



Division of Materials and Waste Management

Response to Comments

Rule: Chapter 3745-599, Beneficial Use Rules

Agency Contact for this Package

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Ohio EPA released draft rules regarding development of a new beneficial use program for interested party review and comment. These draft rules would be located in a new Ohio Administrative Code (OAC) Chapter 3745-599. The interested party comment period was held from May 14, 2015 to June 22, 2015. This document summarizes the comments and questions received during the interested party comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General/Overall Concerns

Comment 1: **The regulation of a beneficial use product implies it is no longer considered a waste, should not be regulated as one, and therefore should be able to be used in a number of applications regardless of whether each and every application is specifically identified. Provided no other rules and regulations of the State are violated (e.g., waters of the State), the end use should not be a concern of Ohio EPA and existing rules are already in place to regulate this. (Scott D. Moegling P.E., Cleveland Division of Water)**

Response 1: The comment is a reasonable broad summary of the goal of proposed Chapter 3745-599 but is more descriptive of what may potentially result under the proposed Chapter's general permit mechanism. The following response is offered to provide a more complete general summary of Ohio EPA's proposed beneficial use rules.

Ohio Revised Code (ORC) Chapter 3734 is the basis of solid waste regulation being disposed (placed onto the land or burned) and ORC Chapter 6111 is the basis of “industrial waste” or “other waste” being placed in a manner that impacts waters of the state. It is the activity of placement of these ORC regulated materials for which the proposed rules seek to establish new mechanisms to authorize the placement and acknowledge as a beneficial use.

Proposed Chapter 3745-599 involves an evaluation of both the material’s characteristics and proposed use in approving a beneficial use of a beneficial use byproduct. Depending on the circumstances, a material may be approvable as a beneficial use in one type of application but not acceptable in a different type of application. To illustrate this point, use of a material as a construction fill material beneath a building represents different public health and environmental exposures than the use of the material as an ingredient in garden soil in residential settings. Another example would be use of a material as fill material at a controlled industrial property versus a residential housing development or adjacent to a high quality stream. To provide appropriate flexibility, proposed Chapter 3745-599 provides several mechanisms for approval (individual permit, general permit, and authorization by rule).

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 2:

We understand that TENORM is prohibited from beneficial use by law, and that the draft rules do not apply to any materials for which ODNR has sole and exclusive authority under Ohio Revised Code 1509; however, it is unclear if the draft rules will regulate materials generated from oil and gas exploration and production operations which are not regulated under ORC 1509. We strongly advocate that NORM not be excluded from beneficial use. Drill cuttings considered as NORM should be included in the proposed beneficial use rules. The 2015 draft beneficial use rules have been issued without any notice regarding rules for a separate program for materials from horizontal wells. (Bill Petruzzi, Hull & Associates; Shawn Bennett, Ohio Oil and Gas Association)

Response 2:

The division does not plan on incorporating the beneficial use of naturally occurring radioactive material (NORM) into the proposed Chapter 3745-599 at this time. Ohio Revised Code 3734.125 gives Ohio EPA authority to draft rules for the beneficial use of material from a horizontal well that has come in contact with a refined oil-based substance and that is not technologically enhanced naturally occurring radioactive material (TENORM). This will be accomplished through a separate rulemaking effort.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 3: **Uncontrolled/unconfined deposition of dredge materials into Lake Erie should be prohibited, regardless of designation. (Scott D. Moegling P.E., Cleveland Division of Water)**

Comment 4: **The beneficial use rules need to be written to allow for unlimited use of dredged material in upland, on/near shore and waterway/open-lake applications if the materials meet applicable standards. (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)**

Response 3 & 4: Ohio EPA has publically raised concerns regarding the practice of unconfined deposition of dredge into Lake Erie. Ohio Revised Code (ORC) section 6111.32 became effective July 3, 2015. This law established a prohibition to commence July 1, 2020, on the deposit of dredged material into Lake Erie and its direct tributaries unless authorized pursuant to ORC section 6111.32.

Since ORC section 6111.32 specifically addresses beneficial use projects involving dredge deposition into Lake Erie and its direct tributaries, the Agency has changed proposed rule 3745-599-01(A)(4) to facilitate the review and authorization of beneficial use projects involving deposition of dredge from federal navigational channels and ports onto land.

It is envisioned that beneficial use requirements specific to dredged material use on land may be addressed in development of general beneficial use permit(s) and submittal of individual beneficial use permit application(s) tailored to the characteristics of the dredged material and type of beneficial uses. In anticipation of the July 1, 2020, general prohibition on the deposit of dredged material in Lake Erie, the Agency has been actively investigating options and appropriate standards for the beneficial use of dredged material onto land.

To clarify that the proposed Chapter 3745-599 is not duplicative of ORC section 6111.32 beneficial use authorizations involving deposition into Lake Erie or its direct tributaries, the proposed rule 3745-599-05 regarding general beneficial use exclusions has been revised to add a new paragraph (G) referencing to ORC section 6111.32.

Comment 5: **The draft rules are a disappointment in that these rules could readily replace much of the current Integrated Alternative Waste Management Program (IAWMP) and the Land Application Management Plan (LAMP) with respect to wastes qualifying for beneficial use. The agency could consolidate the beneficial use program into this one draft chapter. (Dominic J. Hanket, City of Columbus)**

Response 5: Throughout stakeholder discussions, the Agency expressed the intent to use these rules to replace the current IAWMP and LAMP programs and cover solid wastes and industrial wastes and other wastes regulated under Ohio Revised Code Chapters 3734 and 6111. The Agency has decided however to proceed with a limited number of materials in order to expedite the establishment of effective rules for those specific materials listed in proposed rule 3745-599-01. The Agency does anticipate adding more materials in future rulemaking efforts following final adoption of Chapter 3745-599.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 6: **We are concerned that confusion may arise as the rules under ORC 6111 and ORC 3734 are combined into one program. We believe that some of the standards provided in these draft rules are unnecessarily strict and do not provide flexibility that may be appropriate for byproducts currently considered and regulated as wastes. (Katie Kistler, AK Steel)**

Response 6: The purpose of proposed Chapter 3745-599 is to reduce the current state of confusion by establishing one rule chapter creating flexible approval mechanisms for the beneficial use of certain byproducts. The approval mechanisms would provide a single Agency approval where currently two might be required depending on whether the material is regulated under one or both ORC Chapters 3734 and 6111.

Proposed Chapter 3745-599 would establish flexible approval mechanisms that can be tailored to a specific material and uses. The flexibility allows establishment of tailored standards and requirements through permits (individual and general permits) to better ensure that the established standards are appropriate for the byproduct and the beneficial uses.

