

Ohio Hazardous Waste

Notifier

A Publication of Ohio EPA, Division of Hazardous Waste Management

From the Desk of Michael Savage,
Chief of DHWM

The scope of Ohio's hazardous waste regulatory program is potentially changing again. With U.S. EPA finalizing the long-anticipated Definition of Solid Waste (DoSW) rule this past October, states, including Ohio, are evaluating this federal rulemaking to determine whether to adopt the rule at the state level. As you may be aware, this rule encourages certain hazardous waste recycling by excluding hazardous waste secondary materials (spent materials, listed by-products and listed sludges) from regulation if they are reclaimed under the control of the generator or by a third party. Certain conditions need to be met for the exclusion to apply.

DHWM is evaluating the provisions of the DoSW rule, but in light of the recent court challenge of the rule by the Sierra Club and the American Petroleum Industry, we will not be making a determination on whether to adopt it until after the legal challenge is settled. It is important to note that the rules are not effective in Ohio unless we adopt the rules at the state level. For more information on the DoSW rule, go to our Web site on [Ohio's Response to Federal Hazardous Waste Rulemaking](#) or contact Karen Hale of our Regulatory Services Unit at (614) 644-2927.

With the downturn in our national economy, many companies in Ohio are feeling the pinch and looking for ways to be more efficient, generate less hazardous waste and remain in compliance with hazardous waste law and rules. DHWM can help facilities interpret rules and provide guidance on complying with the hazardous waste law and rules. This publication of the *Notifier* contains information on [Ohio's audit privilege law](#) and help with [financial assurance](#). For more assistance, please contact either the [Ohio EPA district office](#) where your facility is located or our Regulatory Services Unit staff here in Central Office at (614) 644-2917. You may also find technical assistance on our [Web site](#) or ask questions through Ohio EPA's [Answer Place](#) accessible from the [Ohio EPA's home page](#). Finally, if you are interested in discussing ways you might reduce your generation of hazardous waste, please contact us at (614) 644-2917.

One of DHWM's newest long-term goals is to promote the concept of environmental sustainability. We plan to do this primarily by serving as a clearinghouse for information through our Web site and the development of fact sheets on issues such as greener cleanups, green(er) chemistry and product stewardship (reducing impacts of product end-of-life cycle). Look for the article on [Going Green and Saving Some Green](#) in this issue of the *Notifier*.

We will also be looking for ways to encourage greening our government. Stay tuned for future news and information on this important area of interest.



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Going Green While Saving Some Green

by Marie Jarden

In this economic climate, companies are likely on the look-out for ways to cut down on costs. It's also important for companies to research ways to reduce wastes and try to replace harmful chemicals with less harmful ones. There are many resources out there to help you do both. Whether you're a generator of hazardous waste or a permitted facility, there are many things you can do to help your company's bottom line at the same time you're helping the environment.



Finding Waste

Analyzing your process to identify waste streams is a good way to start saving money on the materials you're throwing away. Multiple tools are out there to help analyze your process. You can visit [Earth911 Waste Assessment](#) for information on how to account for all your waste streams and [Reduce Your Waste](#) and [U.S. EPA's Resource Conservation site](#) to see ways to reduce/recycle those waste streams. While you're analyzing your waste streams, you may also want to look at your company's overall energy consumption. [Energy Star's Web site](#) can help. Consider joining the [Green Suppliers Network](#) to help your business learn the "lean and clean advantage" as well.

Recycle

Many hazardous wastes are not considered wastes when they are legitimately recycled. Therefore, the materials do not need to be managed as hazardous waste. See [DHWM's Web site for more information on recycling](#) of hazardous waste. This can reduce shipping, treatment and/or disposal costs of handling hazardous waste. The Office of Compliance Assistance and Pollution Prevention (OCAPP) has a [Web site with information on recycling options](#) and [DHWM has lists of recyclers specific to hazardous waste](#).

Reduce

The [Resource Conservation Challenge](#) (RCC) is a national effort to conserve natural resources and energy by managing materials more efficiently. The goals of the RCC are to: prevent pollution and promote reuse and recycling; reduce priority and toxic chemicals in products and waste; and conserve energy and materials. You may also want to consider joining [WasteWise](#), a program run by U.S. EPA to help educate people on the benefit of reducing solid waste streams. An advantage of this program is reduced purchasing and waste disposal costs. You may also be able to reduce your waste stream by changing the materials used in your process. U.S. EPA has a [Web site dedicated to green chemistry](#) that can help you design processes that use and generate less hazardous materials. You can also check out the [12 principles of green chemistry](#), which include preventing waste, using renewable feedstocks and designing safer products and processes.

