

## April 2012 Refiled Proposed Rule Revisions to Chapter 3745-400: Addendum to Response to Comments

**Rule Chapter:** 3745-400 Construction and Demolition Debris (C&DD)  
Proposed Rule Revisions as refiled in April 2012, with the Joint Agency for Rule Review (JCARR)

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Rule Number	Rule Title	April 2012 Refile includes changes from the earlier January 13, 2012 refiled proposed rules
3745-400-08	Construction and final closure certification.	Yes
3745-400-12	Final closure of facilities.	Yes
3745-400-13	Financial assurance for construction and demolition debris facility final closure.	Yes
3745-400-14	Wording of the financial instruments.	Yes
3745-400-16	Post-closure care of a construction and demolition debris facility.	Yes
3745-400-17	Procedures for issuance of an order extending the post-closure care period.	Yes
3745-400-18	Financial assurance for post-closure care of construction and demolition debris facilities.	Yes
3745-400-19	Post-closure care certification report.	<b>This rule is no longer necessary and is being withdrawn.</b>
3745-400-20	Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters.	Yes
3745-400-21	Construction and demolition debris facility – leachate parameter list.	No changes
3745-400-25	Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities.	Yes; <b>grammatical corrections</b>

On November 30, 2011, Ohio EPA originally filed proposed rule revisions to OAC Chapter 3745-400 with the Joint Committee on Agency Rule Review (JCARR). The Ohio EPA refiled the proposed rules with JCARR on January 13, 2012. Subsequently, the Ohio EPA gave JCARR notice of intent to refile the proposed rules for a second time on January 20, 2012 to further consider public comments. This provided the Ohio EPA with more time to consider public comments by removing those proposed rules from the JCARR January 23, 2012 meeting agenda. During this additional time, Ohio EPA's consideration of public comments included hosting meetings with the Construction and Demolition Association of Ohio, the Association of Ohio Health Commissioners, and the Ohio Environmental Health Association on January 18<sup>th</sup> and February 24<sup>th</sup>, 2012.

On April 2012, the Ohio EPA refiled for the second time the OAC Chapter 3745-400 proposed rules with additional changes. These April 2012 refiled proposed rules are scheduled for the JCARR May 7, 2012, meeting agenda. **The official copy of the April 2012 refiled proposed rules may be accessed at either the [DMWM rule page](#) or the [Register of Ohio](#).**

This document is intended to aid the reader in locating and identifying changes in the January 2012 refiled proposed rule versus the April 2012 refiled proposed rule. Therefore, this document shows deleted proposed language from the January 2012 refiled proposed rule and the new language added to the April 2012 refiled proposed rule.

This document comparing the January 2012 refiled proposed rule versus the proposed language contained in the April 2012 refiled proposed rule is not intended to replace the reader's need to review the April 2012 refiled proposed rules. Please remember when reviewing the actual April 2012 refiled proposed rule, it ONLY shows the language additions and deletions from existing effective rule that the Agency seeks to adopt into final rule.

DRAFT

**OAC 3745-400-08: Construction and final closure certification.**

In the April 2012 refiled proposed rules, there are two areas of changes to OAC 3745-400-08.

1. OAC 3745-400-08(A)(3).

Changes: The April 2012 refiled rule changes are highlighted below.

(3) Certification ~~of construction that the~~ **engineered components** of **the** final cap system, ~~which is~~ required by paragraph (G) of rule 3745-400-07 of the Administrative Code and contained in the final cap system design plan, **have been constructed** shall be submitted to the licensing authority within sixty days of completion of construction. The owner or operator may construct portions of the final cap system as active licensed disposal areas are brought to final grade. **The licensing authority shall review the certification report and either approve or deny the construction.** ~~Funds retained as financial assurance shall not be reimbursed to the owner or operator until the licensing authority has concurred that construction of the final cap system meets the specifications contained in paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code, as applicable.~~

[Comment: The release of final closure financial assurance by the licensing authority upon construction certification of engineered components of the final cap system is addressed in paragraph (A)(6) of rule 3745-400-13 of the Administrative Code.]