Where confusion may exist regarding a specific byproduct or specific beneficial use, the Agency is open to working with appropriate stakeholders to provide guidance and clarity.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 7: **The beneficial use rules should directly and explicitly treat beneficial use byproducts no differently than how a raw material or commercially available product is treated. Treating materials in beneficial use applications differently from traditional materials will impact public perception and diminish their use, thereby impacting the achievement of stated recycling and conservation goals. Include only**

minimum language necessary related to prohibitions on the use of beneficial use byproducts. (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)

Response 7: The Agency agrees that similar materials should be held to similar standards. These rules are intended to establish a system by which the agency can evaluate and acknowledge when a beneficial use byproduct should be treated similarly to an equivalent raw material or commercially available product.

Commercially available raw materials or products are held to product specifications or consistent material specifications. This may not be the situation with byproducts or waste materials. The proposed rules provide mechanisms by which the physical and chemical characteristics and the consistency of a byproduct can be evaluated and appropriate standards established depending on how the byproduct is beneficially used.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 8: OCMA requests clarification regarding whether current onsite uses of foundry sand, such as use for onsite landfill construction, will continue to be allowed without a permit under these regulations. (Russ Murray, Ohio Cast Metals Association)

Response 8: In situations where the Agency has previously and expressly authorized use of foundry sands in landfill construction, the Agency's expectation is that the practice continues in accordance with the previous authorization. This is the purpose of proposed rules 3745-599-30 and 3745-599-05.

In consideration of this comment, the proposed rule 3745-599-30 has been revised to add a reference to previous authorizations under ORC Chapter 6111 in addition to ORC Chapter 3734.

Comment 9: We would like to be involved in the creation of the dredge general permit and would like to meet with Ohio EPA before draft general permits are issued to discuss current language and changes related to more problematic issues such as signatures, relationships between different programs, anticipated end user/uses, record keeping and reporting, and renewal. (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)

Response 9: Proposed Chapter 3745-599 has been developed to establish general rule requirements for three basic beneficial use approval mechanisms (individual permit, general permit, and authorization in rule). The rules include flexibility for permits to be tailored to the

byproduct and uses. Now is the appropriate time to discuss any concerns regarding the proposed rule language as it may relate to signatures, relationships between different programs, anticipated end user/uses, recordkeeping, reporting, and renewal.

Ohio EPA anticipates and encourages stakeholder involvement in the development of the general permits. At a minimum and prior to issuance of a general permit, a draft general permit would be released for public review and comment.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

3745-599-01 Applicability

Comment 10: **We would like to see sewage sludge incinerator ash added to the list of applicable materials. (Dominic J. Hanket, City of Columbus; Julius Ciaccia, Northeast Ohio Regional Sewer District; Dax Blake, Association of Ohio Metropolitan Wastewater Agencies)**

Response 10: In response to the comments submitted by the Association of Ohio Metropolitan Wastewater Agencies and two of the Ohio's major generators of sewage sludge incinerator ash, Ohio EPA has added sewage sludge incinerator ash to the list of applicable materials in Ohio Administrative Code 3745-599-01.

Comment 11: **We suggest another category within the applicability rule called the "inclusive byproduct" category to include materials that are demonstrated to be suitable for use as an ingredient or on its own to form a product that meets or exceeds the performance and compliance standards achieved by raw materials or other commercial blends. We suggest including non-exempt coal combustion residuals, drill cuttings identified as NORM and regulated steelmaking waste, etc. in this category. (Bill Petruzzi, Hull & Associates)**

Comment 12: **We would like to see sandblasting media (blast sands) added to the list of applicable materials in rule 3745-599-01. (Dave Hauner and David Herrin, Union Tank Car Company)**

Response 11 & 12: Ohio EPA released the interested party draft of rule 3745-599-01 of applicable materials based on the expressed desire of certain stakeholders to move forward with Chapter 3745-599 rulemaking. This limited applicability approach is in recognition that not all stakeholders are comfortable with inclusion of all materials. Upon the release of the interested party draft Chapter 3745-599, stakeholders were encouraged to make comment regarding any desire to add materials to the applicability rule. The Agency noted that it would consider adding materials should a significant consensus exist. At this time, no evidence of a consensus exists

for adding the materials suggested in comment 11. Similarly, only comment 12 representing a single company have suggested the addition of sandblasting media.

It is worth noting that a May 2014 Early Stakeholder Outreach (ESO) suggested a “co-product” approach similar in purpose to the comment’s “inclusive byproduct” suggestions. Stakeholder response to this ESO did not lead to further exploration of the concept.

Comment 13: **More clarification is needed on what is meant by “placed on the land” or “burning.” (Russ Murray, Ohio Cast Metals Association)**

Response 13: This chapter is only applicable to materials that are intended to be placed on the land or burned for the purpose of beneficial use.

Storage of beneficial use byproducts may likely involve the temporary placement on land prior to the beneficial use. Depending on the characteristics of the beneficial use byproduct, property locations of such storage on land may not likely be addressed in a general permit or individual beneficial use permit. However, the management of the beneficial use byproduct prior to use, including temporary storage, would be subject to the general requirements under the legitimacy criteria in OAC 3745-599-35.

Temporary storage of beneficial use byproducts may be subject to other applicable regulations outside of OAC Chapter 3745-599. Proposed OAC 3745-599-01(D) makes it clear that compliance with the proposed beneficial use chapter does not relieve any person of obligations under other applicable state or federal laws or rules. For example, there may be obligations under the storm water control regulations.

The proposed rule addresses burning in a combustion unit as a fuel or ingredient. Ultimately, it is the air permit for the combustion unit that makes the determination that the beneficial use byproduct is a fuel or ingredient as used in that combustion unit. Otherwise, the combustion unit probably would be regulated as a waste incinerator under the Clean Air Act. Proposed OAC Chapter would not be applicable to burning in a waste incinerator.

Comment 14: **This paragraph should be amended to "Dredged material resulting from harbor or navigational maintenance activities or any other solid waste material resulting from dredging activities that is demonstrated to be an acceptable end use of the material." (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)**

Response 14: The Agency has changed proposed rule 3745-599-01(A)(4) in consideration of this comment. The proposed rule uses the

phrase “material excavated or dredged” to establish a general category of materials excavated or dredged from a federal navigational channel during harbor or navigation maintenance activities. Such material is not restricted to only channel sediment and may consist of anything brought up from the bottom of a navigational channel, including solid wastes. Proposed Chapter 3745-599 would provide the manner of characterizing this material and evaluating proposed beneficial use projects involving deposition of dredge from federal navigational channels and ports onto land.

Comment 15: **Draft rule 3745-599-01(C) states that a beneficial use byproduct that “has been managed and used in accordance with this chapter,” that the material “is not a solid waste under Chapter 3734 of the Revised Code.” This draft rule should also state that a beneficial use byproduct is not an industrial waste or other waste under Chapter 6111 of the Revised Code. (Katie Kistler, AK Steel)**

Response 15: ORC Chapter 3734 does provide a legal basis for Agency rules to acknowledge when a solid waste (unwanted material) is no longer a solid waste by defining “unwanted” material. See the definition of solid waste in proposed rule 3745-599-02(S). However, ORC Chapter 6111 does not have similar language in the definition of “industrial waste” or “other waste”.

