

DRAFT – FOR DISCUSSION

The following document provides the Division of Materials and Waste Management's draft responses to groupings of similar interested party comments. The grouping of similar comments is followed by the draft response in yellow highlight.

General Comments

#851 – Ohio Environmental Council

While, for the most part, we find the proposed regulations and revisions to be perceptive of and responsive to the most urgent environmental threats posed by CDD landfills, OEC nevertheless expresses reservations to these drafted changes where they do not extend far enough to protect the environment and human health and well-being. Further, these rules are nearly six years overdue, and still do not reach the ultimate conclusion that Ohio's scientific reports and other states seem to agree is the proper method of regulating such landfills - regulate CDD landfills as protective as Municipal Solid Waste landfills.

#852 – Ohio Environmental Council

The failure of these proposed regulations to subject existing CDD facilities to the new groundwater monitoring defies logic. If leachate from CDD facilities pose a serious threat to human health and environment, grandfathering of owners of existing CDD facilities clearly contradicts OEPA's purpose of protecting human health and environment. It also allows current industry players to erect a barricade against the entrance of new competitors into the market, by entrenching for themselves a competitive advantage via regulatory preference. Current industry leaders should not be allowed to use these new regulations as a means to bar the entrance of new competitors into their market. The regulatory burden should be equally shared by owners of new and existing facilities, and the public should be equally protected from potential leachate from either facility as well. Therefore, it is of utmost importance that the ground water monitoring rules apply to all CDD facilities throughout Ohio.

#790 – Keller

It is my understanding that the EPA is soliciting comments regarding your draft rules and I have a few comments to make. First off, I am totally opposed to separating the rules between a CD&D facility and that of a solid waste. It was the EPA's very own findings in which ALL CD&D landfills that were reviewed in Ohio were found to contaminate. This finding by the EPA should tell you that there is no need to separate the rules, but that CD&D landfills should be considered equally that of a Solid Waste facility, thus making the rules equal for any and all landfills that contaminate.

While the environmental issues associated with landfill disposal are similar in a general sense (location, design and engineering, operation, environment monitoring), Ohio EPA's authority to adopt C&DD facility rules is established in Chapter 3714. of the Revised Code. Ohio law clearly establishes a distinct regulatory system for C&DD versus solid waste under Chapter 3734. of the Revised Code. This rule package seeks to adopt some specific statutory requirements of Chapter 3714. of the Revised Code.

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While there are many similarities such as the broad authority to ensure that facilities will not create a nuisance, fire hazard, or health hazard, or cause or contribute to air or water pollution, each law does often differ in the level of detail as to what the rules must require and how the licensing authority may regulate the facility.

#820 – Miller – Weaver Boos Consultants

We do not believe that these rules meet the legislative intent of HB 397. Review of HB 397 indicates no support or justification for such broad and over-reaching revision to the C&DD rules to so closely mirror municipal solid waste rules.

These draft rules are targeted to implement specific statutory requirements.

#833 – Rayle, Mathews & Coon

Our environmental consultants who have attempted to analyze this massive and confusing rule package have indicated that implementation of the multi-program rules would likely cost D-K nearly \$100,000.00 in the first year alone and if additional monitoring wells were required that such cost would significantly sky rocket. Modified financial assurance requirements would increase closure cost estimates from \$13,000.00 per acre to \$45,000.00 per acre which would substantially increase the financial assurance that D-K provided in 2010 which totaled \$667,400.00. Should the newer rules get promulgated, D-K would have to provide between \$1.8 million to \$2.3 million in financial assurance for closure plus post closure care for 5 years assuming that the local health department did not extend post closure care for other reasons.

#834 – Rayle, Mathews & Coon

While the application of multi-purpose rules might make sense to large municipal solid waste facilities, which already have extensive groundwater monitoring programs, including C & DD facilities into the multi-program rules at their gate rates and low debris volumes is not economically feasible to the industry and would likely force closure of several [and certainly all small] C & DD facilities across the state.

#827 – Page, Lafarge

823 – Schmidt, Lafarge

After fully participating in the extensive legislative hearings and meetings during the creation of HB 397, it is clear that the proposed C&D rules do not capture the original intent of the Ohio Legislature; in fact, they far exceed the originally stated purpose of that important law.

#829 – Page, Lafarge

824 – Schmidt, Lafarge

Absolutely no economic impact analysis has been performed by the Agency regarding the crushing financial effects upon the C&D industry statewide. In these serious economic times, it is unconscionable that such broad over-reaching rules could be proposed without any idea of the financial shock that it would cause to our industry. fully participating in the extensive legislative hearings and meetings during the creation of HB 397, it is clear that the proposed C&D rules do

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not capture the original intent of the Ohio Legislature; in fact, they far exceed the originally stated purpose of that important law.

#385 – Van Fossen, Ohio Contractors Association

The proposed rules are extremely complicated and will have a significant deleterious financial impact that will affect the majority of existing CDD sites in Ohio, most of which are small, privately-owned businesses. We oppose the Agency's development of the "multi-program" rules that are referenced in the draft revised rules for existing facilities. The multi-program approach adds a new level of complication and confusion for those attempting to comply with Ohio's CDD regulations. For example, as required in draft revised rule 3745-400-09(B), existing CDD sites that have existing groundwater monitoring must comply with rule 3745-400-10 which in turn, refers to the multi-program groundwater monitoring rules in the newly proposed Chapter 3745-506. In addition, existing facilities should be grandfathered and not required to revise their existing monitoring system to include additional saturation zones in accordance with draft rule 3745-506-100. This change alone would require existing facilities to move far beyond their current requirements to monitor the uppermost aquifer system, costing them many thousands of dollars in establishing new monitoring systems with multiple wells.

This draft rule package is focused on implementing the following specific requirements of the statute.

This draft rule package includes rules 3745-400-20 (Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters) and rule 3745-400-21 (Construction and demolition debris facility – leachate parameter list) to implement the requirements found in statute ORC 3714.02(F).

ORC 3714.02(F): Requirements for the monitoring and sampling of leachate. The rules adopted under division (F) of this section shall include all of the following:

- (1) A requirement that the owner or operator of a construction and demolition debris facility provide for sampling of leachate at least annually. However, the rules shall require that if leachate is recirculated through a facility, the leachate be sampled at least every calendar quarter.
- (2) A requirement that the owner or operator of a facility sample for at least seventy-seven parameters that the director shall establish in the rules, which shall include arsenic, copper, and chromium;
- (3) Requirements governing facilities that do not have a system for sampling leachate. The rules shall require that the owner or operator of such a facility monitor ground water in accordance with the rules adopted under division (E) of this section for the parameters established in the rules adopted under division (F)(2) of this section.
- (4) A requirement that a facility that monitors ground water and leachate add to the parameters monitored by the ground water monitoring system any parameter that is detected through the monitoring of leachate;
- (5) Requirements governing the reporting of leachate sampling data. The rules shall require that reports be submitted to the director and the applicable board of health.

This draft rule package includes rule 3745-400-16 (Post-closure of construction and demolition debris facilities) and rule 3745-400-19 (Post-closure care certification report) to implement the requirements found in statute ORC 3714.02(K).

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ORC 3714.02(K): Requirements for the post-closure care of facilities for a period of five years after the closure of a facility. However, the rules shall require that the post-closure care period may be extended by order of the applicable board of health, the director, or a court of competent jurisdiction if conditions at a facility are impacting public health or safety or the environment or if ground water assessment and corrective measures are required to be conducted at the facility under rules adopted under division (E) of this section. This division does not limit the authority of the director, a board of health, or a court of competent jurisdiction to issue an order under any other applicable chapter of the Revised Code.

The rules adopted under this division shall specify both of the following:

(1) With respect to a facility that permanently ceases acceptance of construction and demolition debris in calendar year 2006, the post-closure care and post-closure care financial assurance requirements do not apply, provided that the owner or operator of the facility gives written notice of the date of the cessation to the applicable board of health or the director, the owner or operator of the facility does not submit a subsequent application for a license renewal for the facility after that cessation, and no order was issued by the applicable board of health, the director, or a court of competent jurisdiction governing the post-closure care of and post-closure financial assurance for that facility prior to the date specified in the written notice.

(2) With respect to a facility that permanently ceases acceptance of construction and demolition debris in calendar year 2007, the required period of time for post-closure care and post-closure care financial assurance shall be one year after the closure of the facility, provided that the owner or operator of the facility gives written notice of the date of the cessation to the applicable board of health or the director, the owner or operator does not submit a subsequent application for a license renewal for the facility after that cessation, and no order was issued by the applicable board of health, the director, or a court of competent jurisdiction governing the post-closure care of and post-closure financial assurance for that facility prior to the date specified in the written notice.

This draft rule package includes rule 3745-400-18 (Financial assurance for post-closure care of construction and demolition debris facilities) and rule 3745-400-17 (Procedures for issuance of an order extending the post-closure care period) to implement the requirements found in statute ORC 3714.02(l)(2).

ORC 3714.02(l): Financial assurance requirements for the closure and post-closure care of facilities as follows:

ORC 3714.02(l)(2): The rules establishing the financial assurance requirements for the post-closure care of facilities shall address the maintenance of the facility, continuation of any required monitoring systems, and performance and maintenance of any specific requirements established in rules adopted under division (K) of this section or through a permit, license, or order of the director. The rules also shall allow the director or board of health, as applicable, to determine the amount of a surety bond, a letter of credit, or other acceptable financial assurance for the post-closure care of a facility based on a required cost estimate for the post-closure care of the facility. The rules shall require that the owner or operator of a facility provide post-closure financial assurance for a period of five years after the closure of a facility. However, the rules shall stipulate that post-closure care financial assurance may be extended beyond the

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five-year period if the extension of the post-closure care period is required under rules adopted under division (K) of this section.

This draft rule package includes revisions to rule 3745-400-12 (Final closure of facilities) and rule 3745-400-13 (Financial assurance for construction and demolition debris facility final closure) to implement the requirements found in statute ORC 3714.02(I)(1).

ORC 3714.02(I): Financial assurance requirements for the closure and post-closure care of facilities as follows:

ORC 3714.02(I)(1): The rules establishing the financial assurance requirements for the closure of facilities shall require that the owner or operator of a facility, before being issued an initial license for the facility under section 3714.06 of the Revised Code, submit a surety bond, a letter of credit, or other acceptable financial assurance, as specified by the director in the rules, in an amount determined by the director or the appropriate board of health, as applicable. The rules shall include a list of the activities for which financial assurance may be required. The rules shall allow the director or board of health, as applicable, to adjust the amount of a surety bond, a letter of credit, or other acceptable financial assurance in conjunction with the issuance of an annual license. However, the rules shall require that the amount of a surety bond, letter of credit, or other acceptable financial assurance for the closure of a facility be not less than thirteen thousand dollars per acre of land that has been or is being used for the disposal of construction and demolition debris. The rules shall require an explanation of the rationale for financial assurance amounts exceeding thirteen thousand dollars per acre.

To accommodate comments received from owners and operators of construction and demolition debris facilities regarding the economic impact of increased costs associated with closure financial assurance and newly established post-closure financial assurance, this draft rule package includes the new rule 3745-400-25 (Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities) and revisions to rules 3745-400-08 (Construction and final closure certification), 3745-400-13 (Financial assurance for construction and demolition debris facility final closure), and 3745-400-14 (Wording of the financial instruments). These rules would provide a five year period to reach full funding of closure and post-closure, defer funding of financial assurance for portions of facilities until submittal of the construction certification report, allow for release of financial assurance as engineered components of the final cap system are certified constructed, and allow continued use of financial assurance instruments established prior to the date of the revised rule.

This draft rule package no longer includes the following draft rules released January 7, 2010, for interested party comment.

- Rule 3745-400-07 (Facility design requirements and construction specifications)
- Rule 3745-400-09 (Site characterization)
- Rule 3745-400-10 (Applicability and implementation of the ground water monitoring program)

The above rules are not in this draft rule package. There will be no reference to the draft ground water monitoring multi-program chapter 3745-506 in this draft rule package. Ohio EPA is reviewing ground water monitoring related interested party comments and will address future revisions to ground water monitoring rule 3745-400-10 along with rule 3745-400-09 in a separate rule package.

- Rule 3745-400-11 (Operation of facilities)

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The above rule is not in this draft rule package. Revisions to this existing rule is not necessary with the introduction of rules 3745-400-20 (Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters) and rule 3745-400-21 (Construction and demolition debris facility – leachate parameter list).

#818 – Warnecke, Security National Bank

Our major concern with the proposed rules that impact existing facilities is that sufficient time is available for all parties, including financial institutions to both digest and implement any changes to the status quo. Specifically, rules that increase the amount of financial assurance that must be carried by a facility, such as additional post closure care, will be examined very closely with respect to the additional assets that will need to be pledged and the terms of the loan (i.e. letter of credit). We would respectfully request that the implementation of any rule that impacts an existing facility occur one full year after the effective date of that rule. This will assure that financial institutions have sufficient time to analyze and evaluate any changes without creating unreasonable financial hardship on our existing customer base.

#842 – Gubanc, Springfield Landfill

Our greatest concern with the proposed rules affecting existing facilities is that the estimated additional cost to implement them in the time frame specified is so large that the landfill will be forced to close long before it reaches its currently planned capacity. Unless the implementation time frame is significantly lengthened to several years beyond what is proposed and/or the cost of compliance is significantly reduced, early closure appears likely.

