



## Division of Materials and Waste Management Response to Comments

### Rules Pertaining to the Regulation of Solid Waste Transfer Facilities: Program Chapter 3745-555, Chapter 3745-512 & Amendments to Chapter 3745-500

#### Agency Contact for this Package

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Ohio EPA held an interested party public comment period from March 28, 2014 to June 27, 2014 regarding rules for solid waste transfer facilities in Chapter 3745-555. Ohio EPA also held a public comment period from December 3, 2010 to April 1, 2011 regarding rules for new construction & demolition debris (C&DD) facilities, including the multi-program construction rules in Chapters 3745-500 and 3745-512. This document summarizes the comments and questions received during those comment periods pertaining to adoption of rules for the solid waste transfer facility program.

In an effort to help you review this document, the comments are grouped by rule number and organized in a consistent format. Comments from the solid waste transfer facility comment period are identified as "TFComment," those from the construction & demolition debris comment period as "CDComment." The name of the commenter follows the comment in parentheses.

Please note that comments on multi-program rules used by the composting program have already been responded to as part of the composting program rule package, and are not included in this response. Remaining comments will be addressed at a later date with the appropriate program for response, e.g. the C&DD program, residual waste landfill program, etc.

#### 3745-555-01 Solid waste transfer facility – applicability

**TFComment 1:** The proposed rules appear to eliminate the ability for a transfer facility established prior to the effective date of the relevant law and rules to operate without obtaining a facility permit. Under the current law and rules, a transfer facility established prior to 1996 was considered to be "grandfathered" under prior law and was not required to obtain a permit from Ohio EPA. Such facilities were required to obtain a license for operation under the law and thus, remained subject to Ohio EPA oversight. However, such

**facilities were not required to conform to all facility construction and operational requirements established under the law at the time of enactment. SWACO's Jackson Pike transfer facility fits within this category. This facility has not been required to obtain a permit for the installation or operation but is rather, registered as a transfer facility. If the proposed rules were interpreted to require SWACO to apply for a permit, this application process would be costly and burdensome. The permit application would be subject to public notice and comment and could trigger a public hearing as part of the application process. In addition, while the Jackson Pike transfer station is considered to operate in compliance with Ohio EPA regulations that governed transfer facilities at the time that Ohio Solid Waste law was enacted, it is likely that this facility would be required to undergo operational and/or structural changes in order to qualify for a new permit under the new rules. (Solid Waste Authority of Central Ohio)**

**Response 1:**

The proposed rule 3745-555-10: General obligations for owners, operators, and applicants; retains a [Comment] from the interested party draft rule. This [Comment] follows paragraph (A) of 3745-555-10 meant to clarify this "grandfathered" status.

*[Comment: The owner or operator of a transfer facility who has established a solid waste transfer facility by obtaining a license to operate a solid waste transfer facility prior to May 31, 1991 (the effective date of rules adopted under division (A) of section 3734.02 and under division (D) of section 3734.12 of the Revised Code which require that no person shall establish a new solid waste transfer facility without first submitting an application for a permit) and did not modify the transfer facility after that date, is not required to obtain a permit to install, unless such owner or operator modifies the existing solid waste transfer facility.]*

Permit requirements (siting, design, and permit application – rules 3745-555-100s, 200s, and 300s) apply only to permit reviews. Construction requirements (rules 3745-555-500s) apply only to permitted facilities. For the described "grandfathered" facility, the operation and closure requirements apply (rules 3745-600s and 700s).

The "grandfathered" solid waste transfer facility provision is in Ohio Revised Code 3734.05(A)(2)(b). The proposed rules remain consistent with statute and retain this existing rule's "grandfathered" facility provision. A licensed transfer facility, legally operating without a permit, would only be required to obtain a permit if the facility owner or operator seeks to modify the facility.

After considering this comment and given the retention of the 3745-555-10(A) [Comment], no changes in the proposed rules were deemed necessary.

3745-555-02 Solid waste transfer facility – definitions

**TFCComment 2:** Paragraph (M): The new definition of "modification" includes "any change in the technique of waste receipt or type of waste received at a transfer facility that may endanger human health or the environment, as determined by the director." The intent of the underlined language is unclear. If the purpose is to give the Director the sole discretion to determine what constitutes a modification, we submit that this language makes the definition ambiguous and difficult for regulated entities to know when a modification would be triggered. We recommend that the underlined language be deleted. (Christopher A Walker, on behalf of Montgomery County Environmental Services)

**Response 2:** In consideration of this comment, the phrase "as determined by the director" has been removed from the proposed rule 3745-555-02 as unnecessary.

**TFCComment 3:** Paragraph (T)(2)(d) includes in the definition of a Transfer facility, "...Vehicle and container staging areas and vehicle and container storage areas." This section should be deleted as it is overly broad and will subject portions of the facility that are not involved with waste handling to siting criteria. Some transfer facilities also function as "hauling companies" where numerous vehicles and containers may be stored that are not related to transfer station activities. (Kathy Trent, National Waste & Recycling Association)

**Response 3:** Vehicle and container staging and storage areas are included within the transfer facility boundary because it is a common practice to stage or store solid waste in vehicles/containers. To provide clarification, the definition was revised in the proposed rule to specify vehicles and containers containing waste.

3745-555-10 General obligations for owners, operators, and applicants

**TFCComment 4:** Paragraph (A), line 3, insert "with" after "comply". (Kathy Trent, National Waste & Recycling Association)

**Response 4:** Agreed. The proposed rule 3745-555-10 was revised as suggested.

**TFCComment 5:** Paragraph (H): The draft rule appears to apply to transfer facilities for which no permit to install was issued pursuant to Revised Code Chapter 3734. It states that if the Director

**orders the facility to submit updated engineering detail plans, specifications, and information in accordance with R.C. § 3734.05(A)(5), the facility must submit a PTI application "as though the solid waste transfer facility were being established as a new transfer facility." Section 3734.05 provides only for submission and approval of updated plans, and does not require a facility subject to orders under that section to obtain a PTI. (Christopher A Walker, on behalf of Montgomery County Environmental Services)**

**Response 5:**

Section 3734.05(A) continues that "...updated engineering detail plans, specifications, and information regarding the facility and its method of operation *for approval under rules* adopted under division (A) of section 3734.02 of the Revised Code and applicable rules adopted under (D) of section 3734.12 of the Revised Code...(emphasis added)" These sections include the rules containing the requirement to obtain a permit. This rule specifies that approval be conducted under the permit application rules given that the director will have issued such orders based on a determination that "conditions at the facility constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination."

The proposed rules do make a distinction on what is submitted and reviewed for new facilities versus existing facilities. Paragraph (H) clarifies that in the case of a Director's order, a permit application equal in detail as a permit application for a new facility is required.

In consideration of this comment, no change in the proposed rule 3745-555-10 was deemed necessary.

