (B)(6)(a)(iii) of this rule (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:
    - (i) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

- (ii) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
  - (iii) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.
  - (iv) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
  - (v) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
  - (vi) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.
  - (vii) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.
  - (viii) Wastewater treatment sludges from the production of titanium dioxide pigment using chromium-bearing ores by the chloride process.
- (7) Waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided by rule 3745-266-112 of the Administrative Code for facilities that burn or process hazardous waste.
- (a) For the purposes of paragraphs (B)(7) to (B)(7)(c)(ii) of this rule, beneficiation of ores and minerals is restricted to the following activities:

- (i) Crushing;
- (ii) Grinding;
- (iii) Washing;
- (iv) Dissolution;
- (v) Crystallization;
- (vi) Filtration;
- (vii) Sorting;
- (viii) Sizing;
- (ix) Drying;
- (x) Sintering;
- (xi) Pelletizing;
- (xii) Briquetting;
- (xiii) Calcining to remove water and/or carbon dioxide;
- (xiv) Roasting, autoclaving, and/or chlorination in preparation for leaching [except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing];
- (xv) Gravity concentration;
- (xvi) Magnetic separation;
- (xvii) Electrostatic separation;

- (xviii) Flotation;
- (xix) Ion exchange;
- (xx) Solvent extraction;
- (xxi) Electrowinning;
- (xxii) Precipitation;
- (xxiii) Amalgamation; and
- (xxiv) Heap, dump, vat, tank, and in situ leaching.

(b) For the purposes of paragraphs (B)(7) to (B)(7)(c)(ii) of this rule, waste from the processing of ores and minerals includes only the following wastes as generated:

- (i) Slag from primary copper processing;
- (ii) Slag from primary lead processing;
- (iii) Red and brown muds from bauxite refining;
- (iv) Phosphogypsum from phosphoric acid production;
- (v) Slag from elemental phosphorus production;
- (vi) Gasifier ash from coal gasification;
- (vii) Process wastewater from coal gasification;
- (viii) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
- (ix) Slag tailings from primary copper processing;
- (x) Fluorogypsum from hydrofluoric acid production;

- (xi) Process wastewater from hydrofluoric acid production;
  - (xii) Air pollution control dust/sludge from iron blast furnaces;
  - (xiii) Iron blast furnace slag;
  - (xiv) Treated residue from roasting/leaching of chrome ore;
  - (xv) Process wastewater from primary magnesium processing by the anhydrous process;
  - (xvi) Process wastewater from phosphoric acid production;
  - (xvii) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
  - (xviii) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
  - (xix) Chloride process waste solids from titanium tetrachloride production; and
  - (xx) Slag from primary zinc processing.
- (c) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraphs (B) to (B)(15)(e) of this rule if the owner or operator:
- (i) Processes at least fifty per cent by weight normal beneficiation raw materials or normal mineral processing raw materials; and
  - (ii) Legitimately reclaims the secondary mineral processing materials.
- (8) Cement kiln dust waste, except as provided by rule 3745-266-112 of the Administrative Code for facilities that burn or process hazardous waste.

- (9) Waste which consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic for EPA hazardous waste numbers D004 to D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.
- (10) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of rule 3745-51-24 of the Administrative Code (EPA hazardous waste numbers D018 to D043 only) and are subject to the corrective action regulations under Chapter 1301:7-9 of the Administrative Code.
- (11) Injected ground water that is hazardous only because it exhibits the toxicity characteristic (EPA hazardous waste numbers D018 to D043 only) in rule 3745-51-24 of the Administrative Code that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For ground water returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, this extension applies until October 2, 1991. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:
- (a) Operations are performed pursuant to a written state agreement or order that includes a provision to assess the ground water and the need for further remediation once the free phase recovery is completed; and
  - (b) A copy of the written agreement or order has been submitted to "Ohio EPA, Division of Hazardous Materials and Waste Management, P.O. box 1049, Columbus, OH 43216-1049."
- (12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.
- (13) Non-terne plated used oil filters that are not mixed with waste listed in rules 3745-51-30 to 3745-51-35 of the Administrative Code if these oil filters have been gravity hot-drained using one of the following methods:

- (a) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
  - (b) Hot-draining and crushing;
  - (c) Dismantling and hot-draining; or
  - (d) Any other equivalent hot-draining method which will remove used oil.
- (14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.
- (15) Leachate or gas condensate collected from landfills where certain wastes have been disposed, provided that:
- (a)
    - (i) The wastes disposed would meet one or more of the listing descriptions for EPA hazardous waste numbers K169, K170, K171, and K172 if these wastes had been generated after February 8, 1999;
    - (ii) The wastes disposed would meet one or more of the listing descriptions for EPA hazardous waste numbers K174, K175, K176, K177, and K178, if these wastes had been generated after May 20, 2002;
    - (iii) The wastes disposed would meet one or more of the listing descriptions for EPA hazardous waste number ~~K174, K175, K176, K177, K178,~~ and K181 if these wastes had been generated after August 23, 2005;
  - (b)
    - (i) The wastes described in paragraph (B)(15)(a)(i) of this rule were disposed prior to February 8, 1999;
    - (ii) The wastes described in paragraph (B)(15)(a)(ii) of this rule were disposed prior to May 20, 2002;

- (iii) The wastes described in paragraph (B)(15)(a)(iii) of this rule were disposed prior to August 23, 2005;
  - (c) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;
  - (d) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under ~~sections~~Section 307(b) or Section 402 of the "Clean Water Act."
  - (e) As of February 13, 2001, leachate or gas condensate derived from K169 to K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.
- (C) Hazardous wastes which are exempted from certain rules. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under rules 3745-50-40 to 3745-50-235 and Chapters 3745-52, 3745-53, 3745-54 to 3745-57, 3745-65 to 3745-69, 3745-205, 3745-256, and 3745-270 of the Administrative Code or to the requirement to notify Ohio EPA or U.S. EPA of regulated waste activity, until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.
- (D) Samples.

- (1) Except as provided in paragraph (D)(2) of this rule, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of Chapters 3745-51, 3745-52, 3745-53, 3745-54 to 3745-57, 3745-65 to 3745-69, 3745-205, 3745-256, 3745-266, or 3745-270 or rules 3745-50-40 to 3745-50-235 of the Administrative Code or to the requirement to notify Ohio EPA or U.S. EPA of regulated waste activity, when:
  - (a) The sample is being transported to a laboratory for the purpose of testing;  
or
  - (b) The sample is being transported back to the sample collector after testing;  
or
  - (c) The sample is being stored by the sample collector before transport to a laboratory for testing; or
  - (d) The sample is being stored in a laboratory before testing; or
  - (e) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
  - (f) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).
- (2) In order to qualify for the exemption in paragraphs (D)(1)(a) and (D)(1)(b) of this rule, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:
  - (a) Comply with U.S. department of transportation (DOT), U.S. postal service (USPS), or any other applicable shipping requirements; or
  - (b) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample.
    - (i) Assure that the following information accompanies the sample:

- (a) The sample collector's name, mailing address, and telephone number;
  - (b) The laboratory's name, mailing address, and telephone number;
  - (c) The quantity of the sample;
  - (d) The date of shipment; and
  - (e) A description of the sample.
- (ii) Package the sample so that it does not leak, spill, or vaporize from its packaging.
- (3) This exemption does not apply if the laboratory determines that the waste is hazardous, but the laboratory is no longer meeting any of the conditions stated in paragraph (D)(1) of this rule.

(E) Treatability study samples.

- (1) Except as provided in paragraph (E)(2) of this rule, persons who generate or collect samples for the purpose of conducting "treatability studies" as defined in rule 3745-50-10 of the Administrative Code, are not subject to any requirement of Chapters 3745-51 to 3745-53 of the Administrative Code or to the requirement to notify Ohio EPA or U.S. EPA of regulated waste activity, nor are such samples included in the quantity determinations of paragraph (D) of rule 3745-52-34 and rule 3745-51-05 of the Administrative Code when:
- (a) The sample is being collected and prepared for transportation by the generator or sample collector; or
  - (b) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
  - (c) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

- (2) The exemption in paragraph (E)(1) of this rule is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:
- (a) The generator or sample collector uses (in "treatability studies") no more than ten thousand kilograms of media contaminated with non-acute hazardous waste, one thousand kilograms of non-acute hazardous waste other than contaminated media, one kilogram of acute hazardous waste, two thousand five hundred kilograms of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and
  - (b) The mass of each sample shipment does not exceed ten thousand kilograms; the ten thousand kilograms quantity may be all media contaminated with non-acute hazardous waste, or may include two thousand five hundred kilograms of media contaminated with acute hazardous waste, one thousand kilograms of hazardous waste, and one kilogram of acute hazardous waste; and
  - (c) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph (E)(2)(c)(i) or (E)(2)(c)(ii) of this rule are met.
    - (i) The transportation of each sample shipment complies with DOT, USPS, or any other applicable shipping requirements: or
    - (ii) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:
      - (a) The name, mailing address, and telephone number of the originator of the sample;
      - (b) The name, address, and telephone number of the facility that will perform the treatability study;
      - (c) The quantity of the sample;
      - (d) The date of shipment; and



- (a) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.
  