#786 - Cyphert, CDAO

The draft revised and new rules for existing C&DD facilities will place an immediate economic hardship on Ohio's existing C&DD facilities. The estimated cost for compliance for the "average" existing facility in the first year is likely to be double its expected gross revenue. The General Assembly never intended C&DD facilities to be treated virtually identical to MSW facilities. The rules must be adjusted to provide reasonable "pay-in" periods to accommodate the expected cost of compliance.

#747 - Cyphert, CDAO

The draft revised and new rules in O.A.C. Chapter 3745-400 directed at "existing" C&DD facilities present a significant financial impact and overly complicated program significantly affecting an overwhelming majority of existing C&DD facilities. Most C&DD facilities in Ohio are privately owned, small businesses. Based upon the available 2009 data, of the 47 licensed and operating C&DD facilities in Ohio, the average annual tonnage is approximately 71,000 tons/year. However, the mean is only 36,000 tons/year with 24 of the 47 licensed/operating facilities falling below 37,000 tons/year. Due to the nationwide recession, waste volumes for Ohio C&DD facilities declined an additional 20% in 2010 from 2009. As a result, any significant increase in regulatory cost will have a dramatic adverse impact upon Ohio's existing C&DD facilities.

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To accommodate comments received from owners and operators of construction and demolition debris facilities regarding the economic impact of increased costs associated with closure financial assurance and newly established post-closure financial assurance, this draft rule package includes the new rule 3745-400-25 (Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities) and revisions to rules 3745-400-08 (Construction and final closure certification), 3745-400-13 (Financial assurance for construction and demolition debris facility final closure), and 3745-400-14 (Wording of the financial instruments). These rules would provide a five year period to reach full funding of closure and post-closure, defer funding of financial assurance for portions of facilities until submittal of the construction certification report, allow for release of financial assurance as engineered components of the final cap system are certified constructed, and allow continued use of financial assurance instruments established prior to the date of the revised rule.

#827 – Page, Lafarge

#831 – Page, Lafarge

822 – Schmidt, Lafarge

826 – Schmidt, Lafarge

It is clear from the hundreds of pages of proposed C&D rules why the Agency needed six years to prepare them. However, from the sheer complexity of the proposed inter-related multi-program rules and the changes to the existing OAC 3745-400 rules, it would seem more appropriate that the very industry that they affect would receive more than 60 days (with a two 30 day "quickie" extensions) to digest the massive proposals.

We strongly urge the OhioEPA to create a Construction and Demolition Landfill Regulatory Task force that includes Agency personnel, health department personnel, industry representatives and experts from the industry. In this way, a constructive, realistic and environmentally sound body of regulations can be created and successfully implemented. In Ohio, there has been a Dredge Disposal Task Force, a Lake Erie Phosphorus Task Force, a Groundwater Task Force and a Brownfields Redevelopment Task Force. With regulations as sweeping as the proposed C&D landfill rules, having a such a task force is not inappropriate.

#794 – Bordelon

This letter requests time extension during which Ohio EPA will accept comments on the referenced draft regulations---until January 31st, 2012.

#815 – Cooper, Vance Environmental

#816 – Cooper, Vance Environmental

Also, I think the deadline of February 28, 2011 for comments on the C&DD rules for existing facilities should be extended to at least October 2011. I believe the comment period for existing facilities should be longer, not shorter, than the comment period on the rules for new facilities.

The owners of existing facilities already have enormous financial investments that are being put at risk with these new rules. The owners of existing facilities need to give their environmental consulting firms the opportunity to read and understand hundreds of pages of new rules. The owners then need to meet with these environmental consultants, quite possibly more than

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once, because the owners have to get an understanding of how the new rules will affect their individual circumstances. The owners will then need to meet as a group and determine which concerns are going to be unique for each site and which concerns will be industry wide and responded to as such. Only at that point will the existing facilities be in a position to meaningfully respond to this massive new regulatory program, a process that will take at least nine months.

#792 – Various

The 2011 release is in part a rerelease of rules originally released in 2006, which are a completely new set of rules compared to current governing rule. The volume of the previous draft, the response to comments from the previous draft rules and the current rules, all of which are required to a complete a review of the current draft, make this review a very daunting task. This review process is made extremely complicated by the lack of supporting documentation and by providing no black line comparisons of the current rule to draft rules or even the 2006 draft rules to the new 2011 draft rules. Although the OEPA has included "crosswalks", these rules are still very lengthy and adequate response requires review and or comparison of over 3000 pages of current or previously released drafts, current rules, response to comments, and supporting documents. The current deadline to comment on the draft rules, initially April 1, 2011 and now partially May 1, 2011, has proved insufficient.

#793 – Various

Due to the interrelated complexity of the rule, massive volume of the rule, the inability to compare prior drafts to the current draft and the numerous questions that must be answered to provide comments, we would request that the OEPA schedule face to face meetings on each relevant section of the rules that the industry deems appropriate, in addition to those outlined below. These meetings would include, among other things, a detailed explanation from the OEPA of the goals of the rule changes, any explanation of supporting documentation used to create the changes in the rules as proposed (i.e. the supporting scientific documents), a detailed explanation of the interpretation of the draft rule, and finally an in-depth discussion of the rule itself. These meetings would be made very productive if release of the supporting documents for discussion and the meeting date were announced for each meeting at least 30 days in advance for review and scheduling of attendees. If this could not be done, each topic should be scheduled at least 30 days in advance and should have two meetings separated by at least a week to allow for review of the documents in the first meeting.

We would suggest that separate meetings be conducted on each as outlined above and include at a minimum the following topics for separate meetings;

1. Site Characterization Report
2. Cell Construction and Closure Engineered Requirements
3. Facility Design Requirements outside of Disposal Area
4. Groundwater/Leachate Monitoring Program
5. Groundwater/Leachate Program conversion from Existing Program to 506
6. Daily Operational/Material Handling/Reporting Procedures and Requirements
7. Operational Requirements
8. Financial Assurance and Calculations

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Although this concept would be a large investment in time by Industry and the OEPA, we believe that this process is imperative to providing the best protection of Human Health and the Environment. This process, if a meeting was to be scheduled every two weeks, would require the extension of the comment period to at least September 1, 2011. This letter requests time extension during which Ohio EPA will accept comments on the referenced draft regulations--- until January 31st, 2012.

Ohio EPA has conducted significant effort on outreach to interested parties in seeking comment. This has included several meetings specific to the January 2011 interested party draft of OAC Chapter 3745-400 at the request of the Construction and Demolition Debris Association of Ohio (CDAO). The agency's purpose in these meetings was to gain a better understanding of industry's comments and provide clarification of the agency's intent in the draft rules. The agency also used these meetings as an opportunity to obtain industry input on various agency concepts towards rule revisions.

Given that Ohio EPA has incorporated significant changes since the January 2011 interested party draft of OAC Chapter 3745-400, the agency released a revised interested party draft for comment in October 2011. Following review of the October 2011 interested party comments, Ohio EPA intends to file proposed rules to revise OAC Chapter 3745-400.

#814 – Wildey

I've been looking through the draft C&DD regs and I can't find much on recycling of C&DD waste. Currently there is a situation going on in Clermont County where a business is demolishing buildings and hauling the entire waste stream to their property to be 'recycled'. He maintains that since he is recycling C&DD he is not regulated. My search through current regulations supports his claim and if he was not taking a large amount of solid waste back to his property I believe he would be exempt. The owner's current procedure is to demolish a building without cleaning it out, pack the debris in a roll off container and dump it on his property.

I have no interest in preventing the recycling of C&DD, however there should be some requirements in the draft regulations on acceptable storage time limits (60-90 days), the amount of solid waste that is acceptable in C&DD that is to be recycled (no more than is acceptable in C&DD to be disposed), and some accountability for the volumes received and dispersed (either by weight or volume). I would also recommend that some guidance on the Best Management Practices for C&DD recycling be included in the draft rules. With all of the homes around the state that are in foreclosure this could be a larger issue in the near future.

This draft rule package is focused on implementing the specific requirements of the statute into rule Chapter 3745-400 and is not addressing the issue of storage. Ohio EPA will retain your comment for consideration in an appropriate future rule package.

While Ohio EPA and licensing authorities do not directly regulate C&DD recycling, we do evaluate whether there are regulated activities occurring at the site and that such regulated activities are in compliance. This often focuses on whether wastes (either C&DD or solid wastes) are being segregated and disposal is not occurring at the facility.

In a separate effort, Ohio EPA is working with Ohio's C&DD recycling industry to identify and promote industry best management practices.

#898 - Brown

I am writing to add a little different perspective to the construction and demolition debris going into Ohio landfills. My husband and I live in Fostoria, Ohio. Our home sits adjacent to what was the 'old C&O railyard' on the south east side of Fostoria. Now it is used primarily as a staging ground for whole trains full of garbage & construction and demolition debris waiting to go the Sunny Farms Landfill south of Fostoria. We feel that nothing addresses the problems that we face. There are laws regarding the operation of the landfill, such as the requirement that the landfill is covered with dirt. We don't have that luxury in our neighborhood. The rail cars are filled to the top with waste and debris then covered with netting, which is often holy or falls off altogether.

The debris blows out of the cars into our yards. The odors are pretty much unbearable as well. We are forced to live with our home closed up year round. We have tried, with no success, to get something done. Our neighborhood is not the only one in Fostoria that suffers due to these parked trains. Please take into consideration the environmental damage that is occurring above ground in the areas surrounding the landfills as well as below ground in the landfills proper.

We have not been able to find any agency that will claim any responsibility for addressing our issues. No one wants to deal with the railroad. It seems as though they are above all laws. If you have any suggestions we would love to hear them.

This draft rule package is focused on implementing the specific requirements of the statute into rule Chapter 3745-400 and is not addressing the issue of storage. Ohio law chapter 3714 does not provide Ohio EPA with specific authority to regulate construction and demolition debris transportation or transfer facilities. Ohio's authority is also limited by federal regulatory oversight of railroads. Ohio EPA will retain your comment for consideration in an appropriate future rule package.

Rule 3745-400-09

#749 -Cyphert, CDAO

As required in draft revised Rule 3745-400-09(B), existing C&DD facilities that have existing groundwater monitoring must comply with Rule 3745-400-10 which, in turn, refers to the multi-program groundwater monitoring rules in new proposed Chapter 3745-506. Moreover, as indicated in draft revised Rule 3745-400-09(B)(4)(c), existing facilities with or required to have a groundwater monitoring system will have to expend significant monies to conduct a new hydrogeologic site investigation to describe not only the uppermost aquifer system ("UAS"), but, as required by draft Rule 3745-506-100(A), also "all significant zones of saturation ... above the uppermost aquifer system underlying the facility".

Currently, an existing facility subject to groundwater monitoring is only required to monitor the first continuous zone of saturation underlying the facility. However, draft Rule 3745-506-100 requires that existing facilities that are required to conduct groundwater monitoring also monitor the UAS and all significant zones of saturation ("SZS") above the UAS. These existing facilities should be grandfathered and not required to revise the existing monitoring system to include other zones of saturation in accordance with draft Rule 3745-506100. This would result in a significant financial burden to the facility. There was no suggestion in H.B. 397 that existing groundwater monitoring of the first continuous zone of saturation beneath the facility was somehow, incapable of detecting a release from the facility. Even though an existing facility has historically demonstrated no impact whatsoever to the groundwater by its existing approved groundwater monitoring system, the facility will be required to conduct a new hydrogeologic site investigation to identify the additional significant saturated zones, as well as the uppermost aquifer system. As a result, a new monitoring system with a dozen wells or more will not be uncommon. The likely cost of installing the additional wells will be between \$20,000 and \$70,000 depending on the hydrogeologic complexity of the site setting. When combined with the other financial requirements in the draft revised rules, the cost will be beyond the means of most existing C&DD facilities. Existing facilities should not have to do or re-do a hydrogeologic site investigation.

#796 – Loper, Bowser-Morner

OAC 3745-400-09: The draft revised Rule 3745-400-09(B), requires existing C&DD facilities that have existing groundwater monitoring comply with all aspects of the multi-program groundwater monitoring rules in Chapter 3745-506. The draft revised Rule 3745-400-09(B)(4)(c) requires existing facilities to expend significant monies to conduct a new site investigation to describe not only the uppermost aquifer system ("VAS"), but also "all significant zones of saturation .above the uppermost aquifer system underlying the facility". Even though an existing facility has historically demonstrated no impact whatsoever to the groundwater by its existing approved groundwater monitoring

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system, the facility will be required to conduct a hydrogeological site investigation to identify additional significant saturated zones, as well as the uppermost aquifer system. Currently, an existing facility is only required to monitor the first continuous zone of saturation. As a result, a new monitoring system with a dozen wells or more will not be uncommon. The cost of installing the additional wells and additional site investigations to define zones of saturation could easily exceed \$100,000 depending on the complexity of the site setting, geologically and hydrogeologically. When combined with the other financial requirements to meet the multi program groundwater monitoring and the draft revised rules, the cost will be beyond the means of most existing C&DD facilities.