For this reason, no revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 16: **Draft rule 3745-599-10(D), which states that the rule does not limit applicability of specific chapters of the ORC or rules adopted under these chapters appears to be redundant when compared to 3745-599-01(D). We suggest that paragraph (D) of rule 3745-599-10 be combined with paragraph (D) of rule 3745-599-01. (Katie Kistler, AK Steel)**

Response 16: While proposed rule 3745-599-10(D) may appear duplicative of 3745-599-01(D), the Agency does not believe it is redundant.

Rule 3745-599-10 would directly authorize the use of beneficial use byproducts as an ingredient in listed construction material or as a fuel. The Agency finds value in clarifying within the rule itself that the authorization established by rule 3745-599-10 specifically does not limit the applicability of other environmental regulations.

For this reason, no revisions have been made to proposed Chapter 3745-599 in response to this comment.

Note: The Agency has revised the language of proposed paragraph 3745-599-01(A)(1) to clarify that proposed chapter 3745-599 applies to the identified five wastes including when comingled with any other materials. However, this paragraph does reference

proposed rule 3745-599-05 which does exclude from chapter 3745-599 instances where the comingling of any of the five wastes with other specified materials is otherwise authorized.

The Agency has revised proposed paragraph 3745-599-01(A)(2) for regulatory clarity regarding material resulting from the treatment of a water supply. The proposed rule refers to material resulting from the treatment of a public water system's source water for drinking or industrial purposes.

Related to material resulting from the treatment of a public water system's source water, the Agency understands that agricultural uses can involve spray application of liquids. Therefore, the Agency has revised the proposed 3745-599-05(D) general exclusion of liquids to allow Chapter 3745-599 to authorize the beneficial use of liquids from a public water system.

3745-599-02

Comment 17: We request that the following definition of dredged material be added to rule 3745-599-02 - "Dredged material" means sediment and residuals including organic matter removed from harbors and waterways (navigational and non-navigational) or any dredged material blended with other waste or materials that may or may not be included as one of the four waste streams designated in paragraph (A) or OAC 3745-599-01 or materials listed in the General Exemptions section 3745-599-05. (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)

Response 17: The Agency has changed proposed rule 3745-599-01(A)(4) in consideration of comment 14. Instead of using the term "dredged material", the proposed rule uses the phrase "material excavated or dredged" to establish a general category of materials excavated or dredged from a federal navigational channel during harbor or navigation maintenance activities. Such material is not restricted to only channel sediment and may consist of anything brought up from the bottom of a navigational channel, including solid wastes. Proposed Chapter 3745-599 would provide the manner of characterizing this material and evaluating proposed beneficial use projects involving deposition of dredge from federal navigational channels and ports onto land.

Proposed Chapter 3745-599 does not use the term "dredged material" and a definition in rule 3745-599-02 is unnecessary.

Comment 18: "Masonry Unit" is one of the seven construction materials listed in 599-10(B). The proposed language specifically calls out "foundry sand" in the definition where only "sand" is used in 599-10. Did the agency intend there to be a distinction between these definitions and would the reference to "sand" (and not "foundry sand") in the definitions of the seven noted materials affect the applicability of using foundry

sand for those uses? (Russ Murray, Ohio Cast Metals Association)

Response 18: The agency's intent is to have the term "masonry unit" apply to the use of the beneficial use byproducts regulated under this chapter. In consideration of the comment, the agency revised the definition of the term in 3745-599-02.

Comment 19: **"Material change" is problematic and should be deleted or changed significantly. There should be no exceedance of any concentration limits established in the general or individual permit unless there has been a significant or material change in the process creating the beneficial use byproduct. The issue is addressed in rule 3745-599-220. (Russ Murray, Ohio Cast Metals Association)**

Response 19: The term is defined only for the purposes of an individual permit and is not referenced in the general permit rules. Ohio EPA agrees that material changes typically occur when there is a change in the process creating the beneficial use byproduct, but believes the term is clear for the purposes of these rules.

Comment 20: **The definition of the term "Permittee" fails to indicate who is required to obtain a permit. Is the generator, broker, distributor, intermediate user, or final user? Could it be all of the above? (Russ Murray, Ohio Cast Metals Association)**

Response 20: Depending on the proposed beneficial use, the permittee will vary and could be the generator, distributor, or end-user. The definition is written broadly to allow for this flexibility. Each general permit will identify who needs to be the permittee.

Note: In consideration of comment 49, a definition of "nuisance" has been added to proposed rule 3745-599-02(N). The definition of nuisance would be the same as defined in OAC Rule 3745-27-01(N) meaning anything which is injurious to human health or offensive to the senses; interferes with the comfortable enjoyment of life or property; and affects a community, neighborhood, or any considerable number of persons (although the extent of annoyance or damage inflicted upon individual persons may be unequal).

The definition of "Permittee" in proposed paragraph 3745-599-02(P)(1) now specifies coverage under an "effective" permit for the purpose of clarity.

Since the Agency revised the wording of proposed paragraph 3745-599-20(F), the term "unauthorized disposal" is no longer found in proposed Chapter 3745-599. The term "unauthorized disposal" and the interested party draft definition are not necessary and have been deleted from proposed rule 3745-599-02.

3745-599-03

Note: In consideration of comment 37, the suggested document has been added to proposed rule 3745-599-03.

The Agency has reviewed the document information contained in proposed rule 3745-599-03 and made appropriate corrections.

3745-599-05

Comment 21: **Construction and demolition debris including clean hard fill is exempted from regulation under these rules. Does this exemption include hardened concrete and other materials generated at ready mixed concrete plants that are currently recycled for reuse as construction aggregates and clean hard fill? (Greg Colvin, Ohio Concrete)**

Response 21: To be accurate, proposed Chapter 3745-599 is not applicable to clean hard fill. The terms “construction and demolition debris” and “clean hard fill” are not used in proposed Chapter 3745-599. The proposed applicability rule 3745-599-01 does not include these materials. The general exclusions in proposed rule 3745-599-05 are for instances where beneficial use byproducts are commingled with other materials regulated under a separate regulatory program. The intent is to avoid duplication of regulation pertaining to the proposed 3745-599-01 listed byproducts. There is no such duplication regarding clean hard fill. For this reason, no revisions have been made to proposed Chapter 3745-599 in response to this comment.

ORC Chapter 3714 and rules in OAC Chapter 3745-400 establish the regulation of construction and demolition debris and clean hard fill. Clean hard fill is defined in OAC Rule 3745-400-01(E) and requirements are found in OAC Rule 3745-400-05.