Money Matters

In addition to reviewing your process and waste streams, your company may want to see if you qualify for any funding opportunities. You might already be eligible for an incentive program. Ohio EPA has multiple funding opportunities [listed on its Web site](#). The [Ohio Department of Natural Resources](#) and [U.S. EPA also have many resources](#) directly related to the environment. These sites [can help you get the funding you need](#) to put a new environmentally friendly process into place at your company. The Ohio Department of Development also has [many resources for business and industry in Ohio](#) including entrepreneurship and small business assistance, minority business assistance, business loans and tax incentives.

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Follow the Rules

Be aware of and follow all rules that apply to your business. This prevents violations and can save time and money. Ohio EPA understands that it's not easy to know every rule, but you are required to follow all applicable rules. Ohio EPA has created multiple *guidance documents* and DHWM has published *many specific to hazardous waste*. OCAPP has *help for small businesses*. The *Answer Place* allows you to search frequently asked questions and submit your own questions electronically, and DHWM's *Regulatory and Information Services Section* is always willing to help you find an answer to your hazardous waste questions.

Don't let the current economic climate prevent your company from reaching its full potential. Researching and implementing one or all of these suggestions will help get your company on the right track to save money while going green. 

Simple things your company can do now to save energy and resources

- Use electronic communication and print on both sides of the paper whenever possible to reduce paper consumption. You may also want to consider some of the [paper-reducing strategies from this Department of Energy sponsored Web site](#).
- Turn off your computers when not using them. According to a recent [survey](#), desktop computers are kept on during 43 percent of total non-work hours, including evenings and weekends. For more than 55 hours a week, desktop computers are on but not operating. This can be an unnecessary, additional annual electricity cost of about \$75 per computer. You can utilize computer settings to go to system standby after 30 to 60 minutes and set monitors to enter sleep mode after 10 to 20 minutes to start seeing savings now.
- Buy in bulk to reduce costs of individual items and to use less packaging material.
- Ask employees for suggestions on how to make processes more efficient or to reduce waste.

New Hazardous Waste Rules Adopted

by Jeff Mayhugh

New hazardous waste rules will become effective in Ohio on February 16, 2009. If you are subject to the new rules, you must comply with them starting on that date. Many of these rules actually relax existing hazardous waste requirements.

The new rules include the *new manifest rule, combustor and NESHAP rule, corrections to the used oil rule, environmental performance track for generators, methods innovations and SW846 update IIIB, revision to head works wastewater treatment exemption, CFR corrections (part 1 of 2)* and state five-year review of certain rules.

You already should be complying with one rule currently effective on the federal level. It has been implemented by U.S. EPA, and will be enforced by Ohio EPA after it is adopted. This rule adds a new waste listing for *dyes and pigments production (K181)*.

DHWM maintains a list of recently adopted rules on its [Web site](#).



Ohio's Audit Privilege Law - Maintaining and Returning to Compliance

by **Harry Sarvis**

No company likes to find itself in a situation where it is facing civil penalties for environmental violations, especially in these difficult economic times. One tool available to help companies minimize, if not prevent, escalated enforcement is Ohio's audit privilege law.

Ohio's amended audit privilege and immunity law, found in [Ohio Revised Code \(ORC\) §3745.72](#), became effective on September 30, 1998. The purpose of this law is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of environmental laws. Under the law, the owner or operator of a facility may perform a voluntary self-evaluation (audit) designed to improve compliance or identify, correct, or prevent noncompliance with environmental laws. In return for performing a proper audit, the owner or operator can qualify for immunity from the gravity portion of any civil penalty for the violations disclosed. Also, the audit and documents used to conduct the audit are [privileged](#) and disclosure of information is voluntary.



[ORC §3745.72\(C\)](#) requires that all disclosures must be in writing, dated, and hand delivered or sent by certified mail to the director of Ohio EPA. The disclosure must contain all of the following information:

- the name, address, and telephone number of the owner or operator making the disclosure;
- the name, title, address, and telephone number of one or more persons associated with the owner or operator who may be contacted regarding the disclosure;
- the owner or operator who may be contacted regarding the disclosure;
- a brief summary of the alleged violation of environmental laws, including, without limitation, the nature, date, and location of the alleged violation to the extent that the information is known by the owner or operator; and
- a statement that the information is part of an environmental audit report and is being disclosed under R.C. §3745.72 in order to obtain the immunity provided by that section.