- (b) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:
  - (i) There has been an equipment or mechanical failure during the conduct of a treatability study;
  
  - (ii) There is a need to verify the results of a previously conducted treatability study;
  
  - (iii) There is a need to study and analyze alternative techniques within a previously evaluated treatment process; or
  
  - (iv) There is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.
  
- (c) The additional quantities and timeframes allowed in paragraphs (E)(3)(a) and (E)(3)(b) of this rule are subject to all the provisions in paragraphs (E)(1) and (E)(2)(c) to (E)(2)(f) of this rule. The generator or sample collector must apply to the director in writing and must provide in writing the following information:
  - (i) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation, and the additional time or quantity needed;
  
  - (ii) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability

study;

- (iii) A description of the technical modifications or change in specifications which will be evaluated and the expected results;
- (iv) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and
- (v) Such other information that the director considers necessary.

(F) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to hazardous waste requirements) are not subject to any requirement of rules 3745-50-40 to 3745-50-235, Chapters 3745-51, 3745-52, 3745-53, 3745-54 to 3745-57, 3745-65 to 3745-69, 3745-205, 3745-256, 3745-266, or 3745-270 of the Administrative Code or to requirement to notify Ohio EPA or U.S. EPA of regulated waste activity, provided that the conditions of paragraphs (F)(1) to (F)(11) of this rule are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (F)(1) to (F)(11) of this rule. Where a group of MTUs are located at the same site, the limitations specified in paragraphs (F)(1) to (F)(11) of this rule apply to the entire group of MTUs collectively as if the group were one MTU.

- (1) No less than forty-five days before conducting treatability studies, the facility notifies the director in writing that it intends to conduct treatability studies under paragraphs (F) to (F)(11) of this rule.
- (2) The laboratory or testing facility conducting the treatability study has a U.S. EPA identification number.
- (3) No more than a total of ten thousand kilograms of "as received" media contaminated with non-acute hazardous waste, two thousand five hundred kilograms of media contaminated with acute hazardous waste, or two hundred fifty kilograms of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

- (4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed ten thousand kilograms, the total of which can include ten thousand kilograms of media contaminated with non-acute hazardous waste, two thousand five hundred kilograms of media contaminated with acute hazardous waste, one thousand kilograms of non-acute hazardous wastes other than contaminated media, and one kilogram of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous waste) added to "as received" hazardous waste.
- (5) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to five hundred kilograms of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.
- (6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.
- (7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:
  - (a) The name, address, and U.S. EPA identification number of the generator or sample collector of each waste sample;
  - (b) The date the shipment was received;
  - (c) The quantity of waste accepted;
  - (d) The quantity of "as received" waste in storage each day;
  - (e) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
  - (f) The date the treatability study was concluded; and

- (g) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the U.S. EPA identification number.
- (8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.
- (9) The facility prepares and submits a report to the director by March fifteenth of each year includes the following information for the previous calendar year:
  - (a) The name, address, and U.S. EPA identification number of the facility conducting the treatability studies;
  - (b) The types (by process) of treatability studies conducted;
  - (c) The names and addresses of persons for whom studies have been conducted (including their U.S. EPA identification numbers);
  - (d) The total quantity of waste in storage each day;
  - (e) The quantity and types of waste subjected to treatability studies;
  - (f) When each treatability study was conducted; and
  - (g) The final disposition of residues and unused sample from each treatability study.
- (10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under rule 3745-51-03 of the Administrative Code and, if so, are subject to rules 3745-50-40 to 3745-50-235 and Chapters 3745-51, 3745-52, 3745-53, 3745-54 to 3745-57, 3745-65 to 3745-69, 3745-205, 3745-256, 3745-266, and 3745-270 of the Administrative Code, unless the residues and unused samples are returned to the sample originator under the exemption in paragraph (E) of this rule.
- (11) The facility notifies the director by letter when the facility is no longer planning to conduct any treatability studies at the site.

(G) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under section 404 of the federal water pollution control act (33 U.S.C. 1344) or section 103 of the marine protection, research, and sanctuaries act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For paragraphs (G) to (G)(2)(c) of this rule, the following definitions apply:

(1) The term "dredged material" has the same meaning as ~~defined~~ in 40 CFR 232.2;

(2) The term "permit" means:

(a) A permit issued by the U.S. army corps of engineers (corps) or an approved state under section 404 of the federal water pollution control act (33 U.S.C. 1344);

(b) A permit issued by the corps under section 103 of the marine protection, research, and sanctuaries act of 1972 (33 U.S.C. 1413); or

(c) In the case of corps civil works projects, the administrative equivalent of the permits referred to in paragraphs (G)(2)(a) and (G)(2)(b) of this rule, as provided for in corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

[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

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Date

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