#547 – Loper, Bowser-Morner

OAC 3745-400-09: The draft revised Rule 3745-400-09(B), requires existing C&DD facilities that have existing groundwater monitoring comply with all aspects of the multi-program groundwater monitoring rules in Chapter 3745-506. The draft revised Rule 3745-400-09(B)(4)(c) requires existing facilities to expend significant monies to conduct a new site investigation to describe not only the uppermost aquifer system ("VAS"), but also "all significant zones of saturation above the uppermost aquifer system underlying the facility". Even though an existing facility has historically demonstrated no impact whatsoever to the groundwater by its existing approved groundwater monitoring system, the facility will be required to conduct a hydrogeological site investigation to identify additional significant saturated zones, as well as the uppermost aquifer system. Currently, an existing facility is only required to monitor the first continuous zone of saturation. As a result, a new monitoring system with a dozen wells or more will not be uncommon. The cost of installing the additional wells and additional site investigations to define zones of saturation could easily exceed \$100,000 depending on the complexity of the site setting, geologically and hydrogeologically. When combined with the other financial requirements to meet the multi program groundwater monitoring and the draft revised rules, the cost will be beyond the means of most existing C&DD facilities.

#857 – Trent, Waste management

3745-400-09(C)(4)(c) The proposed definition of uppermost aquifer system in Chapter 500 must be revised to retain the existing definition in Chapter 3745-27-10. Note several comments have been submitted related to proposed Chapter 506 and referenced here when existing facilities are being referred to the ground water monitoring program under Chapter 506.

Ohio EPA will not include either rule 3745-400-09 (Site characterization) or 3745-400-10 (Applicability and implementation of the ground water monitoring program) with this draft rule package. There will be no reference to the draft ground water monitoring multi-program chapter 3745-506 in this draft rule package.

Ohio EPA is reviewing ground water monitoring related interested party comments and will address future revisions to ground water monitoring rule 3745-400-10 along with rule 3745-400-09 in a separate rule package.

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Rule 3745-400-10

#548 – Loper, Bowser-Morner

OAC 3745-400-10: It is inappropriate and adds unnecessary complexity for draft revised Rule 3745-400-10(A) to defer to the definitions in the multi-program Rule 3745-500-02 or 3745-520-02 rather than simply revising, as appropriate, the definitions provided in existing Rule 3745400-01. An existing facility should not have to look beyond OAC 3745400 to determine applicable requirements and obligations, including critical definitions.

The complexity of Chapter 3745-506 is overwhelming and unnecessary for existing C&DD facilities. Moreover, the cost of implementation is overwhelming for the average C&DD facility which would be expected in the first year to do a new site investigation, a new ground water monitoring plan and new background sampling. Requiring all existing facilities with groundwater monitoring obligations to comply with the groundwater monitoring program within one year after the effective date of the rule (e.g., 3745-400-10(C)) is unreasonable, unjustified, and beyond the financial means of many existing C&DD facilities. There should be a phase-in period. For example, under the current rule, an existing facility required to do groundwater monitoring must monitor only the first continuous zone of saturation underlying the facility. The existing facility should be allowed to complete any changes to the existing monitoring of the first continuous zone of saturation and to investigate other potential zones of saturation, as well as the uppermost aquifer, during the first year after the effective date of the new rule. Thereafter, during the second year after the effective date of the rule, the facility should be permitted to expand the groundwater monitoring system, if necessary, to other zones of saturation, as well as the uppermost aquifer. A two to three year "phasein" of expensive additional groundwater monitoring is a reasonable request.

The multiple reference in Rule 3745-400-10(C) to "all potential sources of contamination" that exist at the facility is confusing and ambiguous. If a facility has double-walled leachate tanks outside of the limit of debris placement, must the facility install additional groundwater monitoring wells for these tanks? Similarly, if the facility has proper diesel fuel tanks that comply with BUSTR, must these tanks be monitored? What about surface water management structures such as retention basins or sediment ponds? Areas of future debris disposal should not be considered potential sources of contamination until debris placement occurs.

#546 – Loper, Bowser-Morner

The draft revised and new rules in O.A.C. Chapter 3745-400 affecting existing C&DD facilities present a significant financial impact and overly complicated program significantly affecting an overwhelming majority of existing C&DD facilities. BowserMorner objects to the Agency's development of the so-called "multi-program" rules that are referenced in the draft regulatory programs for existing facilities. These multiprogram rules, such as the groundwater monitoring rules in proposed O.A.C. Chapter 3745-506, add an unnecessary layer of complexity, adversely affecting small

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business. The proposed "multi-program" groundwater monitoring rules exceed over 32,000 words. In comparison, the existing C&D groundwater monitoring rules comprise only 1,990 words and the federal solid waste monitoring rules comprise only 6,700 words. The number of words in the proposed multi-program groundwater monitoring rules cannot begin to convey the complexity and adverse impact on small business. Bowser-Morner and its clients object to referencing the multi-program rules, including the proposed Chapter 3745-506, in the proposed revisions to O.A.c. Chapter 3745-400.

#800 – Loper, Bowser-Morner

The complexity of Chapter 3745-506 is overwhelming and unnecessary for existing C&DD facilities. Moreover, the cost of implementation is overwhelming for the average C&DD facility which would be expected in the first year to do a new site investigation, a new ground water monitoring plan and new background sampling. Requiring all existing facilities with groundwater monitoring obligations to comply with the groundwater monitoring program within one year after the effective date of the rule (e.g., 3745-400-10(C)) is unreasonable, unjustified, and beyond the financial means of many existing C&DD facilities. There should be a phase-in period. For example, under the current rule, an existing facility required to do groundwater monitoring must monitor only the first continuous zone of saturation underlying the facility. The existing facility should be allowed to complete any changes to the existing monitoring of the first continuous zone of saturation and to investigate other potential zones of saturation, as well as the uppermost aquifer, during the first year after the effective date of the new rule. Thereafter, during the second year after the effective date of the rule, the facility should be permitted to expand the groundwater monitoring system, if necessary, to other zones of saturation, as well as the uppermost aquifer. A two to three year "phasein" of expensive additional groundwater monitoring is a reasonable request.

#797 – Loper, Bowser-Morner

It is inappropriate and adds unnecessary complexity for draft revised Rule 3745-400-10(A) to defer to the definitions in the multi-program Rule 3745-500-02 or 3745-520-02 rather than simply revising, as appropriate, the definitions provided in existing Rule 3745-400-01. An existing facility should not have to look beyond OAC 3745-400 to determine applicable requirements and obligations, including critical definitions.

#801 – Loper, Bowser-Morner

400-10(C) The multiple reference in Rule 3745-400-10(C) to "all potential sources of contamination" that exist at the facility is confusing and ambiguous. If a facility has double-walled leachate tanks outside of the limit of debris placement, must the facility install additional groundwater monitoring wells for these tanks? Similarly, if the facility has proper diesel fuel tanks that comply with BUSTR, must these tanks be monitored? What about surface water management structures such as retention basins or sediment ponds? Areas of future debris disposal should not be considered potential sources of contamination until debris placement occurs.

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#858 – Trent, Waste management

3745-400-10(A) See comments related to Chapter 500-02 submitted under separate cover.

#748 -Cyphert, CDAO

The CDAO objects to the Agency's development of the so-called "multi-program" rules that are referenced in the draft revised rules for existing facilities. These multi-program rules, such as the proposed groundwater monitoring rules in O.A.C. Chapter 3745-506, add an unnecessary layer of complexity, adversely affecting small business. While Chapter 3745-506 might make sense for large regional municipal solid waste facilities owned and operated by a few "national" companies, the program fails to recognize the substantial difference between C&DD and MSW facilities that was a cornerstone to the C&DD Study Committee's recommendation to the General Assembly in 2005. Significantly, most MSW facilities are owned and operated by large "Fortune 500" corporations with extensive in-house engineering, hydrogeology, and technical staffs, supported by significantly more waste volume and facility size. In contrast, most C&DD facilities in Ohio are operated by family owned, small businesses with no in-house engineering, hydrogeology or technical staffs. As a result, the draft revised rules must justify the significant adverse financial impact on these small businesses. The proposed "multi-program" groundwater monitoring rules exceed over 32,000 words. In comparison, the existing C&DD groundwater monitoring rules comprise only 1,990 words and the federal solid waste monitoring rules comprise only 6,700 words. The number of words in the proposed multi-program groundwater monitoring rules cannot begin to convey the complexity and adverse impact on small business. The General Assembly has never given Ohio EPA authority to subject MSW and C&DD facilities to identical substantive rules. On the contrary, the General Assembly recognized that C&DD facilities present reduced risks to human health, safety and the environment, as compared to MSW or other waste disposal facilities, thereby, requiring separate programs that were individually tailored to address the different risks. Accordingly, the CDAO and its members object to referencing the multi-program rules, including proposed Chapters 3745-500 and 3745-506, in the proposed revisions to O.A.C. Chapter 3745-400.

#750 -Cyphert, CDAO

It is inappropriate and adds unnecessary complexity for draft revised Rule 3745-400-10(A) to defer to the definitions in the multi-program Rule 3745-500-02 or 3745-520-02 rather than simply revising, as appropriate, the definitions provided in existing Rule 3745-400-01. An existing facility should not have to look beyond the four corners of O.A.C. Chapter 3745-400 to determine applicable requirements and obligations, including critical definitions.

#751 -Cyphert, CDAO

The CDAO and its members continue to object to provisions such as draft revised Rule 3745-400-10(B) that refers an existing facility to the requirements in the proposed multi

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program Chapter 3745-506 for groundwater monitoring requirements. The complexity of Chapter 3745-506 is overwhelming and unnecessary for existing facilities. Current groundwater data for existing facilities that monitor the first continuous zone of saturation underlying the facility does not demonstrate that it is necessary to add monitoring of all significant zones of saturation and the uppermost aquifer. Moreover, the cost of implementation is overwhelming for the "average" C&DD facility which, in the first year of application, would be expected to conduct a new hydrogeologic site investigation (estimated for a typical site not currently monitoring the UAS to be \$45,000), prepare a new groundwater monitoring plan that includes a detection plan and statistical program (\$5,000-\$7,500), collect new background samples (\$25,000-\$30,000), plus install the required additional wells in the saturated zones and uppermost aquifer (\$25,000-\$70,000) -- for a total cost of compliance of between \$95,000 to \$152,500. For the "average" facility (the mean of the 47 existing and operating C&DD facilities) accepting 36,000/tons annually at an average rate of \$10.00/ton (excluding disposal fees), the impact on revenues is significant -- an additional \$2.64 to \$4.24/ton would be needed to be charged to fund the groundwater monitoring requirements alone. This would represent an immediate increase to customers of 26% to 42% -- or a similar decrease to gross revenue. Such increases would not be possible in today's recessionary economy and a decrease to net revenue would make all these facilities unprofitable.

#752 -Cyphert, CDAO

The subparagraphs of draft revised Rule 3745-400-10(B) which purport to exclude certain existing facilities from groundwater monitoring are very confusing. Sub-paragraphs (1) and (2) appear to be the same exemption. For these sub-paragraphs, at the very least, each subpart (a), (b), and (c) should be connected by an "or" to indicate that each criteria independently excludes the facility from groundwater monitoring. This rule should also clarify that groundwater monitoring wells installed at the cost of the licensing authority pursuant to Ohio Revised Code, Sections 3714.071 or 3714.072, do not subject the facility to groundwater monitoring under proposed Chapter 3745-506 if the facility, otherwise, was not required to have a groundwater monitoring system under the existing rules. In addition, a facility that was not required to have a groundwater monitoring system under the existing rules but volunteered to construct one or more monitoring wells, should not be required to install a groundwater monitoring system in accordance with proposed Chapter 3745-506.

#753 -Cyphert, CDAO

Requiring all existing facilities with groundwater monitoring obligations to comply with the groundwater monitoring program within one year after the effective date of the rule (e.g., 3745-400-10(C)) is unreasonable and beyond the financial means of many existing C&DD facilities. H.B. 397 did not require existing facilities to expand their existing groundwater monitoring systems.

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#754 -Cyphert, CDAO

The multiple reference in Rule 3745-400-10(C) to "all potential sources of contamination" that exist at the facility is confusing and ambiguous. If a facility has doublewalled leachate tanks outside of the limit of debris placement, must the facility install additional groundwater monitoring wells for these tanks? Similarly, if the facility has proper diesel fuel tanks that comply with BUSTR, must these tanks be monitored? What about surface water management structures such as retention basins or sediment ponds? It makes no sense to require groundwater monitoring of an employee parking lot or any other structure outside of the limits of debris placement.

#755 -Cyphert, CDAO

The concepts and proposed changes in the groundwater monitoring rules as applied to existing C&DD facilities deserve considerable time and consideration. The goals, background, rationale and data supporting these changes have not been presented to the public or industry. We would request that the Ohio EPA provide all background data and justification and schedule sufficient meetings with industry and interested parties to present the needed information and data and to allow industry to fully comment on the rules.

#756 -Cyphert, CDAO

Reference to compliance with the revised groundwater monitoring requirements in Rule 3745-400-10, which, in turn, refers to compliance with the multi-program rules in Chapter 3745-506 continues to be problematic and overly complex. For example, in Rule 3745-400-11(D)(4), the existing facility cannot place any debris into a newly active area until it has implemented the entire new groundwater monitoring requirements. Even though a new certified cell might not overlay a particular zone of saturation (and, therefore, can have no impact), failure to implement the plan for that zone, which may be disputed and unresolved, would cause the entire facility to shut down until a plan was approved by the licensing authority and implemented.