Comment 22: **Clearly define liquid wastes that are not exempt from these rules. (Scott D. Moegling P.E., Cleveland Division of Water)**

Response 22: “Liquid waste” is defined in proposed rule 3745-599-02 as a waste that contains free liquids determined by the paint filter test. In consideration of this comment, the Agency has made changes to proposed rule 3745-599-05 and paragraph (D) dealing with the exclusion from the beneficial use Chapter 3745-599 any liquid waste regulated pursuant to ORC Chapter 6111.

Liquid waste byproducts not regulated under ORC 6111 and thereby not excluded by 3745-599-10 from the beneficial use Chapter would predominately include those liquid wastes burned as a fuel or as an ingredient in a combustion unit. Such liquid wastes are included in the beneficial use Chapter under 3745-599-01(A)(3). It should be noted that under proposed rule 3745-599-10(C), wastes burned as a fuel or as an ingredient in a combustion unit in accordance with 40 C.F.R. Part 241 is an authorized beneficial use. No Chapter 3745-599 permit would be required.

Related to material resulting from the treatment of a public water system's source water, the Agency understands that agricultural uses can involve spray application of liquids. Therefore, the Agency has revised the proposed 3745-599-05(D) general exclusion of liquids to allow Chapter 3745-599 to authorize the beneficial use of liquids from a public water system.

Comment 23: **3745-599-05 should be revised as the rules only contain a certain number of waste materials. (Dominic J. Hanket, City of Columbus)**

Response 23: In consideration of the comment, the agency has reviewed this rule and eliminated the paragraphs that are no longer appropriate due to the narrowed applicability of the rules.

Note: The Agency has revised the language in proposed rule 3745-599-05 to clarify that proposed Chapter 3745-599 would exclude comingled beneficial use byproduct and the materials listed in this rule.

To avoid duplication with authorizations under the underground injection control (UIC) program, the Agency added a UIC reference to proposed rule 3745-599-05. Byproduct use of materials listed in OAC Rule 3745-599-01 as an ingredient in grout or injected under an authorization of the UIC program is excluded from compliance with Chapter 3745-599.

To avoid duplication with authorizations under ORC 6111.32, the Agency added a reference to proposed rule 3745-599-05 and a comment. Beneficial use involving the deposit of dredged material into Lake Erie and its direct tributaries under ORC 6111.32 is excluded from compliance with Chapter 3745-599.

3745-599-10

Comment 24: **Flexible Pavements of Ohio understands that the term "authorized use" to mean no permits are required for byproducts used in this manner. Is this a correct understanding? (Clifford Ursich, PE, Flexible Pavements of Ohio)**

Response 24: Yes, beneficial use byproducts used in the construction products listed in rule 3745-599-10 do not require a permit if used in the manner specified in the rule.

Comment 25: **3745-599-10 indicates a beneficial use byproduct that is an ingredient in cement concrete is authorized under this chapter provided the use meets certain criteria including legitimate use under generally accepted industry specifications. This is true of fly ash and slag cement which have been used in ready mixed concrete products for many years. Will a permit be needed to continue to use these materials in ready mixed concrete products? (Greg Colvin, Ohio Concrete)**

Response 25: This proposed Chapter is not applicable to the use of fly ash or slag as an ingredient in construction materials. Materials listed in proposed rule 3745-599-01(A)(1), (2), (4), and (5) are subject to Chapter 3745-599 and are authorized under proposed rule 3745-599-10(A) as an ingredient in the construction materials listed in rule 3745-599-10(B). This would be an authorization by rule and would not require a permit under proposed Chapter 3745-599. Materials listed in proposed rule 3745-599-01(A)(1), (2), (4), and (5) include foundry sands, material from water treatment plants, dredged material from certain navigational channels and harbors, and sewage sludge incinerator ash.

It should be noted that proposed Chapter 3745-599 would be applicable under rule 3745-599-01(A)(4) to “solid waste, industrial waste, or other waste for use as a fuel or as an ingredient in a combustion unit.” This covers a broad range of materials that would include fly ash and slag as these materials can be an industrial waste or other waste under ORC 6111. Therefore, proposed rule 3745-599-10(A) and (C) would authorize by rule fly ash or slag as an ingredient in a combustion unit consistent with the referenced federal rules.

A common example is the burning of slag in a cement kiln as an ingredient in the production of cement. While subject to Chapter 3745-599, the burning of the slag as an ingredient in a combustion unit would not require a Chapter 3745-599 permit under 3745-599-10(A) and (C).

Comment 26: **We look forward to expanding this list of construction materials to include dredged material-based products as the beneficial use rule advances. We suggest inclusion of an “other” category that states, “For a construction material that includes a beneficial use byproduct that is demonstrated to meet established performance standards for the end use of the material.” (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)**

Response 26: The Agency hosted a number of open discussions involving a wide array of stakeholders in developing these draft rules. Proposed rule 3745-599-10 seems to include those general types of construction materials that have well-established engineered product specifications. For construction materials not listed in proposed rule 3745-599-10 that are placed on the ground and that use a byproduct as an ingredient, proposed Chapter 3745-599 offers the permit mechanisms to appropriately evaluate the beneficial use of the byproduct. The Agency also looks forward to future additions to the list of construction material as the construction materials using byproducts are identified and evaluated.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 27: **It is not clear how low-strength material or flowable fill would be used within waters of the state, but concerns are unwarranted. Foundry sand has been used in flowable fill for more than 20 years. Academic studies recommend the use of foundry sand in flowable fill. The restriction on the use of controlled low-strength material should be removed. (Russ Murray, Ohio Cast Metals Association)**

Response 27: Upon consideration of the comment, the Agency is proposing controlled low-strength material without including the restriction. Existing authority exists under ORC 6111 to address placement of any material into waters of the state.

3745-599-20

Comment 28: **Does "except as authorized in accordance with this chapter, no beneficial use byproduct shall be placed on the land or burned" apply to beneficial use byproducts authorized by 599-10? If so, does it apply to stockpiling of reclaimed asphalt pavement or shingles? (Clifford Ursich, PE, Flexible Pavements of Ohio)**

Response 28: Specific to the stockpiling of reclaimed asphalt pavement or shingles, proposed Chapter 3745-599 would not be applicable to these types of materials. The proposed applicability rule 3745-599-01 does not include these materials. However other regulations and requirements may apply to stockpiling of asphalt pavement or shingles. These may include ORC Chapter 3714 and OAC Chapter 3745-400 regarding construction and demolition debris and clean hard fill (reclaimed asphalt pavement). Such storage is also subject to other applicable federal and state regulations (e.g., stormwater permit).

Proposed rule 3745-599-10 authorizes by rule the use of those beneficial use byproducts identified in rule 3745-599-01 as an ingredient in certain construction materials or fuel. Until the beneficial use byproduct has been used as an ingredient or fuel, the legitimacy criteria in proposed rule 3745-599-35 is applicable. This includes storage of the beneficial use byproduct prior to use. Such storage is also subject to other applicable federal and state regulations (e.g., stormwater permit).