3745-555-20 Variances, exemptions, alternatives, alterations, and administrative changes

**No comments received.**

3745-555-110 Parks

**TFCComment 6: The draft rule does not include clear definitions of what is a "Park". It is recognized that these terms are defined in 500-02 however; it would be helpful to note that in these rules. (Kathy Trent, National Waste & Recycling Association)**

**Response 6:** Agreed. The proposed rule 3745-555-110 was revised to cite OAC rule 3745-500-02.

3745-555-120 Natural areas

**TFCComment 7:** The draft rule does not include clear definitions of what is a “Natural Area”. It is recognized that these terms are defined in 500-02 however; it would be helpful to note that in these rules. (Kathy Trent, National Waste & Recycling Association)

**Response 7:** Agreed. The proposed rule 3745-555-120 was revised to cite OAC rule 3745-500-02.

3745-555-130 Domiciles

**No comments received.**

3745-555-140 Floodplains

**TFCComment 8:** The draft rule prohibits the location of a waste handling floor within “any boundary” of the 100 year flood plain. The existing rule, 27-22 (C), says that the waste handling area cannot be “in” a regulatory floodplain.” The difference is subtle but the old rule would allow a facility to raise the waste handling floor out of the flood plain. It is suggested that the existing language be maintained unless a problem can be identified. There may be existing facilities that have constructed the waste handling floor such that it is not in the floodplain. To change the rule/standard at this point would prohibit them from ever modifying their facility. (Kathy Trent, National Waste & Recycling Association)

**Response 8:** In consideration of this comment, the proposed rule 3745-555-140 was revised to reference “in the one-hundred year floodplain.”

3745-555-150 Surface waters

**No comments received.**

3745-555-200 Engineered components

**TFCComment 9:** Paragraph (A)(1) requires that a transfer station waste handling area be within a building with walls and a roof to enclose the waste handling areas. This rule is not clear. Some existing transfer stations have a roof and 3 walls but not a 4th wall or doors to “enclose” the waste handling floor. Is it the intent of the DMWM to prohibit this type of operation? This rule should be revised to allow for this type of operation absent some demonstration of existing problems. (Kathy Trent, National Waste & Recycling Association)

**Response 9:** The proposed rule 3745-555-10: General obligations for owners, operators, and applicants; retains a [Comment] from the interested

party draft rule. This [Comment] follows paragraph (A) of 3745-555-10 meant to clarify this “grandfathered” status.

*[Comment: The owner or operator of a transfer facility who has established a solid waste transfer facility by obtaining a license to operate a solid waste transfer facility prior to May 31, 1991 (the effective date of rules adopted under division (A) of section 3734.02 and under division (D) of section 3734.12 of the Revised Code which require that no person shall establish a new solid waste transfer facility without first submitting an application for a permit) and did not modify the transfer facility after that date, is not required to obtain a permit to install, unless such owner or operator modifies the existing solid waste transfer facility.]*

Permit requirements (siting, design, permit application, and construction – rules 3745-100s, 200s, 300s, and 500s) apply only to permit reviews and facilities permitted under the new rules. An existing facility is not required to comply with 3745-555-200 until the facility is modified, requiring a permit.

In consideration of this comment, no change in the proposed rule 3745-555-200 was deemed necessary.

**Note of Addition to Proposed Rule 3745-555-200:**

Since a transfer facility could be a multifunctional building and an applicant may propose unanticipated and different engineered structures, the Agency has included a new paragraph (C) in proposed rule 3745-555-200. The intent of this new language is to address an application proposing engineered structures not specifically listed as engineered components in paragraph (A) and (B) of 3745-555-200 but deemed by the director as integral to the function of a listed engineering component. As an identified facility specific engineered component in the permit, it would be subject to this Chapter's rules regarding inspection and maintenance of engineered components and any necessary permit terms and conditions.

The addition of proposed rule 3745-555-200(C) better expresses the Agency's intent and has resulted in deletion of language in the previous interested party draft rule 3745-555-300 and 3745-555-310. See comment and responses numbers 13 and 16.

It is anticipated such potential facility specific engineered component would be identified during the Agency's permit application review and discussed with the applicant. If there were objections to the identification in the permit of a facility specific engineered component integral to the function of a paragraph (A) and (B) listed engineered component, the applicant become aware of this during the permit application review. As a part of the permit, the applicant would have appeal rights on the permit issuance or proposed and final permit application denial.

3745-555-210 Waste handling floor design

**TFCComment 10: This proposed rule requires the floor design to include leachate collection points. This rule should allow for a**

**transfer station waste handling technique where waste is transferred from one transportation container to another transportation container without using the floor as the point of transfer. This same comment would apply to the design of leachate management systems. Do the proposed rules allow a transfer station to not have a leachate management system if the waste is being transferred directly from one container to another? This waste handling approach utilizes the floor as secondary containment and a working surface for trucks and containers but not waste storage and direct contact waste transfer operations. (Kathy Trent, National Waste & Recycling Association)**

**Response 10:**

Transfer of containers from one vehicle to another is considered a container transfer operation and not a waste transfer operation. If the waste leaves the container or vehicle and is placed in another vehicle or container, it is a waste transfer operation. The comment describes a waste transfer operation involving the physical removal of waste from one container into another container. The industry practice is to use a floor at the point of transfer. Therefore the floor of the designated waste handling area should contain both waste and leachate spillage by meeting the floor and leachate collection criteria of the rules.

Should a permit applicant wish to propose some approach where the loading, processing, and unloading of waste does not occur on a floor and is conducted in a manner to prevent waste and leachate spillage onto a floor of the waste handling area, a variance or exemption from the rule requirement may be requested. While experience with such transfer operations are rare, the Agency invites industry input on the potential approaches.

In consideration of this comment, no change in the proposed rule 3745-555-210 was deemed necessary.

3745-555-215 Conveyance pipes

**No comments received.**

3745-555-216 Leachate holding tanks

**TFCComment 11: Paragraph (A), requires that leachate storage tanks be sized to hold 10X the daily estimated leachate production. This is excessive. Landfills are only required to have leachate storage tanks that hold 7 days of leachate production, 27-08 (C)(17). This rule should be changed to require at most 3X the estimated daily leachate production. (Kathy Trent, National Waste & Recycling Association)**

**Response 11:** In consideration of this comment, paragraph (A) was deleted in the proposed rule 3745-555-216. As a result, the designer should size the tank to meet the needs of the facility, and the leachate management system operated so that violations do not occur.

3745-555-300 Permit to install application procedures and requirements

**TFComment 12:** **The proposed rules appear to increase the operational standards for existing transfer facilities already holding a valid permit, such as the Morse Road Transfer Station. The new siting and design criteria contained in the proposed rules would apply to any new transfer facility or apply to the Georgesville Road facility should SWACO wish to reactivate that facility. The proposed rules do not appear to include changes that would require modifications to the current operations at the Morse Road transfer facility, which would necessarily require additional capital investment and also increase the cost of SWACO's operation. However, it is unclear whether the new additional operational standards would be applied as the new permit criteria for existing facilities already operating under a valid permit. (Solid Waste Authority of Central Ohio)**

**Response 12:** The comment correctly recognizes that operational standards would apply to both existing and new transfer facilities. The intent is that the operational rules apply to all licensed transfer facilities. Where appropriate, some individual operational rules do make distinctions between the requirements of a permitted transfer facility (Morse Road Transfer Facility) and an unpermitted "grandfathered" facility (Jackson Pike Transfer Facility). For example, financial assurance instructions for unpermitted facilities are addressed in 3745-555-610(E).