#385 – Van Fossen, Ohio Contractors Association

The proposed rules are extremely complicated and will have a significant deleterious financial impact that will affect the majority of existing CDD sites in Ohio, most of which are small, privately-owned businesses. We oppose the Agency's development of the "multi-program" rules that are referenced in the draft revised rules for existing facilities. The multi-program approach adds a new level of complication and confusion for those attempting to comply with Ohio's CDD regulations. For example, as required in draft revised rule 3745-400-09(B), existing CDD sites that have existing groundwater monitoring must comply with rule 3745-400-10 which in turn, refers to the multi-program groundwater monitoring rules in the newly proposed Chapter 3745-506. In addition, existing facilities should be grandfathered and not required to revise their existing monitoring system to include additional saturation zones in accordance with draft rule 3745-506-100. This change alone would require existing facilities to move far beyond their current requirements to monitor the uppermost aquifer system, costing

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them many thousands of dollars in establishing new monitoring systems with multiple wells.

#843 - Gubanc, Springfield Landfill

Of problems with these rules concern the time required to establish the baseline, the number of parameters for which baselines must be established and the increased complexity that is injected into the rules because of the continued referral to the multi-program rules (OAC 3745-500 & OAC 3745-520) which are to only apply to new C&DD facilities or C&DD landfills that propose to expand beyond their currently licensed footprint. We have collected groundwater data for over 10 years. There is no reason why that data cannot be used to establish the baseline for existing groundwater, including the upper control limit for each parameter currently analyzed. The proposed ground water monitoring rules completely discards what data was collected before and assumes a baseline must be established with data collected on a quarterly schedule, beginning after the rules become effective. We believe such an approach has the net effect of increasing operating costs beyond what is reasonable and is a de facto shutdown of the landfill. Until the ground water monitoring program allows the applicant to utilize previously collected data as the source of establishing the baseline, and significantly lengthens the implementation schedule, the proposed rules are unreasonable and too costly to implement.

Ohio EPA will not include 3745-400-10 (Applicability and implementation of the ground water monitoring program) with this draft rule package.

Ohio EPA is reviewing ground water monitoring related interested party comments and will address future revisions to ground water monitoring rule 3745-400-10 in a separate rule package.

Note that this draft rule package does include rule 3745-400-20 (Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters) and rule 3745-400-21 (Construction and demolition debris facility – leachate parameter list). Ohio EPA is taking an alternative approach to implement the requirements found in statute ORC 3714.02(F) through subject specific draft rules 3745-400-20 and 3745-400-21. While these are new rules for interested party comment, the subject matter and much of the language was released January 7, 2011, as found in the interested party draft of rule 3745-400-10, rule 3745-400-11, and the parameter list as rule 3745-506-703.

#828 – Page, Lafarge

#825 – Schmidt, Lafarge

Although this has been stated several times before, it bears repeating: The basis of many of the proposed regulations are the "Leachate Study" and the "Groundwater Study" that the Agency undertook several years ago. Both of these studies are fraught with technical, scientific and statistical problems and do not merit the establishment of massive and permanent regulations of an entire industrial sector.

While Ohio EPA will not include 3745-400-10 (Applicability and implementation of the ground water monitoring program) with this draft rule package, Ohio EPA notes that since the public release of these studies for public comment, there have been few comments specifically identifying technical, scientific and statistical errors. Only a few comments have noted a few factual errors, such as the status of a

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facility's ground water monitoring system or noted a discrepancy in split sample results. Each such comment has been investigated and will be appropriately corrected in the final report. The agency's draft studies are:

- "An Evaluation of Leachate from Ohio's Construction and Demolition Debris Landfills" [available at: http://www.epa.ohio.gov/portals/34/document/newsPDFs/n_cdd_leachate_evaluation.pdf]
- "A Comparison of Selected Parameters from Ohio Construction and Demolition Debris Leachate with Ohio Municipal Solid Waste [available at: http://www.epa.ohio.gov/portals/34/document/newsPDFs/n_cdd_msw_leachate_comparison.pdf]
- "Hydrogeologic Evaluation of 99 Construction & Demolition Debris Facilities in Ohio" [available at: <http://www.epa.ohio.gov/LinkClick.aspx?fileticket=5HglxHNMzjk%3d&tabid=1763>]

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Rule 3745-400-11

#799 – Loper, Bowser-Morner

400-11(D)(4) Reference to compliance with the revised groundwater monitoring requirements in 3745-400-10, which, in turn, refers to compliance with the multi-program rules in Chapter 3745-506 continues to be problematic and overly complex. For example, in Rule 3745-400-11(D)(4), the existing facility cannot place any debris into a newly active area until it has implemented the entire new groundwater monitoring requirements. Even though a new certified cell might not overlay a particular zone of saturation (and, therefore, can have no impact), failure to implement the plan for that zone, which may be disputed and unresolved, would cause the entire facility to shut down until a plan was approved by the licensing authority and implemented.

#415 – Stepic, URS

Proposed OAC 3745-400-11 - Operation of Facilities

Reference to compliance with the revised groundwater monitoring requirements in Rule 3745-400-10, which, in turn, refers to compliance with the multi-program rules in Chapter 3745-506 continues to be problematic and overly complex. For example, in Rule 3745-400-11(D)(4), the existing facility cannot place any debris into a newly active area until it has implemented the entire new groundwater monitoring requirements. Even though a new certified cell might not overlay a particular zone of saturation (and, therefore, can have no impact), failure to implement the plan for that zone, which may be disputed and unresolved, would cause the entire facility to shut down until a plan was approved by the licensing authority and implemented.

#386 – Van Fossen, Ohio Contractors Association

There are many other examples of costly and egregious changes to the CDD regulations. A sampling can be found in the following sections:

-Operation of Facilities: 3745-400-11(D) (4) Inability to place debris into newly active areas until the site has implemented the entire new groundwater monitoring requirements;

Ohio EPA will not include 3745-400-11 (Operation of facilities) with this draft rule package.

Note that this draft rule package does include rule 3745-400-20 (Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters) and rule 3745-400-21 (Construction and demolition debris facility – leachate parameter list). Ohio EPA is taking an alternative approach to implement the requirements found in statute ORC 3714.02(F) through subject specific draft rules 3745-400-20 and 3745-400-21. While these are new rules for interested party comment, the subject matter and much of the language was released January 7, 2011, as found in the interested party draft of rule 3745-400-10, rule 3745-400-11, and the parameter list as rule 3745-506-703.

#798 – Loper, Bowser-Morner

OAC 3745-400-11(R)(2)(b): Only one representative sample of leachate should be collected per sampling event. Leachate is often pumped to a storage tank in which a sample can be collected.

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The additional costs for facilities with multiple collection points gives an unfair advantage to the facilities that do not have a collection system or those with only one collection point. Furthermore, sites with side slope risers would be required to install a valve in order to obtain a discrete sample from each sump location. A representative sample can more easily be obtained from the on-site storage tank.

#549 – Loper, Bowser-Morner

OAC 3745-400-11(R)(2)(b): Only one representative sample of leachate should be collected per sampling event. Leachate is often pumped to a storage tank in which a sample can be collected. The additional costs for facilities with multiple collection points gives an unfair advantage to the facilities that do not have a collection system or those with only one collection point. Furthermore, sites with side slope risers would be required to install a valve in order to obtain a discrete sample from each sump location. A representative sample can more easily be obtained from the on-site storage tank.

Reference to compliance with the revised groundwater monitoring requirements in 3745-400-10, which, in turn, refers to compliance with the multi-program rules in Chapter 3745-506 continues to be problematic and overly complex. For example, in Rule 3745-400-11 (D)(4), the existing facility cannot place any debris into a newly active area until it has implemented the entire new groundwater monitoring requirements. Even though a new certified cell might not overlay a particular zone of saturation (and, therefore, can have no impact), failure to implement the plan for that zone, which may be disputed and unresolved, would cause the entire facility to shut down until a plan was approved by the licensing authority and implemented.

#757 - Cyphert, CDAO

The requirement in 3745-400-11(R)(2)(b) to sample each leachate sump is unreasonable. Only a representative sample from the facility should be required. Moreover, the massive changes in Section 3745-400-11(R) regarding groundwater monitoring and leachate sampling and analysis are unreasonable.

#416 – Stepic, URS

Proposed OAC 3745-400-11(R)(2)(b) – Leachate Sampling

Only a representative sample from the facility should be required. Moreover, the massive changes in Section 3745-400-11(R) regarding groundwater monitoring and leachate sampling and analysis is unreasonable.

These comments now pertain to rule 3745-400-20 (Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters). Sampling from a storage tank will not give the same results as sampling leachate from sumps. The process of flowing through pipes and pumped into a vented storage tank leads to release of volatile parameters, possible precipitation products, and conditions not representative of leachate in the landfill. Sampling leachate from sumps will provide a sample more indicative of the leachate as it exists within the landfill. No change has been made to the proposed language.

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Leachate quality is dependent upon the leachable characteristics and type of debris of debris disposed in the landfill. Absent a statistical demonstration of consistent leachate quality between sumps, Ohio EPA believes it is unreasonable to assume that one sample from a single sump will provide a representative sample indicative of the quality of leachate as it exists in the landfill.

#853 – Trent, Waste management

3745-400-11 (P)(3) - Leachate Recirculation. We have several concerns with the general authorization of leachate recirculation at CDD facilities when there can be significant presence of large quantities of wallboard containing gypsum. Experience has shown these materials when wet can produce hydrogen sulfide gas that requires significant controls such as collection and monitoring actions. While the rules acknowledge agency review and approval are required, there should be a general statement prohibiting leachate recirculation and allow a facility to seek approval when sufficient precautions, including monitoring is performed.

#860 – Trent, Waste management

3745-400-11(P)(3): Leachate recirculation at C&DD sites should be prohibited and controlled due to high presence of gypsum wallboard found in C&DD materials. Evidence of hydrogen sulfide and other environmental concerns have been known to be present when leachate is recirculated within C&DD sites.

Leachate recirculation: In this draft rule package, Ohio EPA is seeking to adopt rule 3745-400-20 to implement ORC 3714.02(F)(1) requirements that facilities that do recirculate leachate sample leachate quarterly.

Other than the draft rule 3745-400-12 closure requirement to cease leachate recirculation at the start of closure, Ohio EPA is not seeking to specifically address the broader issue of leachate recirculation in this rule package.

#835 Tussel, Dane

3745-400-11 (A) Applicability - This section states that an operator shall comply with the requirements and operational criteria specified in this rule until final closure has been completed in accordance with rule 3745-400-12 of the Administrative code, AND the closure certification as required by paragraph (D) of rule 3745-400-08 of the Administrative Code has been submitted to and written concurrence received from the licensing authority ... This would mean that an operator would be required to maintain things such as a valid license, daily logs, prohibited waste records, etc., during the time the facility is being closed and until the facility is deemed certified closed by the licensing authority. There is no need to maintain items such as this once the facility cease accepting debris.

Ohio EPA will not include 3745-400-11 (Operation of facilities) with this draft rule package. However, Ohio EPA notes that paragraph (A) applicability requiring compliance with operational rules until final closure is complete has existed since the rule was first adopted in 1996 and last revised in 2002. Ohio EPA also notes that the same approach exists in the solid waste landfill operational rule since at least 1996. Ohio EPA is not aware of examples of confusion about facilities submitting license

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renewal applications after declaring or triggering mandatory closure or continuing to complete daily logs. However, Ohio EPA does recognize that the language may not be specific on these points and other points.

While Ohio EPA is not seeking to revise rule 3745-400-11 with this draft rule package, we will continue to provide clarity on this issue to facility operators through regulatory assistance and daily log and license application instructions. Ohio EPA will retain this comment for future consideration.

#836 Tussel, Dane

3745-400-11(0)(3) Debris Placement - This section speaks on the need for the licensing authority to inspect a newly active disposal area within 10 days of receiving the construction certification report. Then there is a comment following the rule which says "In any case the constructed disposal area must be inspected by the licensing authority before placement of debris". Need to either remove the 10 day time frame or remove the comment. The time frame is worthless with the comment that is in place.

Ohio EPA will not include 3745-400-11 (Operation of facilities) with this draft rule package. Ohio EPA agrees that the comment language in rule is unnecessary and will retain the suggestion of deleting this comment for a future rule package. Paragraph (D) makes it clear that no debris placement may occur prior to inspection by the licensing authority and paragraph (D)(3) clearly states that the licensing authority shall inspect within ten working days of receipt of the construction certification report.

#840 Tussel, Dane

General: With the amount of recycling that is occurring at these facilities, many problems have developed especially with the storage of "sorted" material. It is recommended that regulations be put in place to address these concerns.

Ohio EPA will not include 3745-400-11 (Operation of facilities) with this draft rule package. Ohio EPA will retain this comment for future consideration.

#841 Tussel, Dane

General: There is a need to revise the current disposal fee system. All material arriving at a C&DD facility needs to be assessed the disposal fee. If the material is further processed and removed from the site and legitimately recycled, then the operator should be permitted to subtract the material from the disposal fee.

Ohio EPA will not include 3745-400-11 (Operation of facilities) with this draft rule package. Ohio EPA will retain this comment for future consideration.