Reason for Changes: The first sentence of this paragraph has been corrected for grammatical clarity. The third sentence has been retained since licensing authority approval of the construction certification report for the final cap system continues to be necessary for obtaining release of financial assurance. Retention of this sentence is consistent with the comment following this paragraph referencing the reader to OAC 3745-400-13(A)(6) specific to the release of financial assurance.

2. OAC 3745-400-08(D)(3)&(4).

Changes: The April 2012 refiled rule changes are highlighted below.

(3) All areas within the limits of debris placement which have been certified for final cap system construction in accordance with paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code as applicable shall be shown on a copy of **the a** plan sheet specified in paragraph (G)(1)(~~a~~) of rule 3745-400-07 of the Administrative Code. Each certified capped area shall **identify the certified engineered components and** include the date of the licensing authority approval required by paragraph (A)(3) of **this** rule ~~3745-400-08 of the Administrative Code~~.

**(4) Areas within the limits of debris placement for which a construction certification report is included with the final closure certification report shall be shown on a copy of the a plan sheet specified in paragraph (G)(1)(~~a~~) of rule 3745-400-07 of the Administrative Code. Each area shall identify the engineered components for which a construction certification report is included with the final closure certification report.**

**Construction certification reports for engineered components of the final cap system included with the final closure certification report shall be in accordance with paragraph (A)(3) of this rule with the exception of the attainment of complete and dense vegetative cover specified in paragraph (G)(2)(a)(iii) or (G)(2)(b)(ii) of rule 3745-400-07 of the Administrative Code. The construction certification reports for engineered components of the final cap system included with the final closure certification report shall verify that seeding to establish vegetative cover has been completed prior to submittal of the final closure certification report.**

Reason for Changes: These changes are intended to clearly allow the licensing authority's approval of the final closure certification report to include the review and

approval of the most recent unapproved construction certification report for the engineered components. However, to include the unapproved construction certification report with the final closure certification report will require that final closure certification report be submitted within sixty days of completion of construction to comply with rules OAC 3745-400-08(A)(2) or (3).

These paragraphs have been revised to use the less specific reference to paragraph (G)(1) of rule 3745-400-07. The change affords the owner or operator the option to place the required information on plan sheets other than an OAC 3745-400-07(G)(1)(a) plan sheet showing the final grade of the limits of debris placement. For example, using a plan sheet showing the designation of required cap system types to also identify the areas for which a construction certification report is included with the final closure certification report is a more pertinent presentation of information.

**OAC 3745-400-12: Construction and final closure certification.**

In the April 2012 refiled proposed rules, there is one area of change to OAC 3745-400-08.

1. OAC 3745-400-12(E)(8).

Changes: The April 2012 refiled rule changes are highlighted below.

(8) Construction of cap system.

(a) Within one year of ceasing to accept debris for disposal, the owner or operator shall complete construction of a cap system, consistent with the details of the approved final cap design plan and as required by paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code, over all areas of debris placement not previously certified in accordance with rule 3745-400-08 of the Administrative Code with the exception of the establishment of attainment of complete and dense vegetative cover specified in paragraph (G)(2)(a)(iii) or (G)(2)(b)(ii) of rule 3745-400-07 of the Administrative Code. Establishment of dense Seeding to establish vegetative cover specified in paragraph (G)(2)(a)(iii) or (G)(2)(b)(ii) of rule 3745-400-07 of the Administrative Code; shall be completed within two years after ceasing to accept debris or, in the case of postponement authorized in paragraph (E)(5)(b) of this rule, one year after completion of construction of the cap prior to submittal of the final closure certification report.

[Comment: The licensing authority may utilize authority under section 3714.04 of the Revised Code should a time extension for completion of the establishment of dense vegetative cover be deemed appropriate.]

Reason for Changes: A facility's license includes the approved final cap design plan. To ensure awareness of the obligation to comply with the details of the approved final cap design plan, a reference has been added to the first sentence in paragraph (E)(8)(a).