The comment correctly recognizes that any new facility will need to comply with the permit requirements for siting and design. The Georgesville Road location does not hold a valid license and ceased transfer operations and is closed pursuant to rule. To reestablish a transfer facility at the Georgesville Road location, a new permit meeting the proposed siting and design rules and a new annual license would be required.

The comment correctly recognizes that the changes in the proposed operational rules do not require existing licensed facilities to obtain a permit. However, the statute and rules do continue to require that an existing licensed facility obtain a permit prior to modifying the facility. The proposed siting and design rules would only apply to a permit application for new facility or modification of an existing facility. This is addressed in proposed rule 3745-555-10: General obligations for owners, operators, and applicants; which retains a [Comment] from the interested party

draft rule. This [Comment] follows paragraph (A) of 3745-555-10 and is intended to clarify this “grandfathered” status.

*[Comment: The owner or operator of a transfer facility who has established a solid waste transfer facility by obtaining a license to operate a solid waste transfer facility prior to May 31, 1991 (the effective date of rules adopted under division (A) of section 3734.02 and under division (D) of section 3734.12 of the Revised Code which require that no person shall establish a new solid waste transfer facility without first submitting an application for a permit) and did not modify the transfer facility after that date, is not required to obtain a permit to install, unless such owner or operator modifies the existing solid waste transfer facility.]*

In consideration of this comment, no change in the proposed rule 3745-555-300 was deemed necessary.

**TFCOMMENT 13:** Paragraph (B)(2)(f), requires applicants for a permit to submit/comply with, “revised or additional requirements that are not supported by rule.” [Emphasis added] This is ambiguous and overly broad and should be deleted. Rules should be clear, understandable and state exactly what is expected. (Kathy Trent, National Waste & Recycling Association)

**Response 13:** The language in paragraph (B)(2)(f) has been removed from proposed rule 3745-555-300. The Agency’s intent is now differently worded in proposed rule 3745-555-200. Regarding this change to proposed rule 3745-555-200, see the **Note of Addition to Proposed Rule 3745-555-200** under the 3745-555-200 Engineered components section of this document.

In considering this comment, several other changes have been made to the proposed rule 3745-555-300. The title of the proposed rule is now “Permit to install application procedures.” The interested party draft language included a paragraph (C) pertaining to the required contents of a permit application for a modification has been removed from proposed rule 3745-555-300 making it entirely a procedural rule. The required contents of a permit for a modification have been incorporated into the proposed rule 3745-555-310 specific to the transfer facility permit to install application requirements.

**TFCOMMENT 14:** Paragraph (F) requires a PTI applicant, prior or concurrent to submitting the application, to notify Ohio EPA DAPC and DSW of the intent to establish or modify a transfer facility, and to request those divisions for information relating to any applicable regulatory requirements. We submit that this is unnecessary. If the Agency believes that a particular applicant is in need of regulatory guidance, DMWM may

**notify other divisions as appropriate under the circumstances. (Christopher A Walker, on behalf of Montgomery County Environmental Services)**

**Response 14:** It is the ultimate responsibility of the applicant to comply with all permitting requirements and environmental laws.

Experience demonstrates that when the rules did not have this provision, applicants were often surprised and their projects unfortunately delayed late in the permitting process upon learning that other environmental permits were required. Since including this provision in the rules in the 1990s, the permitting process has gone more smoothly. The rule requirement has proven to be advantageous to applicants.

In consideration of this comment, the requirement has been retained in the proposed rule 3745-555-300.

**TFCComment 15:** **Paragraph (G) requires a PTI application to apply for a license from the licensing authority concurrent to submitting the PTI application for a transfer facility. Again, we submit that this rule is unnecessary. Existing law is clear that a license is required for operation of a transfer facility, and Ohio EPA and the licensing authority have enforcement powers to ensure that a license is obtained prior to operation. We are not aware of any compelling reason why an applicant should be subject to additional enforcement risk if the license application is not submitted concurrent with the PTI application. (Christopher A Walker, on behalf of Montgomery County Environmental Services)**

**Response 15:** The statutory provision of ORC 3734.05(A)(2)(b) requires concurrent application of the license with the permit application. The rule requirement has proven to be advantageous to applicants.

In consideration of this comment, the requirement has been retained in the proposed rule 3745-555-300.

**Note of Revisions to Proposed Rule in 3745-555-300:**

Ohio EPA has made several changes in proposed rule 3745-555-300.

- For clarity, the proposed rule paragraph (G) regarding submittal of disclosure statements now references applications for a “new” transfer facility and ORC sections 3734.41 and 3734.42. In the context of disclosure statements, the definition of “permit” in ORC 3734.41(H) limits the term to permit applications for new transfer facilities.
- The proposed rule replaces the undefined terms “new” and “expanding” with the defined terms “established” (defined in 3745-500-02) and “modification” (proposed definition in 3745-555-02).

3745-555-310 Transfer facility permit to install application

**TFCComment 16:** Paragraph (B)(5), requires an applicant for permit to submit, “construction testing verification requirements that are not otherwise required by this rule.” [Emphasis added]. This is overly ambiguous overly broad and should be deleted. Rules should be clear, understandable and state exactly what is expected. (Kathy Trent, National Waste & Recycling Association)

**Response 16:** The language in paragraph (B)(5) has been removed from proposed rule 3745-555-310. The Agency’s intent is now differently worded in proposed rule 3745-555-200. Regarding this change to proposed rule 3745-555-200, see the **Note of Addition to Proposed Rule 3745-555-200** under the 3745-555-200 Engineered components section of this document.

**TFCComment 17:** Paragraph (B)(9)(viii) references the letters of intent to DAPC and DSW. We submit that this is unnecessary. If the Agency believes that a particular applicant is in need of regulatory guidance, DMWM may notify other divisions as appropriate under the circumstances. (Christopher A Walker, on behalf of Montgomery County Environmental Services)

**Response 17:** See Response 14 regarding the Agency’s purpose in the OAC 3745-555-300(F) requirement that the applicant send letters of intent. This rule is necessary to provide proof that the requirement in 3745-555-300(F) has been met.

In consideration of this comment and comment #14, the requirement has been retained in the proposed rule 3745-555-310.

**Note of Revisions to Proposed Rule in 3745-555-310:**

The proposed rule 3745-555-310 now addresses the required permit application contents for both the “establishment” and the “modification” of a transfer facility as those terms are defined in 3745-500-02 and proposed rule 3745-555-02 respectively. The proposed rule now incorporates language specific to the required contents of a permit application for a modification that had been in the interested party draft paragraph 3745-555-300(B).

3745-555-320 Permit to install issuance

**TFCComment 18:** Paragraph (C)(4), requires compliance with ORC 3734.02 (L) which is the operator certification and training requirement. This should be deleted. There is no operator certification program and there is some doubt if there ever will be such a program. If and when a program is developed and

**implemented the rule can be amended to reflect that fact.  
(Kathy Trent, National Waste & Recycling Association)**

**Response 18:** In consideration of this comment, the proposed rule 3745-555-320 was revised to remove the reference to ORC 3734.02(L). Since there are no rules establishing an operator certification program in accordance with ORC 3734.02(L), the reference is unnecessary.

When the Agency does move forward with separate rule-making to implement ORC 3734.02(L), transfer facility operators will be addressed at that time.