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Rule 3745-400-12

#802 – Loper, Bowser-Morner
 #550 – Loper, Bowser-Morner;
 #758 -Cyphert, CDAO

OAC 3745-400-12: The inclusion of "aspirational requirements" in Rule 3745-400-12(A) is inappropriate. If the facility closes in accordance with the approved design, construction, and operating requirements, the closure must be approved. A licensing authority should not be permitted to require additional work simply because it subjectively believes that compliance with the approved plans haven't "minimized" maintenance, erosion, infiltration of surface water, etc. The term "minimize" is incapable of any objective standard.

OAC 3745-400-12: The inclusion of "aspirational requirements" in Rule 3745-400-12(A) is inappropriate. If the facility closes in accordance with the approved design, construction, and operating requirements, the closure must be approved. A licensing authority should not be permitted to require additional work simply because it subjectively believes that compliance with the approved plans haven't "minimized" maintenance, erosion, infiltration of surface water, etc. The term "minimize" is incapable of any objective standard.

#417 – Stepic, URS

Proposed OAC 3745-400-12 - Final Closure of Facilities: The inclusion of “aspirational requirements” in Rule 3745-400-12(A) is inappropriate. If the facility closes in accordance with the approved design, construction, and operating requirements, the closure must be approved. A licensing authority should not be permitted to require additional work simply because it subjectively believes that compliance with the approved plans hasn’t “minimized” maintenance, erosion, infiltration of surface water, etc. The term “minimize” is incapable of any objective standard.

The triggers for “mandatory closure” in Rule 3745-400-12(B) need to be reconsidered and clarified to specify the requisite timeframe to initiate closure. Sub-section (B)(4) is obsolete since a facility that failed to apply for a license prior to April 1, 1997 has long since closed. Sub-section (B)(5) does not appear necessary -- a facility whose initial license application has been finally denied, would not have been permitted to accept debris and, therefore, there is nothing to close.

The stricken language in Rule 3745-400-12(D) (“Timing of closure”), should be retained. There are numerous good reasons to allow the licensing authority to grant additional time to initiate or complete closure. (E.g., local natural disasters, extreme weather conditions, unforeseen “force majeure” circumstances, etc.).

While the draft rule changes the structure of paragraph (A), this rule has established these closure performance standards since 1996 and last revised in 2002. Ohio EPA is unaware of situations of a licensing authority subjectively requiring additional work and requests interested party identification of such instances. Given the focus of this rule package is to implement specific statutory requirements, Ohio EPA will retain the current rule language except for correction of an incorrect citation.

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837 Tussel, Dane

3745-400-12(E)(8) Construction of cap system - This section requires the cap to be in place within one year of the facility ceasing to accept waste. In certain cases, this may not be possible. Recommend putting a comment in here suggesting that the licensing authority can grant an extension if the operator can demonstrate/justify the need for an extension.

#803 – Loper, Bowser-Morner

OAC 3745-400-12(D): The ability of the licensing authority to grant a time extension has been eliminated and should be retained to ensure proper closure if additional time is required.

#551 – Loper, Bowser-Morner

OAC 3745-400-12(D): The ability of the licensing authority to grant a time extension has been eliminated and should be retained to ensure proper closure if additional time is required.

#760 -Cyphert, CDAO

The stricken language in Rule 3745-400-12(D) ("Timing of closure"), should be retained. There are numerous good and valid reasons to allow the licensing authority to grant additional time to initiate or complete closure. E.g., local natural disasters, extreme weather conditions, unforeseen "force majeure" circumstances, etc.

#762 -Cyphert, CDAO

Unless an extension of time is authorized by Rule 3745-400-12(D), then Rule 3745-400-12(E)(8) needs to contain a provision to allow for an extension of time to complete construction of the cap system or the establishment of a dense vegetation cover.

DMWM intent is that the licensing authority use the statutory exemption authority under ORC 3714.04 to grant a time extension. The existing rule language is vague as to what authority is to be utilized. The language struck in paragraph (D) would be replaced with this comment.

[Comment: The licensing authority may utilize authority under Section 3714.04 of the Revised Code should a time extension for completion of closure be determined appropriate.]

#759 -Cyphert, CDAO

The triggers for "mandatory closure" in Rule 3745-400-12(B) need to be reconsidered and clarified to specify the requisite timeframe to initiate closure. Sub-section (B)(4) is obsolete since a facility that failed to apply for a license prior to April 1, 1997 has long since closed. Subsection (B)(5) does not appear necessary -- a facility whose initial license application has been finally denied, would not have been permitted to accept debris and, therefore, there is nothing to close. If section (B)(5) is meant to refer to a pre-existing 1990 facility that applied for an initial license in 1997 but the license was denied, the facility has long since closed.

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Paragraphs (B)(4) and (5) refer to mandatory closure of existing facilities (as of 1996) that failed to submit an initial license application in 1997 or had that initial license application denied as a final action. The question is whether this language is still necessary. Ohio EPA believes the key point of this language is the obligation for mandatory closure. Have all facilities in this situation in 1996 completed the required closure?

Ohio EPA seeks interested party and health department comment regarding the continued need for these paragraphs.

#804 – Loper, Bowser-Morner

#552 – Loper, Bowser-Morner

OAC 3745-400-12(E)(11): Once an owner ceases to accept debris, it is no longer necessary for the closure cost to be updated especially when the final closure is required to be completed in 12 months. The post closure care financial assurance update should be based on the date of approval by the licensing authority not by the anniversary of the date the facility ceased to accept waste.

During facility operation, the review of closure and post-closure cost estimates is submitted annually with the license renewal application. Since there is no renewal license required after triggering mandatory closure, the rule needs to identify when the review of closure and post-closure cost estimates needs to be submitted. 12 months is a consistent standard and fits well with the construction of final cap in 12 months. The establishment of dense vegetative cover to complete the final closure of the facility may take 24 months. There is also the possibility of an appeal based construction delay of final cap [paragraph (E)(8)(b)]. Revising the closure cost estimate (probably downward if construction certification reports have been submitted) seems like an appropriate and consistent timeframe to review the closure cost estimate. No change in response to comment.

#387 – Van Fossen, Ohio Contractors Association

There are many other examples of costly and egregious changes to the CDD regulations. A sampling can be found in the following sections: -Operation of Facilities: 3745-400-11(D) (4) Inability to place debris into newly active areas until the site has implemented the entire new groundwater monitoring requirements;

Ohio EPA will not include 3745-400-10 (Applicability and implementation of the ground water monitoring program) with this draft rule package.

Ohio EPA is reviewing ground water monitoring related interested party comments and will address future revisions to ground water monitoring rule 3745-400-10 in a separate rule package.

#854 – Trent, Waste management

3745-400-12 (E)(2) New Key Employee Review During Closure ORC 3714.052 envisions conducting background disclosure and compliance reviews when a facility is requesting a new permit or license. This review is not necessary when a facility is undergoing closure and post-

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closure care. In many cases, a consultant or contractor is conducting the work performed during closure activities. This should be removed from the requirements.

#861 – Trent, Waste management

3745-400-12(E)(2): Section 3714.052 envisions conducting the background disclosure review when a facility is requesting a new permit or license. There is no requirement for submitting the information during a closure period, especially when a consultant or employee is used to conduct closure and post-closure activities. This section should be deleted.

#761 -Cyphert, CDAO

The provisions of Rule 3745-400-12(E)(2) [employing a new key employee] appears to be too broad and unnecessary. If the facility hires an outside contractor to construct the standard cap system, that contractor and its supervisors would presumably exercise supervision with respect to construction of the cap. Does this provision mean that the contractor and its supervisors must undergo a "background check", thereby delaying the installation of the cap until the background check is completed? It is unreasonable to hold the facility owner or operator responsible if an employee of the independent contractor is "disqualified". The definition of "key employee" in Ohio Revised Code, Section 3714.052(G) was restricted to an "individual" employed by an "applicant". Nevertheless, must the "applicant" submit information on a newly employed individual that may have supervisory control over the contractor who is obligated to complete the standard cap in accordance with the rules? The primary objective of Ohio Revised Code, Section 3714.052 was to identify background problems with "owners" or "operators" who were about to engage in landfilling operations within the State of Ohio. At the point of closure, all "operations" have ceased. It appears cumbersome to require the contractor, or a new facility employee that supervises the contractor to undergo a background check when no further operations will occur and the criteria for construction of the cap is straight-forward and, eventually, must be certified by a professional engineer. If a background check would be required and, thereby, delays the initiation of closure, additional time must be granted to complete the closure.

#419 – Stepic, URS

Proposed OAC 3745-400-12(E)(2) - Employing a new key employee

This appears to be too broad and unnecessary. If the facility hires an outside contractor to construct the standard cap system, that contractor and its supervisors would presumably exercise supervision with respect to construction of the cap. Does this provision mean that the contractor and its supervisors must undergo a "background check", thereby delaying the installation of the cap until the background check is completed? The definition of "key employee" in Ohio Revised Code, Section 3714.052(G) appears to be restricted to an "individual" employed by an "applicant". Nevertheless, must the "applicant" submit information on a newly employed individual that may have supervisory control over the contractor who is obligated to complete the standard cap in accordance with the rules? The primary objective of Ohio Revised Code, Section 3714.052 was to identify background problems with "owners" or "operators" who were about to engage in landfilling operations within the State of Ohio. At the point of closure, all "operations" have ceased. It appears cumbersome to require the contractor, or a new facility employee that supervises the contractor to undergo a background check when

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no further operations will occur and the criteria for construction of the cap is straight-forward and, eventually, must be certified by a professional engineer. If a background check would be required and, thereby, delays the initiation of closure, additional time must be granted to complete the closure.

The rule language is merely intended to refer to any applicable compliance disclosure requirements in section 3714.052 of the Revised Code when employing a new key employee. Section 3714.052 and uncodified section 3(C) of Amended Substitute House Bill 397 answers what, if any, obligations a specific facility may have regarding a key employee. Most of section 3714.052 obligations are triggered by a permit-to-install except for certain facilities licensed in accordance with uncodified section 3(C) of Amended Substitute House Bill 397. ORC 3714.052(D) does address transfer of licenses and requirements for submittal of compliance disclosure information and ORC 3714.052(E) employment of a new key employee. No change in response to this comment.

Uncodified Section 3(C) of Am. Sub.H. B. No. 397 Notwithstanding the amendments to Chapter 3714. of the Revised Code by this act and except as otherwise provided in this division, beginning January 1, 2006, and until the effective date of the rules adopted under division (A) of section 3714.02 of the Revised Code, as amended by this act, a person may submit an application to a board of health or the Director, as applicable, for a license to establish or modify a construction and demolition debris facility, and such an application shall be reviewed and the license shall be issued or denied in accordance with the provisions of that chapter as they existed on July 1, 2005. However, unless division (G)(2) of section 3714.03 of the Revised Code, amended by this act, applies to the facility, a board of health or the Director, as applicable, shall apply all of the siting criteria established in section 3714.03 of the Revised Code by this act to such an application and shall deny the application if the facility that is the subject of the application will not comply with any of those siting criteria. In addition, the applicant for the license shall submit the information that is required from applicants for permits to install under section 3714.052 of the Revised Code, as enacted by this act. An application for a license may be denied if the information regarding the applicant indicates any of the reasons specified in division (B) of that section for the denial of an application for a permit to install.

#862 – Trent, Waste management

3745-400-12(D)(6): The post closure care period is for five years so this should be extended to five years but not deleted implying the sign should never be removed.

Upon consideration of the comment, Ohio EPA will retain the current language in the proposed rule specifying that the facility closed sign be maintained for the period of closure.

#763 - Cyphert, CDAO

The provision of Rule 3745-400-12(E)(12) ("to retain all documents") should specify an express period of time. There is no need to keep, for example, daily logs of operations indefinitely. Similarly, Rule 3745-400-12(E)(13) ("final closure records") should specify a reasonable retention period.

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#420 – Stepic, URS

Proposed OAC 3745-400-12(E)(12) – retention of documents: This regulation should specify an expressed period of time. There is no need to keep, for example, daily logs of operations indefinitely. Similarly, Rule 3745-400-12(E)(13) (“final closure records”) should specify a reasonable retention period. The regulations already required submittal of documents to the licensing authority and Ohio EPA upon completion of closure activities. As such, documents are already made available to Ohio EPA and the licensing authorities. The requirement for the owner/operator to make extra sets of records available for the purpose of Ohio EPA and/or the licensing authority is redundant.

Paragraph (E)(12) requires retention of authorizing documents and daily logs of operation during the 1-2 year period of closure. Paragraph (D)(9) of rule 3745-400-16 has a similar requirement during the 5 year post-closure period. After the 5 year post-closure period, the owner or operator is no longer required to maintain any documents (unless the licensing authority extends the post-closure period in accordance with rule 3745-400-17). The retention period is therefore 6-7 years after ceasing acceptance of debris. No change in response to comment.

#845 – Gubanc, Springfield landfill

Any cost estimate requires assumptions in order to arrive at a number. One of the more significant assumptions affecting closure cost of any C&DD landfill is the prompt acceptance of the Final Closure Certification Report by the Licensing Authority without request for additional work.