Once the beneficial use byproduct has been used in the making of the construction material, proposed Chapter 3745-599 would not be applicable to the use of the construction material.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 29: 3745-599-20(A) indicates beneficial use byproducts cannot be placed on the land except as authorized by this chapter. Returned concrete and other materials generated at a ready mixed concrete plant that are reused as construction aggregates and clean hard fill may contain fly ash and/or slag. Will a permit be required prior to the reuse of these materials as construction aggregates, clean hard fill, or the placement of these materials in storage piles at a concrete plant site? (Greg Colvin, Ohio Concrete)

Response 29: Proposed Chapter 3745-599 would not be applicable to returned concrete, fly ash, and slag. The proposed applicability rule 3745-599-01 does not include these materials. However other regulations and requirements may apply to stockpiling of returned concrete, fly ash, and slag. Returned concrete may be subject to ORC Chapter 3714 and OAC Chapter 3745-400 regarding construction and demolition debris and clean hard fill. Storage of returned concrete, fly ash, and slag may also be subject to other applicable federal and state regulations (e.g., stormwater permit).

Historically the director has not required ORC Chapter 6111 authorization for the use of fly ash or slag in concrete materials. It is important to note that while the use of foundry sand and other applicable materials listed in paragraph (A) of rule 3745-599-01 are subject to these rules, proposed Rule 3745-599-10 would directly authorize the use of these beneficial use byproducts as an ingredient in concrete and other listed construction materials.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 30: We suggest that 599-20(C) be expanded to state “or otherwise authorized by rule or permit,” since other permitted activities could potentially be considered. (Katie Kistler, AK Steel)

Response 30: Ohio Administrative Code rule 3745-599-01(A) states that these rules are applicable to the beneficial use of materials “placed on land or burned.” Ohio EPA does not intend to use proposed Chapter 3745-599 to authorize the placement of rule 3745-599-01 materials into waters of the state.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 31: We would like clarification that “waters of the state” is defined differently than “waters of the U.S.” (Russ Murray, Ohio Cast Metals Association)

Response 31: The definition of “waters of the state” in ORC 6111.01(H) has existed in the same form with no substantive changes for over

thirty years. It is not the same as the “waters of the United States” definition referenced in the comment.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Note: The Agency added a new paragraph (A) to proposed rule 3745-599-20 to clarify that no person shall beneficially use a beneficial use byproduct [the materials listed in rule 3745-599-01] except as authorized by Chapter 3745-599.

In consideration of comment 49, the term “public nuisance” has been replaced throughout proposed Chapter 3745-599 with the term “nuisance” and a definition of “nuisance” has been added to proposed rule 3745-599-02(N).

3745-599-30

Comment 32: **Draft rule 3745-599-30 could potentially be interpreted to be in conflict with the list in 599-05. Further, if this set of rules were to be expanded by Ohio EPA at some point, we believe that this rule could create issues with regard to the automatic application of the standards in these rules in place of an existing authorization that has been deemed protective and compliant under existing regulations. If this draft rule is intended to indicate that the rules replace the current Land Application Management Plan (LAMP) and Integrated Alternative Waste Management Projects (IAWMP), please clarify. (Katie Kistler, AK Steel)**

Response 32: Ohio Administrative Code rule 3745-599-30 addresses situations where requirements in chapter 3745-599 conflict with authorizing documents or orders issued prior to the effective date of these rules. Because the materials listed in 3745-599-05 are excluded from this chapter, including rule 3745-599-30, there is no conflict between rule 3745-599-05 and 3745-599-30.

It is noteworthy to point out that 3745-599-30(A) states that if there is a conflict between these rules and an authorizing document issued prior to the effective date of these rules, the authorizing document shall remain in force until its expiration. An example of this type of scenario would be instances where a general permit is in conflict with a previously issued Land Application Management Plan (LAMP) and Integrated Alternative Waste Management Projects (IAWMP).

Note: The proposed rule 3745-599-30(A) has been revised in response to comment 8 to add a reference to previous authorizations under ORC Chapter 6111 in addition to ORC Chapter 3734. Also, the language now clarifies that the direct conflict can occur between any provision of OAC Chapter 3745-599 and an authorizing document issued under ORC Chapters 3734 and 6111.

The reference in the interested party draft paragraph 3745-599-30(A) and (B) to “authorizing document approved prior to the effective date of this rule” would not accomplish the Agency’s intent as rule 3745-599-30 is amended with new effective dates into the future. The Agency’s intent is to clearly resolve any direct conflict between an approved authorization and any rule requirement in Chapter 3745-599 by comparing the date of the approved authorization to the effective date when the conflicting rule requirement was established. If the date of the approved authorization was before the effective date of the rule establishing the conflicting rule requirement, the owner or operator shall comply with the authorizing document. The proposed language has been revised to “authorizing document approved prior to the establishment of that requirement in this chapter”.

3745-599-35

Comment 33: We believe the application of the same stringency for speculative accumulation of hazardous waste may not be appropriate for some solid, industrial or other wastes. The required 75% use of the material annually is not merited in all cases, especially as the list of materials under this rule may expand over time. (Katie Kistler, AK Steel)

Response 33: Proposed rule 3745-599-35 allows both a general and individual permit to establish alternative quantities and timeframes tailored to the specific beneficial use byproduct. This is intended to afford appropriate flexibility.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 34: We observe that the legitimacy criteria section OAC 3745-599-35 includes “Ensuring that the BUB is managed and stored as a valuable commodity...” We understand that the inclusion of this statement does not infer that an economic value must be assigned to a waste material for consideration for use in a beneficial application. Further, the use of the term “valuable commodity” does not relate to an economic criteria that may be applied to determine whether a material is wanted or “unwanted” as it relates to the definition of solid waste. (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)

Response 34: This understanding is correct. The purpose of the phrase “stored as a commodity” is to ensure that the material is managed as if it has a value and is not “unwanted.”

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Note: The proposed rule 3745-599-35 has been revised to more clearly establish the obligation to engage in the legitimate beneficial use of a beneficial use byproduct. The rule then would allow the Ohio EPA to require a demonstration only upon request.

3745-599-60

Comment 35: We look forward to discussing with Ohio EPA and stakeholders the sampling and characterization procedures. Specifically, we look forward to how representative samples will be selected, what testing methods and parameters need to be considered, and how sampling strategies can be optimized to achieve high level of confidence in data sets without overly arduous and redundant sampling requirements being applied. (Bill Petruzzi, Hull & Associates; Paul Toth Jr., Toledo-Lucas County Port Authority)

Response 35: Ohio EPA appreciates the willingness of the commenters to continue participating in the development of the beneficial use program. Interested parties will continue to have opportunities for input on the rules, as well as the testing methods included in the general and individual permits.

Note: The Agency has re-ordered the list of test methods in paragraph (B)(1) to be sequentially numbered and corrected the reference to Method 6010D.