Since this rule was originally adopted without a post-closure care period, the establishment of dense vegetative cover as a closure activity ensured that this common erosion control method was in place before closure was completed. This revised rule continues to require seeding to establish the vegetative cover as a closure activity but proposes to move the requirement to achieve complete and dense vegetative cover from closure to the new post-closure care requirements in OAC rule 3745-400-16(A)(4). This will allow a facility to more quickly complete closure activities and enter the five year post-closure care period during which complete and dense vegetative cover is to be established and maintained.

Proposed OAC rule 3745-400-18 does establish the procedure by which a licensing authority may extend the length of the post-closure care period if conditions at a C&DD facility are impacting public health or safety or the environment. Conditions at the facility, including failure to adequately control erosion, that contribute to documented impacts should be considered.

**OAC 3745-400-13: Financial assurance for construction and demolition debris facility final closure.**

In the April 2012 refiled proposed rules, there are two areas of changes to OAC 3745-400-13.

1. OAC 3745-400-13(A).

Changes: The April 2012 refiled rule changes are highlighted below.

(A) The owner or operator of a construction and demolition debris facility shall establish and maintain financial assurance for final closure of the facility as required by paragraph (S) of rule 3745-400-11 of the Administrative Code. Financial assurance may be established and maintained through the use of one of the options specified in paragraphs (B) to ~~(G)~~(F) of this rule, unless it is demonstrated to the satisfaction of the health commissioner or director of the licensing authority that an alternate option will guarantee funding for final closure. The owner or operator may use the options in combination as specified in paragraph ~~(H)~~(G) of this rule. Financial assurance documentation shall be submitted and include the information specified in this paragraph and shall be submitted as part of the license application in rule 3745-400-18 of the Administrative Code.

Reason for Changes: Correction of typographical errors.

2. OAC 3745-400-13(A)(5).

Changes: The April 2012 refiled rule changes are highlighted below.

(5) Notice of deficiency. The licensing authority shall notify the license applicant of deficiencies with the final closure cost estimate and final closure financial assurance documentation not later than thirty days after licensing authority receipt of the license application. Such notification shall identify any adjustment in the amount of final closure financial assurance being considered by the licensing authority.

The licensing authority may adjust the amount of financial assurance in conjunction with the issuance of the annual license. If the licensing authority issues the annual license with adjustment of the amount of financial assurance, the licensing authority shall identify the deficiencies in the itemized final closure cost estimate and provide an explanation of the rationale for financial assurance exceeding thirteen thousand dollars per acre, which may include information provided to or obtained by Ohio EPA or a local board of health.

Reason for Changes: The intent of this change is to ensure that when the licensing authority does adjust the amount of financial assurance with the issuance of the license, the licensing authority both identifies the deficiencies specific to the itemized closure cost estimate and provides an explanation of the rationale for the adjustment.

3. OAC 3745-400-13(A)(6).

Changes: The April 2012 refiled rule changes are highlighted below.

(6) Release of funds.

- (a) Release of funds prior to final closure certification. The owner or operator, or any other person authorized to perform final ~~capping-closure~~ on behalf of the owner or operator, ~~shall~~ may request and receive authorization for reimbursement from or a reduction of the financial assurance required under this rule ~~where~~ when the licensing ~~authority's~~ authority has provided written ~~concurrence~~ approval with the construction certification report for engineered components of the cap system certification required in paragraph (A)(3) of rule 3745-400-08 of the Administrative Code ~~has been obtained. Reimbursement shall be calculated based upon the total acreage of the certified cap system, to the nearest tenth of an acre, multiplied by twelve thousand four hundred fifty dollars per acre plus two thousand one hundred seventy five dollars for each properly plugged and abandoned ground water monitoring well. The amount of financial assurance remaining shall not be less than the final closure cost estimate recalculated in accordance with paragraph (A)(1) of this rule. A request for reimbursement from or a reduction of financial assurance shall be submitted to the licensing authority and include the following:~~
- (i) A copy of the licensing authority's written concurrence approval with the construction certification report for engineered components of the cap system required in paragraph (A)(3) of rule 3745-400-08 of the Administrative Code.

Reason for Changes: The term "concurrence" was changed to "approval" to be consistent with the "approve or deny" language in OAC 3745-400-08(A)(3).