#764 -Cyphert, CDAO

The provisions of Rule 3745-400-12(G) (“Completion”) are unreasonable. Upon submittal of the final closure certification report, the licensing authority should be required to accept or deny the certification report within thirty days. As currently written, the licensing authority could withhold “concurrence” indefinitely. Failure to either approve or deny the certification may not be a “final action” reviewable by the Environmental Review Appeals Commission. E.g., *Trans Rail America, Inc. v. Enyeart* (2009), 123 Ohio St.3d 1, 2009-Ohio-3624. Moreover, concurrence with the certification report should not be dependent upon the owner/operator's compliance with unrelated authorizing documents, rules and/or orders. If the certification report is approvable, past violations of issues unrelated to closure should not be a basis for refusing to acknowledge that closure has been accomplished properly. A resolution of past violations of unrelated requirements should be handled separately through good faith negotiations or, if necessary, an enforcement proceeding.

#421 – Stepic, URS

Proposed OAC 3745-400-12(G) – Completion of Closure

Upon submittal of the final closure certification report, the licensing authority should be required to accept or deny the certification report within thirty days. As currently written, the licensing authority could withhold “concurrence” indefinitely. Failure to either approve or deny the certification may or may not be a “final action” reviewable by the Environmental Review Appeals Commission. Moreover, concurrence with the certification report should not be

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dependent upon the owner/operator's compliance with unrelated authorizing documents, rules and/or orders. If the certification report is approvable, past violations of issues unrelated to closure should not be a basis for refusing to acknowledge that closure has been accomplished properly. A resolution of past violations of unrelated requirements should be handled separately through good faith negotiations or, if necessary, an enforcement proceeding.

In response to these comments, the following language has been added to 3745-400-12(G) to establish a timeframe for decision on concurrence with final closure certification report. The language regarding two years and status of compliance has been removed.

The licensing authority shall make a determination on concurrence within ninety days of receipt of the final closure certification report.

Draft

Rule 3745-400-13

#805 – Loper, Bowser-Morner

Proposed OAC 3745-400-13 – Financial Assurance

(A)(1) states ‘... the most expensive...’ based upon third party costs and prevailing wages. Unfortunately, the existing C&DD regulations do not require phased development drawings or phasing to be defined as part of the license application development. In this case, and since the licenses are provided for each calendar year, it is this reviewers’ assumption that ‘... the most expensive...’ condition should be that for the calendar license year, and not the facility as a whole. Is this true? This should be clarified in the regulations to avoid confusion for the licensing authorities and the regulated community. Furthermore, ‘the most expensive’ does not necessarily reflect the most effective or most conservative design or assumptions. Cost estimation based on “the most expensive” method artificially inflates future bids and costs, and eliminates professional judgment of more effective and conservative methods.

(A)(1) also references, but does not clarify which portions of OAC 3745-400-12 need to be included in the cost estimate provided for the financial assurance. Clarification on this issue will be required to maintain a level of consistency across the State for these calculations and demonstrations.

(B)(3) Requiring the financial assurance amount to be fully funded prior to receipt of the license is not practical for either the licensing authority or the applicant. As you may be aware, the amount of financial assurance can be under review and revision up to the day of license issuance. Allowing an appropriate time for the applicant to fund the amount is the most practical and reasonable activity for all of the involved parties. This will put an undue burden on the applicant that is not reasonable or feasible.

#553 – Loper, Bowser-Morner

OAC 3745-400-13(A)(1) : The written cost estimate should not be based on a third party being paid prevailing wages. There are numerous contractors capable of performing the closure activities without being paid prevailing wages. This unnecessarily increases the final closure costs without any additional protection to the environment or public safety. Furthermore, the Ohio EPA routinely initiates contracts for construction services on solid waste and C&DD facilities without paying prevailing wages. The financial assurance obligations are funded privately and should not be subjected to same requirements as publicly funded projects.

#844 – Gubanc, Springfield landfill

Our problem relates to the preparation of the cost estimate for closure, and the insistence of using "prevailing wages" in calculating the cost of labor. The authorizing legislation is silent on this issue, therefore Ohio EPA clearly exceeds its authority when it specifies the estimate must be based on prevailing wage (i.e, union labor). The R.S. Means estimating software (CostWorks 2010) provides values for both costs. The hourly

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wage of a non-union heavy equipment operator in Springfield, Ohio is 25% less than the union heavy equipment operator at the same location. There is absolutely no reason that the cost estimate for closure should be based on services that are only purchased at prevailing wage rates.

#765 - Cyphert, CDAO

The requirement to fund the new financial assurance amount based upon a third party paying "prevailing wages" and at a time "most expensive", presents an unreasonable impact upon all existing facilities, especially those owned and operated by small businesses. Under these presumed "worst case" scenarios, the closure cost estimate presented by the Ohio EPA averages between \$35,000 and \$45,000 per acre -- three to four times greater than the current \$13,000/acre. Requiring an immediate "pay-in" of this amount by an existing facility "prior to the issuance of any license renewal" is grossly unreasonable. As recognized in the adoption of the 1996 C&DD rules, a five year pay-in period was appropriate when the amount of financial assurance was to be \$13,000/acre. During these recessionary economic times, the availability of alternative financial assurance mechanisms to small businesses has been greatly limited. No longer are surety bonds available to most C&DD facilities for a reasonable premium. For small businesses, only a trust fund or letter of credit may be "available". Yet, financial institutions willing to issue letters of credit now require a cash deposit or assets with an equity value of 150-200% greater than the face amount of the letter of credit. For a typical existing 20 acre C&DD facility, the financial assurance for closure goes from \$260,000 (excluding the \$2195 for each monitoring well) to \$700,00 to \$900,000. For an owner providing a letter of credit for financial assurance, the required "equity" value of assets grows from \$520,000 to \$1.8 million. Since the value of the facility itself cannot be considered, the average small business is unlikely to have \$1.8 million in unencumbered collateral to qualify for a letter of credit. Similarly, it is highly unlikely that any existing C&DD facility will have \$440,000 to \$640,000 in immediately available cash to contribute to a Trust Fund.

In addition to the exorbitant increase unattainable by most existing small C&DD owners and operators, it is unreasonable to require the owner/operator to secure financial assurance prior to the issuance of the annual license for inactive areas that will not become "active" within thirty days of the issuance of the license. In virtually all cases, an owner or operator of an existing facility will "phase" the certification of new cells and obtain authorization in the annual license for those cells which the owner/operator anticipates may become certified during the following year. Until a cell is certified, however, no debris has been placed in that cell and, therefore, there is no current need for final closure financial assurance. At the very least, financial assurance should be required to be effective only for the existing cells or unclosed areas that have or are currently accepting debris. Additional financial assurance for a proposed cell should be required only upon certification and authorization to accept debris.

#422 – Stepic, URS

Proposed OAC 3745-400-13 – Financial Assurance

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(A)(1) states ‘... the most expensive...’ based upon third party costs and prevailing wages. Unfortunately, the existing C&DD regulations do not require phased development drawings or phasing to be defined as part of the license application development. In this case, and since the licenses are provided for each calendar year, it is this reviewers’ assumption that ‘... the most expensive...’ condition should be that for the calendar license year, and not the facility as a whole. Is this true? This should be clarified in the regulations to avoid confusion for the licensing authorities and the regulated community. Furthermore, ‘the most expensive’ does not necessarily reflect the most effective or most conservative design or assumptions. Cost estimation based on “the most expensive” method artificially inflates future bids and costs, and eliminates professional judgment of more effective and conservative methods.

(A)(1) also references, but does not clarify which portions of OAC 3745-400-12 need to be included in the cost estimate provided for the financial assurance. Clarification on this issue will be required to maintain a level of consistency across the State for these calculations and demonstrations.

(B)(3) Requiring the financial assurance amount to be fully funded prior to receipt of the license is not practical for either the licensing authority or the applicant. As you may be aware, the amount of financial assurance can be under review and revision up to the day of license issuance. Allowing an appropriate time for the applicant to fund the amount is the most practical and reasonable activity for all of the involved parties. This will put an undue burden on the applicant that is not reasonable or feasible.

Ohio EPA has removed the term “prevailing wages” and reference to “worst case” from the proposed rule. The requirement that the estimate be based upon the cost of a third party to conduct closure activities is Ohio EPA’s intent.

To accommodate comments received from owners and operators of construction and demolition debris facilities regarding the economic impact of increased costs associated with closure financial assurance and newly established post-closure financial assurance, this draft rule package includes the new rule 3745-400-25 (Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities) and revisions to rules 3745-400-08 (Construction and final closure certification), 3745-400-13 (Financial assurance for construction and demolition debris), and 3745-400-14 (Wording of the financial instruments). These rules would provide a five year period to reach full funding of closure and post-closure, defer funding of financial assurance for portions of facilities until submittal of the construction certification report, allow for release of financial assurance as engineered components of the final cap system are certified constructed, and allow continued use of financial assurance instruments established prior to the date of the revised rule.

#846 – Gubanc, Springfield landfill

Ascertaining the validity of every assumption that is used to develop a cost estimate can be an extremely daunting task, and creates numerous situations where reasonable people can disagree. The proposed rules do absolutely nothing to clarify or improve the quality of the assumptions that must be made to develop a closure cost estimate. Until that task is undertaken, the estimating process is full of traps and misunderstandings

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that will have the ultimate impact of increasing operating costs and inflating the closure cost estimate beyond what is reasonable.

Ohio EPA is committed to conducting training on cost estimation reviews prior to the effective date of the rule for operators, consultants, and licensing authorities. This will include use of C&DD facility cost estimation checklists and developing third party cost estimates. Ohio EPA recognizes that cost estimation can be a facility specific determination and that viable third party estimates reflecting local costs may significantly differ from regional or national cost estimates.

#769 - Cyphert, CDAO

There are numerous provisions in Rule 3745-400-13 (as well as other rules within Chapter 3745-400) which reference the phrase "the health commissioner or director of the licensing authority". The "health commissioner" is not the same as the Board of Health which governs most approved Health Districts. This phrase should be revised to simply reference "the licensing authority" which is a defined term.

The definition of "licensing authority" in rule 3745-400-01 is a city or general health district as created by or under authority of Chapter 3709. of the Revised Code, which is on the approved list in accordance with section 3714.09 of the Revised Code; or the director where the health district is not on the approved list. Ohio EPA's intention is to be more specific in those circumstances involving financial assurance. The rationale is to identify an appropriate senior management position at the licensing authority as the person to be accountable for decisions regarding acceptance and release of financial assurance. Ohio EPA seeks suggestions to achieve that intent but has retained the references to "the health commissioner or director of the licensing authority" in the draft rules rather than simply "licensing authority".

#847 – Gubanc, Springfield landfill

There is no reason to specify a minimum of \$13,000 per acre of ALDA for the letter of credit when a closure cost estimate is being prepared. If the cost to close turns out to be less than \$13,000 per acre of ALDA and \$2,175 per monitoring well, than that should be the amount of the financial assurance the facility is required to secure.

#768 - Cyphert, CDAO

Rule 3745-400-13(A)(5) retains the original "\$12,450/acre" reimbursement figure that is based upon the existing \$13,000/acre financial assurance requirement. This section needs to be revised to permit the owner/operator to request and receive reimbursement from whatever financial assurance is in place. The \$550 holdback portion as indicated in the Comment note is obsolete since post closure care financial assurance will be in place to cover the maintenance of the certified cap prior to facility final closure.

Ohio EPA has removed the reference to \$13,000 in paragraph (A)(6) [was (A)(5) in IP draft]. However, the language in paragraph (A)(1) regarding "the final closure financial assurance cost

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estimate shall not be less than thirteen thousand dollars per acre” is a specific requirement taken from Ohio law in ORC 3714.02(l)(1).

“...However, the rules shall require that the amount of a surety bond, letter of credit, or other acceptable financial assurance for the closure of a facility be not less than thirteen thousand dollars per acre of land that has been or is being used for the disposal of construction and demolition debris.”

#767 -Cyphert, CDAO

As stated previously, the increased financial assurance for an inactive area should not be required until the new area is certified and available for acceptance of debris. Furthermore, Section 3745-400-13(A)(4) is unreasonable in that it allows information to be provided or "obtained" from Ohio EPA, U.S. EPA, a local Board of Health, or other person without the ability of the facility to challenge the information. The term "other person" is undefined and does not guarantee that such "other person" is knowledgeable or reliable. If information is submitted or obtained from third parties, the licensing authority must give the facility an opportunity to evaluate, comment upon, and contest the information. Again, this rule should provide specific criteria that must be considered to increase the amount of financial assurance and must allow the facility reasonable time to submit countervailing information prior to the licensing authority formally requiring an increase.

Ohio EPA has simplified the language consistent with Ohio EPA's intent to read "...which may include information provided to or obtained by Ohio EPA or a local board of health."

#848 – Gubanc, Springfield landfill

Implementing the financial assurance based on an engineering estimate of closure should not apply to the next renewal license following the effective date of the proposed rule, but should apply to the renewal license one full year after the effective date of the rules. For example, if the revised rules become effective in November, 2011, the financial assurance based on the closure cost estimate would apply to the 2013 license, not to the 2012 license.

#770 -Cyphert, CDAO

400-13: In order to address the significant impact of the new financial assurance rule on small businesses, the rule should incorporate a "pay-in" period of at least five years. If the useful life of the facility is less than five years, the pay-in period should be over the remaining life of the facility. An existing facility should be allowed to initiate closure under the existing rules prior to the effective date of these new rules which was the intention of the General Assembly when considering the time frames laid out in H.B. 397.