3745-555-400 License application requirements and procedures

**No comments received.**

3745-555-500 Construction and construction certification requirements

**No comments received.**

3745-555-510 Waste handling floor construction

**No comments received.**

3745-555-520 Building to enclose waste handling area

**TFCComment 19: Rule requires certification of the transfer station building. See comment on 555-200 above requiring that waste handling floors be in a building. (Kathy Trent, National Waste & Recycling Association)**

**Response 19:** See Response 10. Should a permit applicant have obtained approval of a variance in some aspect of the facility's waste handling floors, the certification required under this rule would certify construction as specified in the variance.

Should a permit applicant have obtained approval of an exemption from the requirement that the facility have a waste handling floor, the certification required under this rule would reference the exemption and certify any construction required as a condition of the exemption.

In consideration of this comment, no change in the proposed rule 3745-555-520 was deemed necessary.

3745-555-610 Operation of a solid waste transfer facility – general requirements

**TFCComment 20: Paragraph (F) requires that a transfer station will, ensure that at least one trained i.e., certified under ORC 3734.02 (L), operator be on-site at all times when the facility is in**

**operation. This should be deleted. There is no certification program. The requirement may be excessive as we do not know what the requirements of the program are or would be. At a small transfer station it may be difficult to have the number of people certified that are needed to provide 100% coverage at all times when the facility is in operation due to illness, vacations, off-site meetings etc. (Kathy Trent, National Waste & Recycling Association)**

**Response 20:** See Response 18. In consideration of these comments, the proposed rule is revised to remove the reference to ORC 3734.02(L).

3745-555-615 Maintaining a log of operations

**TFCComment 21:** Paragraph (B)(6), requires the facility to put in the daily log of operations, “information regarding general solid waste transfer station operations.” This is overly broad and should be eliminated or modified so it explains what is being required and/or contain a specific requirement. (Kathy Trent, National Waste & Recycling Association)

**Response 21:** In consideration of this comment, the proposed rule 3745-555-615 has been revised to limit such information to site weather conditions and observations as they may relate to nuisance conditions.

3745-555-620 Access

**TFCComment 22:** Paragraph (B), requires that the facility limit access to the facility to employees during non-operating hours. The existing rule, 27-23 (F) uses the term “authorized personnel”. The existing language should be placed in the draft rule. The term “employees” is too limiting. It is not known what is meant by employee. Other authorized personnel are at times on-site such as security, repair personnel, drivers etc. They are authorized but may not be “employees” of the transfer station. (Kathy Trent, National Waste & Recycling Association)

**Response 22:** In consideration of this comment, the proposed rule 3745-555-620 has been revised to “...limit access...by unauthorized personnel...”.

3745-555-650 Waste handling

**TFCComment 23:** Paragraph (C) requires the use of scales after June 30, 2015 as the sole means of determining gate receipts. Do the rules allow for the scales to be located at another location on a separate property. A transfer station may rely on “shared”

**scales with another adjacent operation. Smaller transfer stations that limit their gate receipts to less than 100 tons per day should not be required to install a scale at the transfer facility. (Kathy Trent, National Waste & Recycling Association)**

**Response 23:** The rule does not specify the location nor limit the location of the scales to the transfer facility. The rule does allow use of scales at another location on a separate property. However, where off-site scales are used in determining gate receipts, the facility operator is responsible for ensuring such scales have been approved by the county auditor or city sealer having jurisdiction where the scale is located and the scales meet requirements of section ORC 1327.49.

The timeframe of this requirement has been updated in the proposed rule from “After June 30, 2015...” to “Not later than 180 days from the effective date of this rule,...”.

**TFCOMMENT 24:** **Paragraph (G)(7) prohibits transfer stations from accepting infectious waste from a registered generator. The current rule, 27-23 (O)(5) prohibits transfer stations from taking “untreated infectious waste”. The draft position is too broad. There is no reason that a transfer station should be prohibited from accepting treated infectious waste. (Kathy Trent, National Waste & Recycling Association)**

**Response 24:** In consideration of this comment, paragraph (G)(7) of the proposed rule 3745-555-650 has been revised. The revised language is consistent to current rule 3745-27-23(O)(5) and the statutory reference has been updated to current law. The proposed rule also now includes an acknowledgement of federal packaging and labelling requirements.

**Note of Addition to Proposed Rule in 3745-555-650(G)(3):**

Ohio EPA has made several changes paragraph (G)(3) in proposed rule 3745-555-650.

- The proposed rule includes a new provision that allows acceptance of containerized bulk liquids in small containers by a transfer facility consistent with allowable landfill disposal.
- There have been slight language changes regarding transfer facility acceptance of source-separated composting facility feedstocks that may contain liquids.
- Clarifications that transfer facilities may collect residential used motor oil in accordance with OAC Chapter 3745-279.
- The interested party draft paragraph (K) has been incorporated into paragraph (G)(3) of the proposed rule.

3745-555-670 Annual report

**TFCComment 25:** Paragraph (B)(7) requires that the transfer station annual report contain, “information regarding general facility operations.” This is too broad and should either be deleted or what is required should be specified. (Kathy Trent, National Waste & Recycling Association)

**Response 25:** In consideration of this comment, paragraph (B)(7) has been revised in the proposed rule 3745-555-670 to be consistent with changes made to the log of operations rule 3745-555-615(B)(6). The summary will be limited to site weather conditions and observations as they may relate to nuisance conditions.

**TFCComment 26:** Paragraph (B)(8) requires that the annual report contain a summary of ANY maintenance performed during the year. This is too broad. There is almost daily maintenance done at a transfer station. The existing rule 27-23 (AA)(3) requires a summary of maintenance on the leachate control system or any other monitoring and control system. This is too broad and should either be deleted or what is required should be specified. (Kathy Trent, National Waste & Recycling Association)

**Response 26:** In consideration of this comment, the proposed rule 3745-555-670(B)(8) was revised to summarize maintenance and repairs to the waste handling floor, leachate management system, and building that encloses the waste handling area. These are the features of a transfer facility for which construction is certified.

3745-555-690 Operations of a transfer facility that accepts exclusively source-separated yard waste

**No comments received.**

3745-555-700 Closure of a transfer facility

**No comments received.**

OAC Rule 3745-500-02 (amendment to update definitions rule)

**TFCComment 27:** Paragraph (R)(1). The CDAO has repeatedly objected and commented on the redundant and confusing duplication of definitions between Rule 3745-400-01 and the same C&DD terms that appear in Rule 3745-500-02. The proposed establishment of two different definitions for the same words creates significant risk of conflicting meanings and an unconstitutional violation of equal protection. Instead of adding other potentially confusing, unreasonable, and inappropriate definitions in Rule 3745-500-02, which will

cause confusion and ambiguity, Ohio EPA should focus on the existing definitions in Rule 3745-400-01.