3745-599-200

Comment 36: This rule includes USEPA Regional Screening Levels (RSLs) as “restrictions or standards” that the director may consider. The RSLs also are listed in 3745-599-320 and 3745-599-340. The RSLs are a constantly evolving set of risk-based calculated value that are not promulgated and may change every six months based on US EPA. We disagree that the RSLs are appropriate decision criteria for any permitting program. We would agree that permittees may refer to RSLs as values at which the permittee’s beneficial use byproduct can be assumed as not requiring any further demonstration of the material being acceptable on a risk-basis. We do not agree with the director using the RSLs as basis for decisions on restrictions or limitations to be applied in any permit. (Katie Kistler, AK Steel)

Response 36: In consideration of this comment, the agency has amended the language in 599-200 to specifically identify consideration of screening levels in addition to restrictions or standards. The value of the screening levels is to determine when a chemical is at a level below any concern, and therefore does not need a standard, limit, or a restriction included in the permit. This will be valuable in permits for general unrestricted distribution.

Comment 37: We recommend adding the following to 3745-599-200(A)(4): “United States environmental protection agency risk assessment results of industrial by-products.” (Russ Murray, Ohio Cast Metals Association)

- Response 37:** Proposed rule 3745-599-200 and the incorporation by reference rule 3745-599-03 have been revised to include the suggested document.
- Comment 38:** **Rule 3745-599-200(B) requires the director to determine that the use of the beneficial use byproduct is “unlikely” to adversely affect public health, or safety, or the environment, or to cause pollution of waters of the state. It is unclear how that determination is made. Please clarify. (Katie Kistler, AK Steel)**
- Response 38:** When the director establishes a general permit, the Agency has the burden of defending any appeal of the general permit. The determination outlined in 3745-599-200(B) will be specific to the material, proposed beneficial use, and involve consideration of the potential impacts and risks of the beneficial use. This will require the evaluation of the characteristics of the material, homogeneity, use, pathways of migration and exposure, and environmental and health impacts of the byproduct. Additionally, the review of available data, testing results, existing literature, reports, studies, and relevant environmental and health standards, including but not limited to those in paragraph 3745-599-200(A) would be necessary to make the determination.
- No revisions have been made to proposed Chapter 3745-599 in response to this comment.
- Comment 39:** **Would not a significant noncompliance issue be necessary rather than “a violation of any applicable rule or law” for the basis of a revocation of a general permit in 3745-599-200(D)(1)? (Katie Kistler, AK Steel)**
- Response 39:** This section outlines instances where the general permit for use of a material might be revoked, terminated, or allowed to expire by the director, resulting in all future beneficial use authorizations of that material to be approved through the individual permit process. This does not apply to the revocation of coverage issued to permittees under an effective general permit. Noncompliance is not the appropriate determination to revoke, terminate or allow a general permit to expire. The determination would be based on the director’s finding that the use of the material in the way specified in the general permit was negatively impacting the air, land, or waters of the state. However, in light of the comment, paragraph (D)(1) has been revised to clarify the intent of the requirement.
- Comment 40:** **Please provide clarification on what basis the director would allow a general beneficial use permit to expire without renewing it. (Katie Kistler, AK Steel, Russ Murray, Ohio Cast Metals Association)**

Response 40: The director may decide not to renew a general permit if no one seeks coverage under the permit, if it is being replaced with a different general permit, or if the director determines the use of the material under the general permit no longer meets the criteria identified in paragraph (B) of 3745-599-200. Additionally, the rules could change and the material or use might be authorized by rule, therefore no longer requiring the use of a general permit. In response to the comment, 3745-599-200(D)(2) has been revised to clarify the intent of the paragraph.

Note: The Agency has revised the language in this rule to improve clarity and eliminate duplication. Paragraph (A)(2) now is broken out as subparagraphs (a) and (b). Paragraph (A)(5) has been reformatted as paragraphs (a) to (h) rather than (A)(5)(a)(i) to (viii). Paragraph (A)(5)(b) has been eliminated as duplicative of (A)(5).

The Agency has added criteria for director issuance a general permit in paragraph (B) and added a reference to a statutory based criterion in ORC 3734.02(M) restricting the director issuance of a solid waste permit within specified types of state and federal parks.

3745-599-210

Comment 41: **Why does the rule limit an applicant to a 60-day time frame if the agency is not required to act on the application within 60 days? If the rule does not clarify the agency's timeline, then the permittee should not be limited to a 60-day prior submittal. (Katie Kistler, AK Steel, Russ Murray, Ohio Cast Metals Association)**

Response 41: The intent of this requirement is not to limit when an application for a general beneficial use permit is submitted. The paragraph has been revised to remove the reference to sixty days. The agency will include a note in the notice of intent form alerting the applicant that to ensure timely review by the agency of the general permit notice of intent, the application for coverage should be submitted up to sixty days before the anticipated date of commencing use of the beneficial use byproduct.

Comment 42: **We question the language in 3745-599-210(A)(1)(e) that reads, "Each location of the proposed use and storage of the beneficial use byproduct" be included in the NOI. This material has been determined to be environmentally safe so why would a generator be forced to expend the necessary manpower and cost of collecting data and reporting it to Ohio EPA? (Russ Murray, Ohio Cast Metals Association)**

Response 42: Proposed rule 3745-599-210(A)(1)(e) states that the NOI contain "Each location of the proposed use and storage of the beneficial use byproduct, unless otherwise specified in the general permit." Therefore, each general permit can establish whether the NOI for

that particular general permit does not need to include each proposed use and storage location.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 43: Under (A)(2) a fee for the permit of three hundred fifty dollars is set forth. Given that the effort required by Ohio EPA staff to review a general permit would be much less than that for an individual permit, the cost of the general permit should be reduced. (Russ Murray, Ohio Cast Metals Association)

Response 43: In consideration of the comment and consistent with the existing fee structure utilized by the Division of Surface Water, the language in this rule has been amended to two hundred dollars for a general beneficial use notice of intent and retains the three hundred fifty dollars for an individual beneficial use permit.

Comment 44: OCMA requests the following changes be applied to paragraph (B): "Any notice of intent or other documentation required to be submitted by this rule that fails to provide Ohio EPA with requested information needed to ascertain compliance with the applicable provision of this chapter may be considered incomplete or deficient. If the application is deemed incomplete or deficient, Ohio EPA will make the applicant aware of the deficiency in a timely manner. If the missing information is received from the applicant within the timeframe specified by the agency, the date of receipt of the application shall remain as the date of the original submittal. Should the missing information not be provided by the applicant within the timeframe specified by the agency, Ohio EPA may either request additional information or return the notice of intent to the applicant without further processing. And incomplete application will not be considered." (Russ Murray, Ohio Cast Metals Association)

Response 44: In consideration of this comment, proposed rule 3745-599-210(B) has been revised to require Ohio EPA to provide notification of an incomplete notice of intent and request information to be submitted within a specified timeframe.