**OAC 3745-400-16: Post-closure care of a construction and demolition debris facility.**

In the April 2012 refiled proposed rules, there are three areas of changes to OAC 3745-400-16.

1. OAC 3745-400-16(E)(4).

Changes: The April 2012 refiled rule changes are highlighted below.

~~(4) Maintaining vegetative cover~~ (4) Establishing and maintaining complete and dense vegetative cover as specified in paragraph (G)(2)(a)(iii) or (G)(2)(b)(ii) of rule 3745-400-07 of the Administrative Code in areas where seeding to establish vegetative cover is required during facility final closure in accordance with rule 3745-400-12 of the Administrative Code. Areas where a vegetative standard cap system is required in accordance with paragraph ~~(E)(4)(G)(2)(a)~~ of rule 3745-400-07 of the Administrative Code shall be mowed at least once per year.

Reason for Changes: Proposed changes to OAC rule 3745-400-12(E)(8) would continue to require seeding to establish the vegetative cover as a closure activity but the requirement to achieve complete and dense vegetative cover is proposed to move from closure to the new post-closure care requirements in this rule. This will allow a facility to more quickly complete closure activities and enter the five year post-closure care period during which complete and dense vegetative cover is to be established and maintained.

Proposed OAC rule 3745-400-18 does establish the procedure by which a licensing authority may extend the length of the post-closure care period if conditions at a C&DD facility are impacting public health or safety or the environment. Conditions at the facility, including failure to adequately control erosion, that contribute to documented impacts should be considered.

2. OAC 3745-400-16(E)(8).

Changes: The April 2012 refiled rule changes are highlighted below.

(8) Submitting a post-closure care evaluation report not later than the third anniversary of commencing the post-closure care period. The post-closure care evaluation report shall contain the following:

- (a) An assessment of the integrity and long term stability of the cap system. The assessment shall consider observations, inspections, maintenance, repairs, and other information relating to the cap system since the commencement of post-closure care. The assessment shall identify needed maintenance and repair at the time of ~~certification~~ the evaluation report.
- (b) A summary of changes to leachate quality and quantity since the commencement of post-closure care.
- (c) The rate of leachate generation and quantity of leachate generated at the facility since the commencement of post-closure care, with an explanation of how these figures were derived.
- (d) An assessment of hydrogen sulfide gas generation and emissions by the facility. The assessment shall consider observations, inspections, maintenance, repairs, and other information relating to hydrogen sulfide gas generation and emissions since the commencement of post-closure care. The assessment shall identify needed hydrogen sulfide gas emission controls at the time of ~~certification~~ the evaluation report.

Reason for Changes: The intent was to refer to have these assessments reflect the situation at the time that the evaluation report is being completed. The reference to the certification report was a proofreading oversight. The changes correct this error.

3. OAC 3745-400-16(F).

Changes: The April 2012 refiled rule changes are highlighted below.

(F) The owner or operator shall submit to Ohio EPA and the approved board of health a post-closure care certification report that conforms to rule 3745-400-19 of the Administrative Code before the completion last thirty days of the post-closure care period. The post-closure care certification report shall conform with the following:

(1) The post-closure care certification report shall be signed by a professional skilled in the appropriate discipline and shall certify that the owner or operator has completed post-closure care in accordance with this chapter.

(2) The post-closure care certification report shall contain at a minimum the documentation relied upon in the preparation of the post-closure care certification report.

(3) If applicable, the post-closure care certification report shall include information on the status of ground water monitoring wells. The status shall include the identification of intended use or anticipated time frame for well abandonment. [Comment: Decommissioning of the ground water monitoring system and proper abandonment of ground water monitoring wells is required by Chapter 3745-09 of the Administrative Code.]

(4) If applicable, the post-closure care certification report shall include information on the status of any other environmental monitoring being conducted at the facility and any required environmental control systems. The status shall include the identification of the anticipated timeframe for cessation of monitoring or abandonment of any environmental control systems that were required during post-closure care.

Reason for Changes: Paragraph (F) has been expanded and now includes all of the requirements for the post-closure care certification report rather than reference to rule 3745-400-19. Given this change, Ohio EPA will remove rule 3745-400-19 from the proposed rule package. Clarification has been added that the certification report is to be submitted anytime during the last thirty days of the post-closure care period.