The definition of “Recycling” in the proposed O.A.C. Rule 3745-500-02(R)(1) means:

*converting solid waste or C&DD that would otherwise be disposed and returning the converted material to commerce as a commodity for use or exchange in an established and legitimate market. Recycling is not reuse, storage, disposal, or transfer.*

This new definition differs significantly from the current regulatory definition of “recycling” in O.A.C. Rule 3745-400-01(II):

*processing a material using such methods, including but not limited to, screening, sorting, or shredding, for use in a beneficial manner that does not constitute disposal.*

The proposed definition in Rule 3745-500-02(R)(1) inappropriately eliminates the “processing” concept and focuses on a “converting” concept that eliminates customary and appropriate industry standards. Converting implies that an end product must be produced from the recycling. This proposed change unduly restricts the term and would eliminate beneficial business practices which merely separate components of the C&DD stream into its components for incorporation into a product for sale.

One example of the difference in definitions might be a C&DD facility which separates wood from the C&DD, and sells the wood unchanged to a mulch company that grinds up the wood for mulch. Separation of the wood (a “process”) is recycling under the current definition in 3745-400-01, but might not be recognized as “recycling” under the proposed 3745-500-02 definition because the wood has not been “converted.” CDAO opposes the failure to account for such beneficial practices in the proposed definition. Moreover, no attempt should be made to include a definition in O.A.C. Chapter 3745-500 that would be inconsistent with an existing definition in O.A.C. Chapter 3745-400.

Another problem with the proposed definition is the ambiguity of the terms, “established and legitimate market.” These terms do not belong in the regulatory definition. Merriam-Webster defines “recycle” as “to make something new from something that has been used before” or “to send (used newspapers, bottles, cans, etc.) to a place where they are made into something new.” Common understanding of

**the term does not require an “established and legitimate market” in order to constitute recycling. Instead, Ohio EPA should leave the current definition in Chapter 3745-400 unchanged. (John Heer, on behalf of the Construction and Demolition Association of Ohio)**

**CDComment 28:** “Recycling” means converting solid waste, C&DD, or clean hard fill... Does Ohio EPA have the statutory authority to regulate clean hard fills? (Bruce Schmucker, Cornerstone)

**Response 27 & 28:** In consideration of comments 27 and 28, the reference to C&DD has been removed from the proposed rule 3745-500-02.

**TFCComment 29:** Paragraph (R)(3). The CDAO has repeatedly objected and commented on the redundant and confusing duplication of definitions between Rule 3745-400-01 and the same C&DD terms that appear in Rule 3745-500-02. The proposed establishment of two different definitions for the same words creates significant risk of conflicting meanings and an unconstitutional violation of equal protection. Instead of adding other potentially confusing, unreasonable, and inappropriate definitions in Rule 3745-500-02, which will cause confusion and ambiguity, Ohio EPA should focus on the existing definitions in Rule 3745-400-01.

The definition of “Reuse” in the proposed OAC 3745-500-02(R)(3):

*taking a solid waste or C&DD that would otherwise be disposed and using it for its original purpose or a similar purpose, without converting the material. Reuse does not include using solid waste, C&DD, or clean hard fill as fill. Reuse is not recycling, storage, transfer, or disposal.*

differs from the current regulatory definition in OAC 3745-400-01(LL):

*reincorporating a material as part of a structure and does not include reincorporating a material as fill.*

This proposed definition of “Reuse” suffers from a defect similar to the proposed definition of “Recycling” – improper reliance and focus on the concept of “converting.” No such concept is warranted or reasonable. (John Heer, on behalf of the Construction and Demolition Association of Ohio)

**CDComment 30:** “Reuse” does not include using solid waste, C&DD, or clean hard fill as fill. Ohio EPA does not have statutory authority to regulate clean hard fill. Please delete this language from this definition. (Bruce Schmucker, Cornerstone)

**Response 29 & 30:** The references to C&DD and clean hard fill have been removed from the proposed rule 3745-500-02.

**TFCComment 31:** Paragraph (S)(7)(e). The proposed definition of a “Transfer Facility” remains largely unchanged from the current definition except that it further defines the “exceptions” to the definition and adds some clarity to what will not be considered a transfer facility, thus eliminating the need to comply with the more restrictive permitting and operational requirements contained in the proposed rule. Of particular importance to SWACO is the clarification that a “Solid Waste Transfer Facility” is not considered to be any facility that is identified as a “Solid Waste Disposal Facility.” This new exemption from the definition of a transfer facility adds weight to SWACO’s position and Ohio EPA’s current interpretation of the existing rules that a receiving facility would not require a transfer facility permit, because it would operate as part of the existing permitted landfill. Thus, a receiving facility would be (or be a component of) an existing “Solid Waste Disposal Facility.”

While the addition of this exception to the definition of a “transfer facility” should help to clarify that a transfer facility located within a landfill boundary would not need a separate permit – it is not conclusive and does not go far enough to put this issue to rest. Even with this added clarification in the proposed rule, there is still much left to individual interpretation which leaves SWACO and other solid waste facility operators vulnerable to inconsistent decisions based on differing interpretations. A better approach would be to seek inclusion of language clarifying that a transfer facility is not considered to be “a facility which is identified as solid waste disposal facility” [newly proposed language] or operates as part of a solid waste disposal facility. This clarification would enhance SWACO’s position that a receiving facility would be part of a permitted solid waste disposal facility (the landfill) and thus, not required to be separately permitted.

SWACO is contemplating the construction and operation of a landfill receiving facility (LRF). The LRF would be located behind the gate of SWACO’s solid waste disposal facility (the Franklin County Sanitary Landfill or FCSL) and serve as a receiving facility for loads of waste that are then processed or “transferred” to large load trucks for delivery to the working face of the landfill for disposal. In that regard, a receiving facility would be operationally similar to a traditional Solid Waste Transfer Facility except that the waste will not be transferred to vehicles for ultimate delivery to a disposal

facility because any waste subsequently hauled from the receiving facility will have already been hauled to the disposal facility. Thus, it SWACO's stated position that a receiving facility or any similar facility should not require a separate Transfer Facility permit because it will be operated as part of the permitted Solid Waste Facility.

The new rule, if enacted, could be read to require a receiving facility located at a landfill to obtain a separate Solid Waste Transfer Facility permit. If so, then SWACO will be required to undergo a redundant and costly permitting process for a receiving facility that could very easily cause considerable unnecessary delay in the construction of such a facility.

Ohio EPA currently interprets its existing transfer facility and disposal facility rules to preclude the need for separate permitting of a receiving facility located at a landfill. This is because Ohio EPA considers such a facility to be part of the disposal facility already regulated via the Solid Waste Disposal Permit to Install (PTI) and Permit to Operate (PTO). However, there is nothing in the definitions contained in the current solid waste statute or rules that directly address the issue of whether separate permitting is necessary for a receiving facility located at a sanitary landfill. The proposed rule changes fail to remedy this ambiguity under the existing rules and leave open the possibility of inconsistent interpretation of the rule and inconsistent decisions regarding need to obtain separate transfer facility permits. Additional permitting would be redundant, costly, unnecessary, and inefficient for the regulated community. Quite simply, a solid waste receiving facility located at a landfill would be included as part of the existing Solid Waste disposal facility permit and would receive regulatory oversight and review by Ohio EPA through that facility permit. (Solid Waste Authority of Central Ohio)

**TFCOMMENT 32:** Paragraph (S)(7)(e), excludes from the definition of a solid waste transfer station a C&DD facility. This would appear to be an unintended loophole which if adopted would allow a C&DD facility to accept and transfer solid waste without having to obtain a solid waste PTI or license. (Kathy Trent, National Waste & Recycling Association)

**Response 31 & 32:** In consideration of comments 31 & 32, the proposed rule 3745-500-02 was significantly revised to clarify the intent.