Upon receipt of a valid disclosure, Ohio EPA will assign a lead investigator, usually from the district office where the facility is located. The lead investigator will then conduct an inspection of the facility to determine the status of the alleged violation(s) and identify any additional steps the company must take to return to compliance, if any. The company will then receive a Notice of Violation letter from the lead investigator identifying the violations noted, the current status of the violations and whatever additional steps, if any, the company must take to return to compliance.

Upon completion of this inspection, Ohio EPA will make a final determination on the validity of the disclosure, and Ohio EPA's opinion of the degree of immunity, if any, that applies and if Ohio EPA plans to take any action. As mentioned previously, a proper audit can qualify for immunity from the gravity portion of any civil penalty for the violations disclosed. Please note that Ohio EPA may still pursue escalated enforcement for any significant economic benefit accrued by the company due to its non-compliance as well as for any other non-penalty related injunctive relief needed to return the company to compliance with the appropriate environmental laws and regulations.

If you have any additional questions regarding Ohio's audit privilege and immunity law, please contact Harry Sarvis at harry.sarvis@epa.state.oh.us 

Compliance Assistance Centers

by **Helen Miller**

Since 1996, U.S. EPA has teamed up with industry, academic institutions, environmental groups, and other agencies, to sponsor Web-based *National Compliance Assistance Centers* (Centers) that address the environmental requirements of specific sectors. The Centers provide businesses, local governments, and federal facilities with information and guidance on environmental requirements and ways to save money through pollution prevention techniques. The Centers use Web sites, telephone assistance lines, fax-back systems and e-mail discussion groups to offer easy access to plain-language materials and resources on environmental compliance.

Information Available

- Updates on relevant regulatory developments.
- Sector-specific regulatory explanations.
- Compliance tools and training.
- A place to ask questions and get answers.
- Databases on technologies and techniques.
- Pollution prevention tips and ideas.
- Links to other assistance providers, vendors and suppliers.
- *State resource locators* for a wide range of topics to help find state-specific environmental compliance information.
- More information about the centers by visiting this link.



The Centers support the following sectors:

- *Agriculture*
- *Automotive recycling*
- *Automotive service and repair*
- *Chemical manufacturing*
- *Colleges and universities*
- *Construction*
- *Federal facilities*
- *Healthcare*
- *Local government*
- *Metal finishing*
- *Paints and coatings*
- *Printed wiring board manufacturers*
- *Printing*
- *Transportation*
- *Tribal governments and Indian country*
- *U.S./Mexico border issues* 

Managing Financial Assurance in a Tough Economy

by John Schierberl

Establishing and maintaining financial assurance can be costly in terms of money, time and human resources. With the current global economic downturn, companies are feeling those costs even more now. While financial assurance costs cannot be avoided, there are ways to reduce their impact to your bottom line.



Financial assurance requirements address the cost of closing a hazardous waste facility in accordance with RCRA Subtitle C; the annual cost required for post-closure care; liability coverage for sudden and non-sudden accidental occurrences; and corrective action required at solid and hazardous waste management units. In Ohio, these requirements are contained in [Ohio Administrative Code](#) rules 3745-54-101 and 3745-55-42 through 3745-55-51. These rules help ensure that a property with environmental liabilities and potential or actual releases, such as from hazardous waste drums, above or underground storage tanks or other hazardous waste units, will

be cleaned up by either the owner/operator or a third party should the owner/operator fail to do so.

Several different mechanisms can be used to establish financial assurance, including trust funds, surety bonds, letters of credit, insurance, and financial tests and corporate guarantees. Mechanisms can vary significantly in both the cost to establish and maintain them and risk management. Like anything else, you should shop different financial institutions for the best fit for your property/situation. Since tighter credit markets may limit which mechanisms are available, investing time in exploring all your options now may save you time and money later should your current mechanism or liability policy be cancelled or become unavailable. For example, recently we've noticed an increase in financial institutions' scrutiny of letters of credit, which have been relatively economical and popular among owner/operators. Although they've had the letters of credit for some time, the recent scrutiny is costing businesses time and money now.