3745-599-220

Comment 45: Section (A)(3) states "no person shall use a beneficial use byproduct at a location that has not been identified in the notice of intent approved by Ohio EPA in the general beneficial use permit." If the generator is the permittee and has shipped the byproduct to a distributor, processor, or broker, it is unreasonable to require the generator to control the material once it has left their possession. (Russ Murray, Ohio Cast Metals Association)

Response 45: The agency understands the concerns associated with this comment.

It is important to note that proposed rule 3745-599-220(A)(3) fully states “Unless otherwise specified in the general beneficial use permit, no person shall use a beneficial use byproduct at a location that has not been identified in the notice of intent approved by Ohio EPA in the general beneficial use permit.” Further, proposed rule 3745-599-210(A)(1)(e) states that the NOI contain “Each location of the proposed use and storage of the beneficial use byproduct, unless otherwise specified in the general permit.” Therefore, each general permit can establish whether the NOI for that particular general permit does not need to include each proposed use and storage location.

If the general permit states that the locations in rule 3745-599-210(A)(1)(e) are not required in the NOI, then the restriction in rule 3745-599-220(A)(3) does not exist in the general permit.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 46: **3745-599-220(D) should be limited to material changes as defined in 599-02. Changes could occur that are not "material changes" therefore should not trigger notification or other action. Only changes in process, feedstock, input materials, etc. as noted in the rule that may cause a material change in the beneficial use byproduct should require any action. (Katie Kistler, AK Steel)**

Response 46: In response to the comment, the Agency has added several references to “material change” in proposed rule paragraphs 3745-599-220(D)(1), (2), and (3) and rule paragraph 3745-599-345(C).

Comment 47: **Is the intent of draft rule 3745-599-220(E) that general beneficial use permits will be denied if the locations in paragraphs (E)(1)(a) through (E)(1)(d) exist, regardless of the characterization of the beneficial use byproduct? (Katie Kistler, AK Steel)**

Response 47: The general permit would not be denied or affected under proposed rule 3745-599-220(E). The intent is to allow the director to deny coverage of a specific permittee operating under the general permit for use of a beneficial use byproduct at specific locations. The intent is to accomplish this result without otherwise affecting the permittee’s continued coverage and use of other locations under the general permit.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 48: **It is essential to add the word "material" be added to each phrase in 3745-599-220(F). In addition, the following language should be included, "Prior to revocation of the permit, the Director will give written notice to the permit holder and provide thirty days for the violation, nuisance, adverse impact or changed conditions leading to revocation be corrected. If the permit holder fails to correct the conditions within the thirty days, the permit will be revoked. Permit holder may request reconsideration or request a hearing." (Russ Murray, Ohio Cast Metals Association)**

Response 48: The agency does not feel it is necessary to add the word "material" to each phrase in 3745-599-220(F). However, in response to this comment, the Agency has revised this paragraph to include a reference to Ohio Revised Code Chapter 119 regarding revocation procedures.

Comment 49: **How is "public nuisance" is defined for purposes of 3745-599-220(F)(2)? (Katie Kistler, AK Steel)**

Response 49: In consideration of this comment, the term "public nuisance" has been replaced in paragraphs 3745-599-220(E)(1) and (F)(2) and throughout proposed Chapter 3745-599 with the term "nuisance" and a definition of "nuisance" has been added to proposed rule 3745-599-02(N). The definition of nuisance would be the same as defined in OAC Rule 3745-27-01(N) meaning anything which is injurious to human health or offensive to the senses; interferes with the comfortable enjoyment of life or property; and affects a community, neighborhood, or any considerable number of persons (although the extent of annoyance or damage inflicted upon individual persons may be unequal).

Comment 50: **Please clarify draft rule 3745-220(G). It appears the second sentence should state that the notice of intent should be submitted forty-five days prior to the expiration date of the permit rather than "not later than forty-five days after the effective date of the renewed general beneficial use permit." (Katie Kistler, AK Steel)**

Response 50: The effective date referenced in paragraph (G) is referring to when a general permit (not coverage under a general permit) is expired or will expire. This paragraph affords permittees the opportunity to review the renewed permit and time to complete the new notice of intent.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Note: The Agency has reworded and added two subparagraphs to paragraph (A) and one to (B) to improve clarity and reference to any specific requirements in the general beneficial use permit. Paragraph (D)(1) has been reformatted to include subparagraph (a) and (b). Paragraph (D)(3) has been reworded and subparagraph (D)(3)(a)(ii) now simply refers to the general permit requirements. Paragraph (E) has re-ordered the subparagraphs. Paragraph (F)(5) has been added to address the possibility that a permittee requests coverage under a general permit be ended.

3745-599-310

Note: In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “initial beneficial use byproduct characterization” to refer to initial sampling and analysis conducted prior to submitting an individual permit application. The Agency is using the term “compliance demonstrations” to refer to compliance-based sampling and analysis required after being issued an individual permit. This is reflected in revisions to proposed paragraph 3745-599-310(B) and (C).

The Agency has reworded subparagraph (A)(10) and paragraph (C) now correctly references to the compliance demonstration required in proposed rule 3745-599-345.

3745-599-320

Comment 51: **A permittee should have the option of demonstrating through risk calculations, site specific conditions and reasonable site-specific exposure scenarios, values that are supported and acceptable for limitations or restrictions when an individual permit is pursued. (Katie Kistler, AK Steel)**

Response 51: There is nothing in this rule that limits the permittee’s ability to demonstrate acceptable limitations or restrictions for an individual permit through risk calculations, site specific conditions and reasonable site-specific exposure scenarios. Further; nothing in this rule limits the director’s ability to request or consider such information provided by the permittee. This rule establishes the general criteria and the types of information that the director may at a minimum consider when evaluating an application for an individual beneficial use permit.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Comment 52: **At the end of 3745-599-320(A), we recommend the following language be inserted, "If the requested information is received from the applicant within the timeframe specified by the agency, the date of receipt of the application shall remain as the date of the original submittal." (Russ Murray, Ohio Cast Metals Association)**

Response 52: For the permits in proposed Chapter 3745-599, the original submittal date of the application would not change because of subsequent revisions. The Agency would simply continue with

review of the revised application. However, the Agency has revised the wording of 3745-599-320(A) in the proposed rule for greater clarity.

Note: In consideration of comment 49, the term “public nuisance” has been replaced throughout proposed Chapter 3745-599 with the term “nuisance” and a definition of “nuisance” has been added to proposed rule 3745-599-02(N).

In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “initial beneficial use byproduct characterization” to refer to initial sampling and analysis conducted prior to submitting an individual permit application. The Agency is using the term “compliance demonstrations” to refer to compliance-based sampling and analysis required after being issued an individual permit. This is reflected in revisions to proposed paragraph 3745-599-320(C)(10).