The proposed rule has been revised to further clarify that the acceptance, unloading, processing, and transport of solid waste within the facility boundaries of a solid waste disposal facility used

for incineration or sanitary landfilling does not constitute a solid waste transfer facility.

This position is based on the statutory definition of solid waste transfer facility in section 3734.01 of the Revised Code. A transfer facility transfers solid waste into other vehicles “for transportation to a solid waste disposal facility”. In the situation described in Comment 32, the solid waste has already been accepted and is being managed and disposed within the boundaries of a sanitary landfill facility. Any transfer into other vehicles occurs at and within the boundaries of a sanitary landfill for the purpose of placing solid waste at the working face of that landfill. The solid waste is not being transferred for transportation and disposal at a different off-site sanitary landfill facility.

Ohio EPA agrees with comment 32 that further clarification is necessary. The proposed rule has been revised to provide clarification that the term solid waste transfer facility does not include a C&DD disposal facility operating in accordance with ORC Chapter 3714 and OAC Rule Chapter 3745-400. C&DD disposal facility requirements involve rejection of debris shipments, removal of pulverized debris, and removal of solid waste prior to placement on the working face and removed from the working face. The intent of the proposed rule is to clarify that C&DD facilities complying with these requirements and subsequently loading and transporting solid waste off-site for proper management does not constitute operation of a solid waste transfer facility.

The intent is that a C&DD facility operating beyond the C&DD operational requirements by accepting loads of solid waste, unloading and loading into vehicles at the C&DD disposal facility for off-site transport to a solid waste disposal facility would constitute a solid waste transfer facility.

**CDComment 33: “Solid waste transfer facility” means any site... that is used... for the purpose of transferring solid wastes... from vehicles or containers into other vehicles or containers for transportation to a solid waste disposal facility.**

**The wording in this definition includes the transfer of wastes from one vehicle or container to another vehicle or container. A conventional transfer station places waste on the waste handling floor before being placed into another vehicle or container. This definition represents a waste unloading facility not a transfer station as identified above. The agency should clarify their intent to regulate transfer stations and/or unloading facilities. (Bruce Schmucker, Cornerstone)**

**Response 33:** The statute, ORC 3734.01(U), defines solid waste transfer facility this way. Ohio EPA has always made the distinction between transfer of waste versus transfer of vehicles or containers. Transfer of waste entails removal of waste from one vehicle or container into another vehicle or container, regardless of whether it is placed on a waste handling floor; whereas transfer of vehicles or containers entails such activities as moving a container from a barge or rail car onto a truck. Although “unloading” may be a better word to describe the activity of transfer of waste, Ohio EPA will retain the wording used in the statute when defining the term in regulation to avoid confusion and the appearance of deviating from statutory requirements.

In consideration of this comment, no change in the proposed rule 3745-555-300 was deemed necessary.

**Note of Addition of a New Definition in Proposed Rule 3745-500-02(C)(5):**

Ohio EPA is proposing the addition of a definition of “convert” to support the proposed definitions of “recycling” and “reuse”.

**Note of Revisions in 3745-500-02(S)(7):**

In addition to changes made in response to the comments above, Ohio EPA has made additional changes to the definition of solid waste transfer facility in paragraph (S)(7) in proposed rule 3745-500-02.

- The proposed rule does not include the reference to “any facility that accepts scrap tires other than scrap tires which are incidental to the load of solid waste” that was found in the interested party draft rule 3745-500-02(S)(7)(b). As written in the interested party draft, it might be interpreted that the mere acceptance of scrap tires at a site otherwise transferring solid waste for disposal would exclude that site from the definition of solid waste transfer facility. This is not the Agency’s intent.

Upon examination, a facility accepting scrap tires for subsequent transport is regulated under Ohio’s scrap tire laws and regulations. Such facility would be by definition either a scrap tire collection facility [ORC 3734.01(AA) or scrap tire storage facility [ORC 3734.01(EE). The Agency has removed this language from the proposed rule 3745-500-02 as unnecessary.

- The proposed rule 3745-500-02(S)(7)(c) has been slightly changed for greater clarity regarding facilities where recycling activities are conducted. There are some facilities that may meet the exclusion criteria at times but as a business decision choose to obtain and maintain a solid waste license and regulated as a transfer facility. It is not the Agency’s intention to limit this business’ choice.

**Note of Addition of a New Definition in Proposed Rule 3745-500-02(F)(3):**

Ohio EPA is proposing the addition of a definition of “functionally equivalent” to support proposed amendments where the term is used in the variance rule 3745-500-210(D)(2).

OAC Rule 3745-500-03 (amendment to update incorporation by reference rule)

**No comments received.**

OAC Rule 3745-500-120 (amendment to update rule on procedures for permit and licensing actions)

**TFComment 34:** Paragraph (D), discusses when a Board of Health will deny a solid waste PTI. Under what circumstance would a Board of Health ever deny a solid waste PTI? The can deny licenses and C&DD PTIs but not solid waste PTIs. (Kathy Trent, National Waste & Recycling Association)

**Response 34:** In response to this comment and since this rule does not apply to construction and demolition debris landfills, references to permits have been removed from paragraph (D) of the proposed rule 3745-500-120.

OAC Rule 3745-500-210 (amendment to update variance rule)

**No comments received.**

Chapter 3745-512 General Comments

*Note: Many of the following comments refer to an earlier interested party draft of chapter 3745-512 released in 2011 with draft construction and demolition debris rules. In several instances these comments refer to 2011 draft language that is not part of this solid waste transfer program rule-making.*

*This response to comment document is regarding the interested party drafts released in 2014 specific to the solid waste transfer facility program. The subject of this rule-making effort includes the 2014 interested party drafts for the transfer facility program (chapters 3745-555, 3745-512, and amendments to 3745-500). The following responses are based on the 2014 draft of chapter 3745-512 specific to the transfer facility program.*

**CDComment 35:** In numerous places in the draft rules package the DSWIM has included the phrase, "... the director may decline to act..."  
Examples of where this phrase is used include:

**3745-512-17(B), 3745-512-51(A)**

**The phrase/authority for the Director to decline to act should be removed entirely from the draft rules. Decisions of the Director on requests for action should be explainable, defensible and appealable. Under the draft rules where this phrase is used the Director is not even required to explain the reasons as to why the request is not being approved nor, it is assumed, would the applicant or permittee be able to appeal the "inaction" of the Director. Thus, the applicant or permittee could spend considerable time, money and effort preparing a request only to ultimately hear that the Director has simply decided not act on the request. Worse the applicant or**

**permittee would have no recourse to challenge the decision of the Director not to allow something this is specifically discussed in the rule as a possibility.**

**In addition, often this phrase is used to provide the opportunity for an applicant or permittee to operate at "variance" with an otherwise prescribed action. ORC 3734.02 (A) already provides a means for variance. Whereas nowhere in this section or elsewhere within the statute does it indicate that the Director may choose to "decline to act" on a request for a variance or on a request for an approval pursuant to a rule. (Chris Jaquet, Republic; Steve White, Steven H White & Associates)**

**Response 35:**

A global search of all the interested party draft transfer facility rules and associated draft multi-program rules for the phrase "may decline to act" and the term "decline" found two instances. 3745-512-51(A) uses the phrase "may decline to act" and 3745-512-51(B) uses the phrase "may decline to concur."