**OAC 3745-400-17: Procedures for issuance of an order extending the post-closure care period.**

In the April 2012 refiled proposed rules, there is one area of change to OAC 3745-400-17.

1. OAC 3745-400-17(B).

Changes: The April 2012 refiled rule changes are highlighted below.

- (6) A timeframe of at least forty-five days for the submittal of the revised cost estimate and a timeframe of at least ninety days for re-establishment of financial assurance.
- (7) Any terms or conditions established by the order.
- (78) A termination date or termination provisions.
- (9) A description of the post-closure care activities required by paragraph (E) of rule 3745-400-16 of the Administrative Code that are to be continued during the extended post-closure care period.

Reason for Changes: The extension of the post-closure care period will involve revision of the post-closure care cost estimate and may necessitate a change in the financial assurance instruments. A new paragraph (B)(6) has been added to ensure that the licensing authority's order addresses the timeframe for the submittal of the revised cost estimate and re-establishment of financial assurance. The proposed rule provides a minimum timeframe while allowing the license authority flexibility to provide the facility owner or operator greater time to calculate the cost estimate and re-establish financial assurance instruments. A new paragraph (B)(9) was added to clearly identify the minimum information that should be contained in the order.

**OAC 3745-400-18: Financial assurance for post-closure care of construction and demolition debris facilities.**

In the April 2012 refiled proposed rules, there is one area of change to OAC 3745-400-18.

2. OAC 3745-400-18(A)(5).

Changes: The April 2012 refiled rule changes are highlighted below.

(5) Release of funds. Reimbursement shall be made as follows:

(a) Release of funds prior to completion of post-closure care. The owner or operator, or any other person authorized to perform post-closure care activities on behalf of the owner or operator, may request and receive authorization for reimbursement from or a reduction of the financial assurance required under this rule ~~when the licensing authority has provided written concurrence that the post closure care activities listed in the request for reimbursement or reduction have been performed in accordance with rule 3745-400-16 of the Administrative Code. The~~ In accordance with paragraph (A)(3)(e) of this rule, the amount of financial assurance remaining shall not be less than the recalculated post-closure care cost estimate ~~recalculated in accordance with paragraph (A)(1) of this rule.~~ A request for reimbursement from or reduction of financial assurance shall be submitted to the licensing authority and include the following:

~~(i) A copy of the licensing authority's written concurrence that the post closure care activities listed in the request for reimbursement or reduction have been performed in accordance with rule 3745-400-16 of the Administrative Code.~~

~~(i)~~ (i) The amount of reimbursement or reduction of the financial assurance calculated based upon the unit cost of the completed post-closure care activities contained in the current approved financial assurance cost estimate.

~~(iii)~~ (iii) A post-closure care cost estimate recalculated in accordance with paragraph (A)(1) of this rule.

~~(iv)~~ (iv) A comparison of the recalculated post-closure care cost estimate to the amount of financial assurance remaining if the requested amount of reimbursement or reduction of the financial assurance is released or reduced.

Reason for Changes: The reference to the licensing authority providing written concurrence that the post-closure care activities have been performed is a concept taken from final closure that is unnecessary for post-closure care and has been removed. Final closure activities involve significant cap construction involving engineering design and certification of construction which cannot be adequately reviewed simply through licensing authority site inspections. Conversely, post-closure care activities should not typically require significant construction, but consist primarily of maintenance, monitoring, and repair activities. The licensing authority's site inspections provide regular verification of post-closure activities.

**OAC 3745-400-19: Post-closure care certification report.**

In the April 2012 refiled proposed rules, OAC 3745-400-19 has been removed from the proposed rule package since the proposed requirements have been moved to paragraph (F) of proposed rule 3745-400-16. This rule is being withdrawn from JCARR jurisdiction.

DRAFT

**OAC 3745-400-20: Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters.**

In the April 2012 refiled proposed rules, there are two areas of changes to OAC 3745-400-20.

1. OAC 3745-400-20(A).

Changes: The April 2012 refiled rule changes are highlighted below.