The Agency has added a new paragraph (C)(12) requiring a demonstration of legitimacy in accordance with rule 3745-599-35. This is consistent with rule 3745-(A)(11) for general permits.

The Agency has reformatted paragraph (C)(4) into subparagraphs (a) through (h) and eliminated three inappropriately referenced documents pertaining to analytical methods.

The Agency has added criteria for director issuance an individual permit in paragraph (D) and added a reference to a statutory based criterion in ORC 3734.02(M) restricting the director issuance of a solid waste permit within specified types of state and federal parks. The criteria in 3745-599-320 are consistent with proposed rule 3745-599-200 for director issuance of a general permit.

3745-599-330

Note: In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “initial beneficial use byproduct characterization” to refer to initial sampling and analysis conducted prior to submitting an individual permit application. The Agency is using the term “compliance demonstrations” to refer to compliance-based sampling and analysis required after being issued an individual permit. This is reflected in revisions to proposed paragraph 3745-599-330(B).

The Agency has revised paragraph (A)(4) to include a reference to the requirements of an individual permit.

3745-599-334

Comment 53: In 3745-599-334(B) and 3745-599-335(B), records should be made available “upon written request of the director” The current language only states the records shall be maintained and the permittee shall “make them available upon request.” (Katie Kistler, AK Steel)

Response 53: In consideration of this comment, the language in both rules 3745-599-334(B) and 3745-599-335(B) has been amended to require records be maintained and made available upon request “...by

Ohio EPA.” This added wording is consistent with rule 3745-599-35.

Comment 54: **In 599-334(A)(4)(c), it cannot be the responsibility of the generator to police actions of the distributor once the transaction takes place. The generator certainly should not be responsible for reporting a re-characterization of the beneficial use byproduct performed by the distributor. (Russ Murray, Ohio Cast Metals Association)**

Response 54: In consideration of this comment, the language in paragraph (A)(4)(c) has been revised to clarify the intent.

Note: In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “initial beneficial use byproduct characterization” to refer to initial sampling and analysis conducted prior to submitting an individual permit application. The Agency is using the term “compliance demonstrations” to refer to compliance-based sampling and analysis required after being issued an individual permit. This is reflected in revisions to proposed paragraph 3745-599-334(A)(4)(b).

3745-599-335

Comment 55: **The recordkeeping requirements in this section and in 599-334 are excessive and onerous and should be significantly reduced. (Russ Murray, Ohio Cast Metals Association)**

Response 55: Paragraph (A) of rules 3745-599-334 and 3745-599-335 state, “Unless otherwise specified in the individual beneficial use permit...” This allows for each individual beneficial use permit to separately make the determination if compliance with the recordkeeping requirements is necessary, depending on the homogeneity and use of the proposed material.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Note: In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “initial beneficial use byproduct characterization” to refer to initial sampling and analysis conducted prior to submitting an individual permit application. The Agency is using the term “compliance demonstrations” to refer to compliance-based sampling and analysis required after being issued an individual permit. This is reflected in revisions to proposed paragraph 3745-599-335(A)(5)(b).

Paragraph 3745-599-335(A)(5)(c) has been revised consistent with the simplified language of paragraph 3745-334(A)(4)(c)

3745-599-340

Note: In consideration of comment 49, the term “public nuisance” has been replaced throughout proposed Chapter 3745-599 with the term “nuisance” and a definition of “nuisance” has been added to proposed rule 3745-599-02(N).

In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “initial beneficial use byproduct characterization” to refer to initial sampling and analysis conducted prior to submitting an individual permit application. This is reflected in the title and throughout proposed rule 3745-599-340.

Since the proposed rule is now specific to the initial beneficial use byproduct characterization, the interested party draft’s paragraph (B) pertaining to compliance sampling and analysis plan has been removed and placed in proposed rule 3745-599-345. In general, this rule has been reformatted and language revised for clarity. Two additional U.S. EPA documents have been added to the comment under 3745-599-340(F).

3745-599-345

Comment 56: **Unless there has been a material change in the process of generating the beneficial use byproduct, there is no justification for annual compliance sampling and analysis characterization. (Russ Murray, Ohio Cast Metals Association)**

Response 56: Paragraph (A) of rule 3745-599-345 states, “Unless otherwise specified in the individual beneficial use permit...” This allows for each individual beneficial use permit to separately make the determination if compliance with the sampling and analysis requirements is necessary, depending on the homogeneity and use of the proposed material.

No revisions have been made to proposed Chapter 3745-599 in response to this comment.

Note: The Agency has added a reference to “material change” in proposed rule paragraph 3745-599-345(C) in response to comment 46.

In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “compliance demonstrations” to refer to compliance-based sampling and analysis required after being issued an individual permit. This is reflected in the title and throughout proposed rule 3745-599-345.

Since proposed rule 3745-599-345 is now specific to the compliance demonstrations, a new 3745-599-345(A) has been added incorporating language from the interested party draft’s paragraph 3745-599-340(B) pertaining to compliance demonstrations. Paragraph (B) and (D) have been reworded and a new recordkeeping requirement has been added as new paragraph (F).

3745-599-350

Note: The title and subject of this proposed rule now addresses changes to the beneficial use byproduct as well as changes to the individual beneficial use permit. This involves the addition of a new paragraph 3745-599-350(A) specific to material changes in the raw materials or generating process of the beneficial use byproduct. The

approach of new paragraph 3745-599-350(A) is consistent with proposed paragraph 3745-599-220(D) regarding beneficial use byproduct changes under a general permit. The definition of “modification” has been removed from proposed paragraph (C).

3745-599-360

Note: In this proposed rule and throughout proposed Chapter 3745-599, the Agency is using the term “compliance demonstrations” to refer to compliance-based sampling and analysis required after being issued an individual permit. This is reflected in proposed rule 3745-599-360(A).

3745-599-370

Comment 57: **In the case of a permit denial, it would be helpful to have language inserted that indicates the permit applicant will receive a denial or revocation in writing with the reasons specified. The applicant should also have an opportunity to cure a deficiency if possible and a right to appeal the decision. (Russ Murray, Ohio Cast Metals Association)**

Response 57: In response to this comment, the Agency has revised paragraphs 3745-599-370(A) and (B) to include a reference to Ohio Revised Code Chapter 119 regarding permit denial and revocation procedures.

Note: In consideration of comment 49, the term “public nuisance” has been replaced throughout proposed Chapter 3745-599 with the term “nuisance” and a definition of “nuisance” has been added to proposed rule 3745-599-02(N).

The Agency has revised the language paragraphs (A) and (B) that the two lists represent a minimum of reasons for denial or revocation. The Agency has added paragraph (A)(1)(e) by reference to include statutory based criterion in ORC 3734.02(M) restricting the issuance of a solid waste permit within specified types of state and federal parks.

End of Response to Comments