The "may decline to act" provision of 3745-512-51(A) is specific to concurrence of an incomplete construction certification report. Once a report is complete, the concurring authority is obligated to act. No change was made to paragraph 3745-512-51(A) of the proposed rule.

Upon examination of the interested party draft of 3745-512-51(B) and the use of the phrase "may decline to concur", the Ohio EPA has removed this language entirely from proposed rule 3745-512-51. The removed language is unnecessarily duplicative of paragraph 3745-512-51(A).

3745-512-01 Construction – applicability

**CDComment 36:**

**The rule states that the rules in this chapter will apply when the rules are referenced by a rule in a program chapter. The new residual waste rules are not yet drafted and yet if GM does not comment now, they will be unable to comment on them in the future. This approach forces GM to provide comments on a proposed rule that may or may not apply when the new residual waste rules are drafted. How can meaningful comments be provided when these proposed rules cannot be reviewed within their proper context? Such an approach would be procedurally defective. Accordingly, GM has chosen to provide comments on individual sections of the Multi-Program Rules and reserves the right to make future comments on the Multi-Program Rules should the Ohio EPA choose to move forward with promulgation of the rules prior to finalization of all program rules. (Todd Rouse GM)**

**Response 36:** The focus of this rule-making effort is to obtain interested party comment on the solid waste transfer facility program chapter and associated multi-program chapters and rules. The solid waste transfer facility program chapter references to multi-program chapters are what make the multi-program rules applicable to the program.

In this rule-making effort, Chapter 3745-555 is proposed to be the program chapter for solid waste transfer facilities. This transfer facility program chapter proposes references to existing multi-program OAC Chapters 3745-500 (General Administration), 3745-501 (Licensing), and 3745-503 (Financial Assurance). Proposed Chapter 3745-512 (Construction) contains only rules made applicable by the proposed transfer facility Program Chapter 3745-555.

In consideration of this comment, no change in the proposed rule 3745-555-300 was deemed necessary.

**CDComment 37: How do these regulations interface with the permit application regulations? (Bruce Schmucker, Cornerstone)**

**Response 37:** The solid waste transfer facility program chapter will stipulate when a multi-program rule is to be used. If a solid waste transfer facility permit includes construction requirements, compliance with the construction requirements established by rule is addressed in rule 3745-500-35 *Relationships among authorizing documents, rules, and the authority of the director and board of health*.

No changes have been made to proposed rule 3745-512-01 in response to this comment.

**CDComment 38: These regulations are reading more like specifications or instructions than regulations. Ohio EPA is now instructing engineer's soil preparation. (Bruce Schmucker, Cornerstone)**

**Response 38:** For the transfer facility program, reference to "soils" is limited. A global search of the interested party draft transfer facility program chapter 3745-555 and associated draft multi-program rules (Chapter 3745-512 and amendments to Chapter 3745-500) found two rules using the term "soils". The incorporation by reference rule 3745-500-03 has four instances using the term "soils" in the name of test methods (Method 3050B, Method 3051A, and Method 9045D) and in the title of a resource document (*Recommended Chemical Soil Test Procedures for the North Central Region*). One instance in the General Construction – General Requirements rule 3745-512-30(D) states "The owner or operator shall employ measures to attain compliance with applicable laws and authorizing documents for erosion control of all disturbed soils."

No changes have been made to proposed rule 3745-512-01 in response to this comment.

**CDComment 39:** **(B) These proposed rules are better than anything currently in place and we DO NOT want to lose many of those proponents drafted. However (B) states "If an engineered component is not included in the facility's design, this chapter does not require that the engineered component be constructed." WHY NOT? If a facility has not yet been constructed, why wouldn't the OEPA insist that the landfill owners conform to the new rules in order to protect us? This section needs to be REMOVED or reworded to conform to the new rules wherever/whenever possible to protect us. (Cynthia Latham, Garry Pfleiderer, Susan Keller, Dennis Garverick, Sandra Petty)**

**Response 39:** As a multi-program rule, none of the requirements in Chapter 3745-512 are imposed upon a transfer facility unless and until the transfer facility program chapter 3745-555 activates or references Chapter 3745-512 or a rule within the chapter.

In addition, if a component is addressed in Chapter 3745-512 but is not a component of the facility required by the transfer facility program Chapter 3745-555, Chapter 3745-512 does not make it a requirement to have that component. For example, if a solid waste transfer facility is not required to have a leachate holding tank by the transfer facility program Chapter 3745-555, the rule 3745-512-460 regarding tanks does not obligate the facility to construct a tank.

Regarding unconstructed facilities, the owner or operator is expected to comply with both their authorizing documents and the rules. If, however, when it is not possible to comply with both, the owner or operator shall comply with the authorizing document. See OAC Rule 3745-500-35.

No changes have been made to proposed rule 3745-512-01 in response to this comment.

**CDComment 40:** **(B)(1) It is not clear the applicability of these new rules with a landfill's current authorizing documents. Is it Ohio EPA's intention that during the 10 year BAT demonstration reviews that currently constructed facilities will be forced to upgrade their authorizing documents to these new rules? (Bruce Schmucker, Cornerstone)**

**Response 40:** Please refer to OAC 3745-500-35. The owner or operator is expected to comply with both their authorizing documents and the rules.

The solid waste compost program chapter 3745-560 and the proposed solid waste transfer facility program chapter 3745-555

do not require a 10 year design demonstration (also known as the best available technology (BAT) demonstration). Therefore, the proposed multi-program construction rule 3745-512 does not address the issue of a 10 year design demonstration.

No changes have been made to proposed rule 3745-512-01 in response to this comment.

**CDComment 41:** **(B)(2) For prior permitted facilities, the proposed rule gives precedence to the design and construction of components according to the proposed rule instead of the existing governing permit documents. This will necessitate review, potential re-design, and permit alterations/modifications for all currently permitted, but unconstructed phases of, existing facilities. The unconstructed components will be subject to compliance with the proposed rule. This requirement could be costly and has the potential to delay construction while the review and re-permitting process is underway. This could potentially necessitate the temporary closure of landfills until such time as the new permit documents are approved. Delete the last sentence of (B)(2) and replace with "Paragraph (B)(1) of this rule shall apply to all new permit applications and modifications to existing permits." (Environmental Committee of the Ohio Utility Group)**

**Response 41:** Only if Chapter 3745-512 has been made applicable to a facility in accordance with 3745-512-01(A), does rule 3745-512-01(B) become pertinent. Rule 3745-512-01(B)(1) starts by requiring the owner or operator to comply with the instructions in the chapter unless, as stated in paragraph (B)(2), a program chapter supersedes those instructions.

No changes have been made to proposed rule 3745-512-01 in response to this comment.