#817 – Kit Cooper, Vance Environmental

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Ohio EPA is trying to push through regulations that are forcing dozens of business owners, including myself, to consider closing. Several hundred jobs are at risk over the next few months and many more within eighteen months. I have attached an industry newsletter that describes the proposed regulation. The new regulation significantly increases the amount of a Letter of Credit, issued by a bank, to insure that our demolition debris landfills are properly closed. For many businesses, like mine, the new regulation will cause us to take on hundreds of thousands of dollars of additional debt, at a cost of many thousands of dollars each year in additional interest payments to the bank. This is money we simply do not have! There is a common sense solution to addressing the agency's concern. Rather than forcing all of these businesses to bury themselves in more long-term debt, the companies should be allowed to establish "sinking funds", funded with gate revenues and dedicated to cover closure expenses. (OEPA will say-"but you could walk away from your business tomorrow, not twenty five years from now) OEPA is wrong for numerous reasons, but even if true, the current Letters of Credit could stay in place, with sinking funds created to cover Ohio EPA concerns over the escalating costs of closure.

Ohio EPA will establish an effective date for the rule to ensure sufficient time to generate a cost estimate and submit that estimate with the next renewal license application. Specific to the issue of transitional funding of the closure cost estimate, Ohio EPA will propose several new provisions to accommodate comments received from owners and operators of construction and demolition debris facilities regarding the economic impact of increased costs associated with closure financial assurance and newly established post-closure financial assurance, this draft rule package includes the new rule 3745-400-25 (Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities) and revisions to rules 3745-400-08 (Construction and final closure certification), 3745-400-13 (Financial assurance for construction and demolition debris facility final closure), and 3745-400-14 (Wording of the financial instruments). These rules would provide a five year period to reach full funding of closure and post-closure, defer funding of financial assurance for portions of facilities until submittal of the construction certification report, allow for release of financial assurance as engineered components of the final cap system are certified constructed, and allow continued use of financial assurance instruments established prior to the date of the revised rule.

#806 – Loper, Bowser-Morner

#554 – Loper, Bowser-Morner

OAC 3745-400-13(A)(2): The funding for the financial assurance instruments should remain at no later than 30 days upon issuance of the license, HB 397 contained no provisions for revising the period for funding the financial instruments. The licensing authority often requests revisions that affect financial assurance without sufficient time to fund the required instruments prior to the end of the year expiration of the annual license.

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#849 – Gubanc, Springfield landfill

The financial assurance for a renewal application should continue to be allowed to go into effect 30 days following the issuance of the license by the licensing Authority. The proposal to require that financial assurance be in place Q.dQr to the issuance of the license may create problems for the financial institution that issues letters of credit. For the past 10 years banks are comfortable being allowed to secure the financing to the C&DD landfill after the license is issued. They may not be willing to change their internal procedures just because Ohio EPA wants to change the rule. Facilities such as Springfield landfill, IIC could be in the unenviable position of violating a rule in order to satisfy a financial institution fiduciary requirement

#819 – Warnecke, Security Nation Bank

We also have a specific concern with OAC 3745-400-13(A)(2), which states: "The financial assurance instrument(s) submitted in accordance with paragraph (A) (1) of this rule shall be funded not later than thirty days after the licensing authority issues a construction and demolition debris facility license. "

Security National Bank, Division of The Park National Bank has had occasion. to delay issuance of the Letter of Credit until the licensing authority has issued the license. In the past, the 30-day window was necessary when the applicant and the Health Department disagree over a license condition that required resolution by the Board of Health. Such decisions do not typically occur until a few days before the existing license expires. Since the letter of credit involves pledging assets, the Bank would likely insist that an effective license be issued to the applicant before it executes the loan. We see no reason why the existing provision should change, and would earnestly recommend the Ohio EPA to abstain from placing the C&DD landfill licensees and the financial institutions in a situation that may result in unintended violation of the rules.

#422 – Stepic, URS

Proposed OAC 3745-400-13 – Financial Assurance

(A)(1) states ‘... the most expensive...’ based upon third party costs and prevailing wages. Unfortunately, the existing C&DD regulations do not require phased development drawings or phasing to be defined as part of the license application development. In this case, and since the licenses are provided for each calendar year, it is this reviewers’ assumption that ‘... the most expensive...’ condition should be that for the calendar license year, and not the facility as a whole. Is this true? This should be clarified in the regulations to avoid confusion for the licensing authorities and the regulated community. Furthermore, ‘the most expensive’ does not necessarily reflect the most effective or most conservative design or assumptions. Cost estimation based on “the most expensive” method artificially inflates future bids and costs, and eliminates professional judgment of more effective and conservative methods.

(A)(1) also references, but does not clarify which portions of OAC 3745-400-12 need to be included in the cost estimate provided for the financial assurance. Clarification on

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this issue will be required to maintain a level of consistency across the State for these calculations and demonstrations.

(B)(3) Requiring the financial assurance amount to be fully funded prior to receipt of the license is not practical for either the licensing authority or the applicant. As you may be aware, the amount of financial assurance can be under review and revision up to the day of license issuance. Allowing an appropriate time for the applicant to fund the amount is the most practical and reasonable activity for all of the involved parties. This will put an undue burden on the applicant that is not reasonable or feasible.

Ohio EPA has revised the proposed rule to require funding of financial assurance thirty days after license issuance and included new provisions to accommodate comments received from owners and operators of construction and demolition debris facilities regarding the economic impact of increased costs associated with final closure financial assurance and newly established post-closure care financial assurance, this draft rule package includes the new rule 3745-400-25 (Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities) and revisions to rules 3745-400-08 (Construction and final closure certification facility final closure), 3745-400-13 (Financial assurance for construction and demolition debris facility final closure), and 3745-400-14 (Wording of the financial instruments). These rules would provide a five year period to reach full funding of final closure and post-closure care financial assurance, defer funding of financial assurance for portions of facilities until submittal of the construction certification report, allow for release of financial assurance as engineered components of the final cap system are certified constructed, and allow continued use of financial assurance instruments established prior to the date of the revised rule.

#807 – Loper, Bowser-Morner

#555 – Loper, Bowser-Morner

OAC 3745-400-13(A)(4): Lines three and four comply with HB 397 but lines five through eight "which may include information provided or obtained by Ohio EPA, US EPA, a local board of Health, or other person that indicates that the cost of closing the construction and demolition debris facility by Ohio EPA or the approved board of health may exceed thirteen thousand per acre." are not necessary and should be deleted. Closure costs are site specific and should not be based upon construction costs from other regions or persons not accustomed to the costs associated with construction work. The term "other person" is undefined and does not guarantee that such "other person" is knowledgeable or reliable. Estimates for an independent (third) party contractor(s) are adequate to predict the required final closure cost estimate.

The provisions of Rule 3745-400-13(A)(4) are unreasonable as written and beyond the authority granted by the General Assembly. The rationale for a licensing authority to request an increase in financial assurance must be clearly stated in this rule - not developed in an ad hoc manner differing between each and every licensing authority. As clearly provided in Ohio Revised Code, Section 3714.02(1)(1), "the rules shall require an explanation of the rationale for financial assurance amounts exceeding \$13,000/acre" (emphasis added). Accordingly, it is the rule that must provide the "rationale" for an

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increase, not the licensing authority. Owners and operators of existing facilities must know, in advance, the circumstances under which financial assurance may increase. The licensing authority must justify the increase based upon the specific criteria contained in the rule. Moreover, if the financial assurance is to be increased, the licensing authority must give a reasonable period of time to increase the financial assurance that may go beyond the issuance of the annual license. It would be, for example, grossly unreasonable for the licensing authority to indicate in the month of December that a substantial increase in financial assurance is required prior to January 1 of the following year. The existing facility must have an opportunity to contest the licensing authority's determination without immediate forfeiture of its annual license. At the very least, the facility should have a minimum of 90 days from the date that it is notified that financial assurance will be increased to make arrangements for the increased financial assurance. For certain financial assurance mechanisms, like letters of credit, a financial institution may require an appraisal of property to determine its value. Such appraisals may take additional time. In order to address the significant impact of the new financial assurance rule on small businesses, the rule should incorporate a "pay-in" period of at least five years. If the useful life of the facility is less than five years, the pay-in period should be over the remaining life of the facility. The facility should be allowed to indicate that it will initiate closure under the existing rules prior to the effective date of these new rules.

#766 - Cyphert, CDAO

The provisions of Rule 3745-400-13(A)(4) are unreasonable as written and beyond the authority granted by the General Assembly. The rationale for a licensing authority to request an increase in financial assurance must be clearly stated in .§: rule -- not developed in an ad hoc manner potentially differing between each and every licensing authority. As clearly provided in Ohio Revised Code, Section 3714.02(1)(1), "the rules shall require an explanation of the rationale for financial assurance amounts exceeding \$13,000/acre" (emphasis added). Accordingly, it is the rule that must provide the "rationale" for an increase, not the licensing authority. Owners and operators of existing facilities must know, in advance, the circumstances under which financial assurance may increase. The licensing authority must justify the increase based upon the specific criteria contained in the rule. Moreover, if the financial assurance is to be increased, the owner/operator must be given a reasonable period of time to increase the financial assurance that may go beyond the issuance of the annual license. It would be, for example, grossly unreasonable for the licensing authority to indicate in the month of December that a substantial increase in financial assurance is required prior to January 1 of the following year. The existing facility must have an opportunity to contest the licensing authority's determination without immediate forfeiture of its annual license. Indeed, as recognized by the C&DD Study Committee, if the owner/operator disagrees about the necessary level of financial assurance, the facility should be allowed to continue to operate as long as the minimum \$13,000/acre is in place until ERAC makes a decision on an appeal. At the very least, the facility should have a minimum of 90 days from the date that it is notified that financial assurance will be increased to make arrangements for the increased financial assurance. For certain financial assurance mechanisms, like letters of credit, a financial institution may require an appraisal of property to determine its value and equity. Such appraisals may take additional time.

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The rule needs to accommodate the reasonable and necessary requirements of the financial institution providing the financial assurance mechanism, including extensions of time.

#388 – Van Fossen, Ohio Contractors Association

There are many other examples of costly and egregious changes to the CDD regulations. A sampling can be found in the following sections:

-Financial Assurance: 3745-400-13(A) (4) Allowing licensing authorities to request an increase in financial assurance without any type of rationale required;

Rule 3745-400-12 establishes the list of closure activities for which financial assurance is to be required. The proposed rule requires the owner or operator provide a closure estimate based upon the cost of a third party to conduct closure activities. Paragraph (A)(4) is consistent with the Ohio law in ORC 3714.02(I)(1) as underlined below. Ohio EPA reads the law as stating that the rules must require the licensing authority to provide an explanation of their rationale.

“...The rules shall include a list of the activities for which financial assurance may be required. The rules shall allow the director or board of health, as applicable, to adjust the amount of a surety bond, a letter of credit, or other acceptable financial assurance in conjunction with the issuance of an annual license. However, the rules shall require that the amount of a surety bond, letter of credit, or other acceptable financial assurance for the closure of a facility be not less than thirteen thousand dollars per acre of land that has been or is being used for the disposal of construction and demolition debris. The rules shall require an explanation of the rationale for financial assurance amounts exceeding thirteen thousand dollars per acre.”

Rule 3745-400-14

838 Tussel, Dane

3745-400-14 Wording of financial instruments - Unless the wording for the financial assurance instruments is different from the other programs (MSW, compost, etc) this section should be housed in the multi-program financial assurance section. It is our understanding that is why the multi-program rules were developed.

At this time, Ohio EPA will continue to keep financial assurance requirements, including wording of financial instruments, in rules separate from the proposed multi-program financial assurance chapter 3745-503. Chapter 3745-503 is specific to the solid waste programs where only Ohio EPA does the review and holding of the financial assurance instruments. The C&DD program's financial assurance has the approved health department reviewing and holding financial assurance instruments that necessitates slightly different wording.

#771 - Cyphert, CDAO

400-14: There is uncertainty regarding whether financial institutions will accept the Ohio EPA's revised language in the wording of the available financial instruments. In other words, has Ohio EPA ascertained that existing financial assurance instruments will not be voided or revoked by the financial institution if the new designated wording is prospectively required? For example, if a cost estimate indicates that an increase in financial assurance is required in addition to the existing \$13,000/acre, may a facility keep in place its existing trust fund, letter of credit, etc. and apply for a new financial assurance instrument (with the required new language) for the amounts in excess of \$13,000/acre? If not, Rule 3745-400-13 must contain an additional provision allowing existing financial assurance instruments to remain in place. In other words, a "grandfather" provision must be included. An existing facility should not be forced to abandon a favorable financial assurance mechanism currently in place due to a rejection of the Agency's new required wording by the financial institution.

Ohio EPA has added language to paragraphs (B) trust funds, (C) Surety bond guaranteeing payment, (D) Surety bond guaranteeing performance, (E) letter of credit, and (F) insurance that will grandfather existing instruments from needing to comply with the wording of Rule 3745-400-14.

The wording of the certificate of insurance shall be identical to the wording specified in paragraph (E) of rule 3745-400-14 of the Administrative Code *except for a certificate of insurance obtained prior to the effective date of this rule*

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Rule 3745-400-16

#773 - Cyphert, CDAO

Rule 3745-400-16(C) allowing the extension of post-closure care in all circumstances "in accordance with Rule 3745-400-17" is unlawful. Post-closure care for facilities opting out early per the authorization in Ohio Revised Code, Sections 3714.02(K)(1) or (2) may not be extended under any circumstances.