(A) Leachate sampling and analysis. Throughout the operation, closure, and post-closure care, the owner or operator shall do the following:

Reason for Change: Added clarification that compliance with this rule is required throughout operation, closure, and post-closure care.

2. OAC 3745-400-20(B).

Changes: The April 2012 refiled rule changes are highlighted below.

(B) Additional requirements to monitor ground water for leachate parameters.

(1) The owner or operator of a facility with a ground water monitoring system and a leachate monitoring system that can be used for conducting the leachate sampling required by paragraph (A) of this rule shall monitor ground water for parameters that have been detected in the facility's leachate. If Ohio EPA or the licensing authority conducts sampling and analysis of leachate in accordance with this rule and rule 3745-400-21 of the Administrative Code, Ohio EPA or the licensing authority may require the owner or operator to add the detected parameter to the ground water monitoring parameter list.

(2) If Ohio EPA or the licensing authority has detected a parameter listed in rule 3745-400-21 of the Administrative Code through conducting sampling in accordance with paragraph (A) of this rule with the exclusion of paragraph (A)(1)(d)(iii)(c), Ohio EPA or the licensing authority may require that the owner or operator add a parameter listed in rule 3745-400-21 of the Administrative Code that is detected by the Ohio EPA or the licensing authority to the ground water monitoring parameter list.

(3) The owner or operator of a facility that has a ground water monitoring system and does not have a leachate monitoring system that can be used for conducting the leachate sampling required by paragraph (A) of this rule shall monitor ground water for the parameters listed in rule 3745-400-21 of the Administrative Code.

(34) The owner or operator shall monitor ground water for the additional parameters required by this rule in accordance with rule 3745-400-10 of the Administrative Code. [Comment: The licensing authority may utilize authority under section 3714.04 of the Revised Code should the addition of parameters required by this paragraph no longer be determined appropriate.]

Reason for Changes: A licensing authority conducting sampling under this rule should not be allowed the option to assume a detection has occurred. That is an option available to an owner or operator under OAC 3745-400-20(A)(1)(d)(iii)(c). The change clarifies that paragraph (A)(1)(d)(iii)(c) is not an option available to the licensing authority.

**Miscellaneous Clarifications and Grammatical Changes:**

Rule(s):	Change:	Reason:
3745-400-12(E)(11); 3745-400-13(A)(3)(b), (A)(3)[Comment], (C)(1), & (D)(1); 3745-400-14 (A)(1)(Section 6)(a); 3745-400-18(A)(3)(d), (A)(3)(d)[Comment], (C)(1), & (D)(1)	Appropriate incorporation by reference language was added to each of these sections.	This language is required in rules that incorporate text by reference.
3745-400-13(A)(1)	The word "premature" was removed from "premature final closure activities."	This is to remain consistent with the terminology used throughout Chapter 3745-400.
3745-400-13(B)(1)	The word "which" was replaced with "that."	Correction of a grammatical error.
3745-400-13(D)(5)	The words "the chapter" were replaced with "this chapter".	This change was made to amend an incorrect reference.
3745-400-13	Corrected paragraphs (A)(1), (A)(3), (A)(3)(b), (A)(3)(c), (A)(6)(a), (A)(6)(a)(ii), (A)(6)(a)(iv), (B)(1), (C)(1), (E)(1).	Grammatical corrections.
3745-400-17(A) and 3745-400-17(B)(3)	The reference 3745-400-10 of the Administrative Code was replaced with section 3714. of the Revised Code.	This change was made to amend an incorrect reference.
3745-400-17(B)(1)	"The" was added to the beginning of the paragraph.	Grammatical correction.
3745-400-20(A)(1)(c)(iii)(a)	Reference to (A)(1)(d)(iii) was changed to (A)(1)(d)(ii).	This change was made to amend an incorrect reference.
3745-400-25(A)(3)(a)	"...described in this rule and to adhere with to this rule."	Correction of a grammatical error.
3745-400-25	"Annual transition period final closure payment" was changed to "Final closure transition amount"	This change was made for clarification purposes.
3745-400-25	"Transition periods" was changed to "transition period."	Correction of a grammatical error.