

Final policy regarding regulation of facilities that use thermal and biological conversion technologies to convert solid waste to fuels - - Ohio EPA's Response to Interested Party Comments

In November 2010, Ohio EPA issued a draft policy regarding regulation of these facilities and solicited comments from interested parties. The Agency received comments both in support of and against the draft policy. Summarized below are the more significant concerns that were raised in opposition to this policy and the Agency's response to those concerns:

❖ **Existing definition/rules for solid waste energy recovery facilities conflict with the policy interpretation.**

Ohio EPA agrees. When the existing rules were adopted, they were only meant to apply to solid waste energy recovery facilities that were incinerating waste and capturing energy. The rules will need to be clarified.

❖ **Not calling these solid waste facilities potentially puts them beyond the reach of the Solid Waste Management District's (SWMD's) rulemaking authority, contracting authority, designation authority, etc. – comprehensive solid waste management planning will be difficult. If nothing else, the SWMDs need advance notice when these facilities plan to operate in the SWMD.**

It is true that by not regulating these facilities as solid waste facilities they may fall somewhat outside of the comprehensive solid waste planning structure that governs facilities such as landfills and transfer facilities. As such, it may present some challenges to solid waste management districts (SWMDs) in terms of comprehensive planning. However, in most areas of the state solid waste is currently handled by a wide variety of facility types, some privately owned and operated; some publicly owned and operated; some regulated directly by Ohio EPA as solid waste facilities through permitting and licensing; some regulated in a less comprehensive manner (such as through a registration); and some not regulated at all. As a result, most solid waste management districts already have to deal with a range of facility types with various regulatory statuses. As a result, Ohio EPA does not believe that this regulatory approach will be too far removed from the scenario already faced by most SWMDs in Ohio. Ohio EPA will continue to monitor the situation. If this approach produces significant negative impacts to SWMDs' ability to effectively conduct solid waste planning activities, Ohio EPA will evaluate how best to address those impacts.

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Ohio EPA agrees that it is important for SWMDs to be aware of any plans to establish these types of facilities. Therefore, if the Agency is notified either formally or informally of a proposed facility we will notify the SWMD. Furthermore, we will strongly encourage any proposed facility to contact and communicate directly with the appropriate SWMD. Any written guidance created by Ohio EPA on the development of these types of facilities will also include a recommendation that the facility communicate with the appropriate SWMD.

❖ Need to be able to apply siting criteria for these types of facilities

One result of regulating these facilities using air pollution, surface water, and other regulatory authorities as described in this policy is that these facilities will not be subject to solid waste siting criteria. Ohio EPA considered this issue prior to issuing the draft policy and highlighted this issue during the initial solicitation for comments. While Ohio EPA did receive one comment recommending application of siting criteria, Ohio EPA believes that the approach described in this policy will provide adequate environmental protection. If the regulatory approach described in this policy proves to be inadequate, Ohio EPA will re-evaluate the approach in the future.

❖ Using a broad-based, hands-off approach isn't appropriate - - the Director should use exemption authorities under ORC 3734.02(G) or variance authority under 3745-27-03 where appropriate or develop a permit-by-rule.

Consistent with the State Plan and Executive Order 2011-01K, Ohio EPA has proposed this approach in an effort to simplify the regulatory approach and to reduce redundancy. Using exemption or variance authority would create a case-by-case regulatory structure that would not be clear or easy to understand, and developing a permit-by-rule approach would take time and resources to develop. Interest in these types of facilities is growing quickly and the approach described in the policy is an attempt to react to that interest without the necessity of developing a new regulatory program.

❖ Ohio EPA can't exempt biological and thermal facilities from solid waste regulation using a policy interpretation - - it should be done through rule.

Large processing facilities (>50 tons/day) should have solid waste regulatory oversight.

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Proposal goes too far in streamlining and reducing regulatory control -- unscrupulous operators or well-intended but inexperienced or underfunded operators won't have appropriate regulatory oversight.

Bad actors will create a negative impact on the regulated solid waste facilities. They will make solid waste permitting and siting harder in the future.

How processing facilities are managed and controlled and what happens upon facility closure need solid waste regulatory oversight.

The solid waste laws do not specifically define solid waste disposal to include thermal or biological processes used to convert solid waste to create gases and/or oils that are subsequently burned as a fuel. As described in the policy, Ohio EPA believes that the combination of regulatory authority under the existing air and water pollution control laws, combined with existing prohibitions on creating nuisances and open dumps, provides adequate regulatory protection and oversight. In addition, Ohio EPA, in conjunction with local health departments, air agencies, and others, will be providing proactive compliance assistance to these facilities. If the regulatory approach described in this policy proves to be inadequate, Ohio EPA will re-evaluate the approach in the future.

❖ **These facilities have the potential to undermine current recycling efforts.**

Recycling technologies, recycling markets, and the waste industry are continually changing and evolving, creating new and changing dynamics for how materials are managed. SWMDs and local communities have always had to respond to these changing conditions. The market will ultimately dictate how and where recyclable materials are managed.

❖ **Addressing problems using public nuisance laws will be too little too late and require the state to spend money for site remediation and cleanup.**

The Agency, in cooperation with the local health departments, soil and water conservation districts and local air agencies, will be providing compliance assistance to these facilities. We will provide support to local jurisdictions so any problems at these facilities can be addressed quickly before they require significant remediation and cleanup.