#### 3745-512-02 Construction – definitions

**CDComment 42:** **Proposed rewording of this regulation to make it more clear: A term defined in rule 3745-500-02 of the Administrative Code is applicable to this chapter. (Bruce Schmucker, Cornerstone)**

**Response 42:** The suggested wording does not account for a situation where rule 3745-512-02 defines a term differently than what is defined in rule 3745-500-02.

No change was made in response to this comment and the language has been retained in proposed rule 3745-500-02.

#### 3745-512-17 Alternative construction material evaluation and reporting

**CDComment 43:** **The proposed rule provides detailed standards as to what must be demonstrated to OEPA for an alternative engineered**

**component to be considered acceptable. 512-17(G)(4)(a) to (o) list most of the engineered components and provides the standard to which OEPA will evaluate a proposed alternative. Standards are not provided for all engineering components required by 512. Where standards for alternatives are not provided, compliance cannot be demonstrated (as required by 17(G)(4)) and therefore no alternatives would be acceptable. Provide alternative standards for all engineered components required by in proposed rule 3745-512 (Environmental Committee of the Ohio Utility Group)**

**Response 43:**

This comment's reference to paragraphs (G)(4)(a) to (o) is based on an earlier 2011 draft of Chapter 3745-512 regarding construction and demolition debris facilities. These paragraphs do not exist in the 2014 interested party draft of Chapter 3745-512 specific to the transfer facility program.

The proposed rule 3745-512(E) establishes performance standards for alternative construction materials to be used in transfer facility construction. No change was made in response to this comment and the 2014 interested party language has been retained in proposed rule 3745-512-17.

**CDComment 44:**

**(G)(1) - The Ohio EPA needs to explain why it is inappropriate for the owner/operator of a permitted facility to use a solid waste as an alternative material to construct an engineered component of a facility. There are many industrial by-products that have characteristics which are suitable for reuse as engineered components of a solid waste facility. If a demonstration can be made that these materials meet the engineering properties necessary for successful operation of the facility, their use in this manner should not be rejected without cause, especially if the alternate material is used within the lined portion of the facility. (Todd Rouse, GM-Defiance)**

**Response 44:**

Ohio EPA acknowledges that some solid wastes may provide acceptable material and structural characteristics for use in an engineered component. The issue here is the mechanism for that evaluation and authorization as an alternative construction material for transfer facilities. The intent of this rule is to provide the owner or operator of a transfer facility with a mechanism to easily gain authorization to use a known construction material different than specified in an approved permit.

The Agency's experience is that the evaluation of the suitability of a solid waste (chemical and physical characteristics, engineering performance, material specifications and quality controls) can pose significant questions. The Agency suggests that such evaluation and authorization of solid waste as an alternative

construction material occur through the variance or exemption process.

No change was made in response to this comment and the language has been retained in the proposed rule.

3745-512-30 Construction activities – general requirements

**No comments received.**

3745-512-50 Construction certification

**No comments received.**

3745-512-51 Procedure for concurrence of construction certification

**TFCComment 45:** Paragraph (A) should require the DMWM to identify deficiencies in the application rather than allow them to just say it is incomplete. (Kathy Trent, National Waste & Recycling Association)

**Response 45:** Agreed. In response to this comment, proposed rule 3745-512-51 has been revised to require written notice of deficiency.

**TFCComment 46:** Paragraph (B) should have some criteria for a denial or a requirement that reasonable requests will not be denied. (Kathy Trent, National Waste & Recycling Association)

**Response 46:** In consideration of this comment, it has been recognized that paragraph (B) is redundant with OAC 3745-500-150: Alteration to a solid waste permit to install. The language of the interested party paragraph (B) has been removed from proposed rule 3745-512-51.

3745-512-55 Failed tests and alterations

**No comments received.**

3745-512-60 Repair of damaged or failed engineered components

**TFCComment 47:** This rule should be modified to identify exactly which components are considered to be “engineering components” and what constitutes reportable damage. For example, damage such that the equipment cannot function in accordance with its intended purpose. It is currently overly broad and can lead to misunderstanding. For example, gas wells at a landfill could well be considered engineering components. Gas wells often need repair – some large, some small. Under this rule a facility may be required to submit numerous notices, reports and plans for relatively small

**repairs. (Kathy Trent, National Waste & Recycling Association)**

**CDComment 48:** The rule requires reporting to the OEPA damaged or failed engineering components but does not define precisely what constitutes a "damaged or failed engineering component". This could lead to wide interpretations in the field, the requirement on a case-by-case basis to file many reports with the OEPA and the possibility of numerous NOV's over differences in opinion of what constitutes a damaged or failed engineering component. (Chris Jaquet, Republic)

**CDComment 49:** The rule is unclear as to the magnitude of damage which would trigger the notifications and failure investigation assessment. The rule is also unclear as to if the rule applies only to damage/failure which occurs during (or by) construction or also applies to damage/failure during operations, closure, or post-closure activities. Assuming the rule would apply only to severe damage with the potential to endanger human life or the environment, the general language of the proposed rule is appropriate; however, without clarification as to magnitude and applicability, the rule is impractical. (Environmental Committee of the Ohio Utility Group)

**Response 47, 48 & 49:**

The proposed rule incorporates the suggestion to identify what constitutes reportable damage. Proposed rule 3745-512-60(A) now defines for the purposes of the rule that a damaged or failed engineered component cannot function as designed or no longer fulfills the applicable rule or permit requirements. Also, the proposed rule 3745-512-60(B) has been changed to only require reporting of a damaged or failed engineering component if a resulting release or spill needs to be reported in accordance with OAC Chapter 3750-25.

In the case of transfer facilities, this requirement applies to damage/failure during construction, operation, and closure as required by the transfer facility program Chapter 3745-555. Engineered components of a facility are identified through the program design rules. The transfer facility engineered components are identified in the transfer facility program rules 3745-555-200 through 3745-555-216. Gas wells are not an engineered component of a transfer facility.

3745-512-450 Conveyance pipes

**TFComment 50:** Paragraph (A). This rule should not specify one type material. There are several types of materials that can reasonably be

**used such as PVC. (Kathy Trent, National Waste & Recycling Association)**

**CDComment 51: (A)(1) This rule will exclude the use of PVC material from use in conveyance pipes. Why is PVC piping being excluded from use? There are situations where PVC is the preferred material and has been used effectively. (Chris Jaquet, Republic)**

**Response 50 & 51:** In consideration of comments 50 and 51, proposed rule 3745-512-450 was revised to specify HDPE only for pressurized lines. Gravity lines may use other materials without going through the alternative materials process.

PVC, if used for a pressurized line, is not excluded; the material can be approved pursuant to 3745-512-17 as stated in the paragraph. The corresponding criteria in 3745-512-17 are that the pipe material needs to be chemically and physically resistant to damage caused by waste/debris, leachate, and gas. If PVC can meet these criteria, it can be approved.

#### 3745-512-460 Tanks

**CDComment 52: (A) This rule requires air testing of tanks. Why is hydrostatic testing with clean water not allowed? In many instances hydrostatic testing with water is a preferred method as it is difficult to detect the location of leaks with air testing. (Chris Jaquet, Republic)**

**Response 52:** In response to this comment, proposed rule 3745-512-460 was revised to not require air testing. If air testing is used by the owner or operator, the air testing must meet the specified standard.

**End of Response to Comments**