Unfortunately, in some situations, an owner's first knowledge of financial assurance requirements often comes after they've purchased a property. They may not have researched the property's history prior to purchase, underestimated the environmental liabilities or have not been aware of financial assurance requirements. To minimize some pretty significant buyer's remorse, at a minimum, a prospective purchaser should complete a [Phase 1 environmental assessment](#) (records review and site assessment) prior to purchasing a property.

What can an owner/operator do if they discover they should have established financial assurance but for some reason failed to do so? As noted in the article "[Maintaining and Returning to Compliance](#)," companies can take advantage of Ohio's audit privilege law. Both Ohio EPA and U.S. EPA have a growing volume of resources available to assist in evaluating and implementing your company's financial assurance options. Should you have questions or encounter difficulties with financial assurance requirements, DHWM has [staff dedicated to reviewing financial assurance](#) documentation and working with companies to ensure compliance with financial assurance requirements. In addition to personal assistance, [DHWM](#), the [Division of Solid and Infectious Waste Management](#) and [U.S. EPA](#) have references, resources and tools on their Web sites. Ohio EPA is currently evaluating how best to improve the quality and usefulness of its electronic financial assurance resources and welcomes your input. You can contact John Schierberl at (614) 644-2955 or john.schierberl@epa.state.oh.us.



Processing Environmental Covenants

by Ed Lim

Generally, environmental covenants can be required as a condition of a cleanup approval or issuance of 'no-further-action' letters. DHWM may require an environmental covenant in either the corrective action or closure context depending upon the specific circumstances of the cleanup scenario. The selected remedy is based upon a cleanup plan prepared and reviewed under the existing hazardous waste rules and applicable cleanup guidance. Nothing in [Ohio's Environmental Covenant law](#) alters those requirements.



Ohio's Legislature adopted a version of the [Uniform Environmental Covenants Act](#) in 2004. This act was created by the [Uniform Law Commission](#). The Commission works toward the uniformity of state laws. The Uniform Environmental Covenants Act was designed by the Commission to meet the need for long-term certainty in the area of environmental remediation. It is a means for returning previously contaminated property to the stream of commerce.

If the long-term efficacy of a remedy for remediation is based on (among other things) the maintenance of land use or activity restrictions, then an environmental covenant meeting the statutory requirements is needed. [DHWM's Engineering and Remediation Assistance Section \(ERAS\)](#) staff provides assistance to develop the necessary covenant.

Once in the remedy implementation phase, ERAS staff will work with the owner/operator and the district office staff to obtain the required information for an environmental covenant. ERAS will work to jointly draft an environmental covenant as part of remedy implementation that represents an agreement by the owner, Ohio EPA and any other holder(s). The covenant would describe the land use and/or activity restrictions, the location and details of remaining contaminants, pathways of exposure, exposure limits and any affirmative requirements (e.g. reporting or maintenance requirements). ERAS would ensure that the body of the covenant contains provisions for notice of change of ownership or land use, periodic reporting on the land use, access rights for various parties and the rights or duties of the holder. ERAS would also ensure that the covenant has the proper supporting attachments such as an abstract or legal description of the subject property.

Once ERAS has a draft covenant that appears to be mutually satisfactory to the parties, it will be forwarded to Ohio EPA Legal for final approval and transmission to the signatories of the environmental covenant.

To view environmental covenants that have already been issued by DHWM, go to our [Environmental Covenants/Use Restrictions Web site](#).

For more information contact, [ERAS](#) or see [Ohio Revised Code 5301.80 through 5301.91](#). 



Don't forget [Answer Place](#) is still available for you to use. Answer Place allows you to search the list of previously asked questions and answers to see if an answer is already available. If not, you can use the Answer Place to ask a question. Your question will be directed to the appropriate Ohio EPA staff person to answer.

What to Do If Your Business is Closing: Your Obligations in Ohio

by **Marie Jarden**

When your business discontinues or terminates the production, use, storage or handling of regulated substances, you may be required to remove these harmful chemicals from your facility. You may need to comply with the [Cessation of Regulated Operations](#) (CRO) rules or the [RCRA closure requirements](#). The CRO rules apply to companies that submit hazardous chemical reports to the State Emergency Response Commission. For more information, the [Winter 2007 Notifier](#) has an article explaining the rules and your requirements. If you manage hazardous waste in a tank, storage containers, waste pile, surface impoundment or other unit, you will also need to perform RCRA closure. For more information on closure, see the [Summer 2006 Notifier](#) and the [Closure Plan Review Guidance](#).



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