Ohio EPA agrees and has revised the language to clarify that the authority to extend post-closure does not apply to the circumstances in paragraphs (B)(1) and (2).

~~Notwithstanding the requirements of paragraph (B) of this rule, the~~ The post-closure care period may be extended in accordance with rule 3745-400-17 of the Administrative Code *except for facilities where the owner or operator has complied with either paragraph (B1) or (B)(2) of this rule.*

#772 - Cyphert, CDAO

400-16: The requirement and funding of post-closure care adds an additional financial burden upon existing facilities. If the five year post-closure period envisioned by the General Assembly is to be extended, there must be specific, reasonable criteria indicating the circumstances.

The reasons justifying an extension of the post-closure period will certainly be significant, site-specific, and varied. The impact could be an immediate safety or health hazard (exposure to chronic or acute concentrations of hydrogen sulfide, smoke from fire, or slope failure). The impacts may be slower or under assessment such as ground water contamination. The proposed rule is consistent with the statutory standard in ORC 3714.02(K) in that the licensing authority must base the order on findings that "conditions at the facility are impacting public health or safety or the environment or if ground water assessment and corrective measures are required to be conducted at the facility." The requirement that such extension be ordered by the licensing authority assures all affected parties the opportunity to argue the lawfulness and reasonableness of the order before the Environmental Appeals Review Commission. It is in the licensing authority's best interest to have sufficient justification to withstand appeal.

#774 - Cyphert, CDAO

Contrary to Rule 3745-400-16(D)(5), it may not be necessary to maintain all air and water permits. For example, it is doubtful that a facility in post-closure care would require a fugitive dust permit since limited operations would be considered "deminimus". As indicated in comments to the previous closure rule, there does not appear to be any rationale for retaining complete logs of operation during the post-closure period as stated in Rule 3745-400-16(D)(8).

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#808 – Loper, Bowser-Morner

#556 – Loper, Bowser-Morner

OAC 3745-400-16: Contrary to Rule 3745-400-16(D)(5), it may not be necessary to maintain all air and water permits. For example, it is doubtful that a facility in post-closure care would require a fugitive dust permit. As indicated in comments to the previous closure rule, there does not appear to be any rationale for retaining complete logs of operation during the post-closure period as stated in Rule 3745-400-16(D)(8).

The proposed rule specifies all “applicable” air and water permits. Only all of those permits that are “required” (made applicable) by the air or water programs is the intent. No change in response to this comment.

839 Tussel, Dane

3745-400-16 Post closure care: It does not seem clear that for a facility which was certified closed prior to these rules being adopted but after the law was enacted (HB397) whether they will be pulled back in either 1 year or 5 years of post-closure care. For example, if a facility closed in 2007, put the cap on and was certified closed in 2008, will this facility still have to perform one year of post closure care once these rule are adopted. Needs clarification.

Ohio EPA agrees that clarification needs to be added to the paragraph (A) of the proposed rule to clarify that all facilities taking debris in calendar year 2006 and later are subject to five years of post-closure care unless the owner or operator complied with paragraph (B). Paragraph (B) is from ORC 3714.02(K) which addresses facilities that cease taking debris in calendar years 2006 and 2007.

(A) Unless the owner or operator of the construction and demolition debris facility has complied with paragraph (B)(1) of this rule, an owner or operator of a facility that has accepted construction and demolition debris in calendar year 2006 or later shall conduct post-closure care activities at the construction and demolition debris facility upon the licensing authority concurrence of the final closure certification report for the facility.

#775 -Cyphert, CDAO

The "window" of "not earlier than 60 days and not later than 30 days" contained in Rule 3745-400-16(E) to decommission the groundwater monitoring system does not make sense. Until the licensing authority acknowledges that the post-closure care period has concluded, there is no way to know when to decommission the groundwater monitoring system. This section should be revised to indicate that the groundwater monitoring system may be decommissioned within thirty days after the completion of the post-closure care period or as such other time as authorized by the licensing authority. The language in Rule 3745-400-16(E)(2) should be prefaced by "if applicable" since few, if any, existing facilities will have a gas management system.

The post-closure period ends five years after it begins (unless the licensing authority issues and order extending the post-closure period). There is no provision for licensing authority

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concurrency with the post-closure care certification report. Post-closure just ends after 5 years and any violations of rules 3745-400-16 or 3745-400-19 would be open to enforcement. The rule requires that decommissioning of wells occur during the 11th month of the 5th year. No change in response to this rule.

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Rule 3745-400-17

#809 – Loper, Bowser-Morner
#557 – Loper, Bowser-Morner
#776 - Cyphert, CDAO
#424 – Stepic, URS

OAC 3745-400-17: The provisions of this new rule do not clearly establish the circumstances under which the licensing authority may extend the post-closure care period. Moreover, this new rule does not appropriately limit the post-closure care to the issue or area compelling an extension. Not all portions of a facility may "impact" public health or safety of the environment. For example, even if groundwater collective action is required, there is no rationale to extend post-closure care for mowing or maintenance of a gas collection system. Any order extending the post-closure care period should specify the portion of the facility for which post-closure care period is being extended and the reasons therefore.

If the licensing authority believes that the post-closure care period should be extended, specific findings of fact should be provided in a "final action" demonstrating that the conditions of the facility are adversely affecting public health or safety or the environment. A "summary", as provided by Rule 3745-400-17(B)(3) is inadequate. The licensing authority should only issue a proposed action, allowing the facility to request an adjudication hearing under Chapter 119 of the Ohio Revised Code. The final action resulting from the adjudication hearing extending post-closure care must be appealable to the Environmental Review Appeals Commission.

The reference in Rule 3745-400-17(C) to Chapter 3734 should be deleted. Chapter 3734 does not pertain to C&DD facilities. In addition, a reference should be made in Rule 3745-400-17(D) to Chapters 119 and 3745 of the Revised Code. Finally, any order of a licensing authority (Board of Health or the Director) must be appealable to the Environmental Review Appeals Commission pursuant to Ohio Revised Code, Section 3745.04. A new sub-section (F) should be added to state: "An order by the licensing authority extending the post-closure care period is appealable to the Environmental review Appeals commission pursuant to Ohio Revised Code, Section 3745.04".

The reasons justifying an extension of the post-closure period will certainly be significant, site-specific, and varied. The whole facility may be the source of impact or some portion. The impact could be an immediate safety or health hazard (exposure to chronic or acute concentrations of hydrogen sulfide, smoke from fire, or slope failure). The impacts may be slower or under assessment such as ground water contamination. A requirement that a proposed order be issued first may not be timely. The proposed rule mimics the statutory standard in ORC 3714.02(K) in that the licensing authority must base the order on findings that "conditions at the facility are impacting public health or safety or the environment or if ground water assessment and corrective measures are required to be conducted at the facility." In

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response to comment, the rule now requires that the order describe the conditions. The requirement that such extension be ordered by the licensing authority assures all affected parties the opportunity to argue the lawfulness and reasonableness of the order before the Environmental Board of Review. It is in the licensing authority's best interest to have sufficient justification to withstand appeal.

#855 – Trent, Waste management

3745-400-17 (A) Extending Post-Closure Care

Extending the post closure care period if "ground water assessment" is required should be removed from the rule. Often ground water assessment is triggered to determine if there is an impact to the ground water. A confirmed corrective action should be the only trigger for extending the postclosure period.

#855 – Trent, Waste management

3745-400-17(A)

Conducting a ground water assessment due to a statistical significant finding, especially for non-hazardous parameters should not indicate a facility needs to have it's post-closure period extended.

ORC 3714.02(K) specifically states that the post-closure care period may be extended if ground water assessment and corrective measures are required to be conducted at the facility.

While the purpose of ground water assessment is to more accurately determine the rate, extent, direction, and contaminate of any ground water impact, legally continuing the owner or operator's obligation to maintain the facility until that assessment is complete and a determination may be made regarding any corrective action is arguably an authority the statute provides to the licensing authority.

#777 - Cyphert, CDAO

If the licensing authority believes that the post-closure care period should be extended, specific findings of fact should be provided in a "final action" demonstrating that the conditions of the facility are adversely affecting public health or safety or the environment. A "summary", as provided by Rule 3745-400-17(B)(3) is inadequate. Moreover, the licensing authority should only issue a proposed action, allowing the facility to request an adjudication hearing under Chapter 119 of the Ohio Revised Code to contest the findings of fact and/or extended postclosure care period. The final action resulting from the adjudication hearing extending postclosure care must be appealable to the Environmental Review Appeals Commission ("ERAC"). If ERAC finds the final action of the licensing authority to be unreasonable or unlawful, the licensing authority should be required to reimburse the owner or operator for the costs incurred in the extended post-closure period.

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In response to comment, Ohio EPA has replaced the word “summary” with “description” to avoid any inference that this rule establishes any standard inconsistent with applicable legislative or any procedural rule requirements or Environmental Review Appeals Commission standards regarding issuance of final orders.

Ohio EPA does not have statutory authority to adopt rules to implement the suggestion that the rule require a licensing authority to reimburse the owner or operator for any costs incurred based upon an Environmental Review Appeals Commission decision.

#778 - Cyphert, CDAO

#424 – Stepic, URS

The reference in Rule 3745-400-17(C) to Chapter 3734 should be deleted. Chapter 3734 does not pertain to C&DD facilities. In addition, a reference should be made in Rule 3745-400-17(D) to Chapters 119 and 3745 of the Revised Code. Finally, any order of a licensing authority (Board of Health or the Director) must be appealable to the Environmental Review Appeals Commission pursuant to Ohio Revised Code, Section 3745.04. A new sub-section (F) should be added to state: "An order by the licensing authority extending the post-closure care period is appealable to the Environmental review Appeals commission pursuant to Ohio Revised Code, Section 3745.04".

The reference in rule 3745-400-17(C) to Chapter 3734 is intended to address the situation where a C&DD facility has disposed or mismanaged solid wastes.

The reference in rule 3745-400-17(D) is to the primary statutory authorities (ORC Chapter 3714 and ORC section 3709.20). The suggested addition of ORC Chapters 119 and 3745 are either referenced in ORC Chapter 3714 and ORC section 3709.20 or made applicable directly by ORC Chapters 119 and 3745.

The jurisdiction of the Environmental Review Appeals Commission (ERAC) is determined by statute and ERAC promulgated rules. Ohio EPA will rely on ERAC’s statute and rules and not seek to address ERAC’s jurisdiction in this rule. Rather, Ohio EPA will continue to provide general notice and instructions to licensing authorities regarding the applicable ERAC’s statute and rules in regard to licensing authority actions (orders, license actions, etc.). Ohio EPA continues to routinely reference appropriate statutory appeal rights to the ERAC in letters transmitting final actions, public notices, etc., when issuing final actions.

No changes have been made in consideration of this comment.

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Rule 3745-400-18

#810 – Loper, Bowser-Morner

#558 – Loper, Bowser-Morner

OAC 3745-400-18(A)(1): The written cost estimate should not be based on a third party being paid prevailing wages. There are numerous contractors capable of performing the post closure activities without being paid prevailing wages. This unnecessarily increases the post closure costs without any additional protection to the environment or public safety.

Furthermore, the Ohio EPA routinely initiates contracts for construction services on solid waste and C&DD facilities without paying prevailing wages. The financial assurance obligations are funded privately and should not be subjected to same requirements as publicly funded projects.

OAC 3745-400-18(A)(1): The written cost estimate should not be based on a third party being paid prevailing wages. There are numerous contractors capable of performing the post closure activities without being paid prevailing wages. This unnecessarily increases the post closure costs without any additional protection to the environment or public safety. Furthermore, the Ohio EPA routinely initiates contracts for construction services on solid waste and C&DD facilities without paying prevailing wages. The financial assurance obligations are funded privately and should not be subjected to same requirements as publicly funded projects.

Ohio EPA has removed the term “prevailing wages” from the proposed rule. The requirement that the estimate be based upon the cost of a third party to conduct post-closure activities is Ohio EPA’s intent.

#779 - Cyphert, CDAO

Throughout this new rule, the reference to "the Health Commissioner or Director of the licensing authority" should be changed to "the licensing authority". The reference in Rule 3745-400-18(A) to paragraph (E)(12) of Rule 3745-400-12 should be to paragraph (E)(11) (this error is contained in other sections). The comment following Rule 3745-400-18(A) is outdated and no longer applies and should be deleted. We are unaware of any Health District that has approved an alternative "financial assurance mechanism" for post-closure care. Even if it had, the requirements of this rule as authorized by Ohio Revised Code, Section 3714.02(1)(2) pre-empt any local rule or ordinance.

The definition of “licensing authority” in rule 3745-400-01 is a city or general health district as created by or under authority of Chapter 3709. of the Revised Code, which is on the approved list in accordance with section 3714.09 of the Revised Code; or the director where the health district is not on the approved list. Ohio EPA’s intention is to be more specific in those circumstances involving financial assurance. The rationale is to identify an appropriate senior management position at the licensing authority as the person to be accountable for decisions regarding acceptance and release of financial assurance. Ohio EPA seeks suggestions to achieve

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that intent but has retained the references to “the health commissioner or director of the licensing authority” in the draft rules rather than simply “licensing authority”.

#850 – Gubanc, Springfield landfill

The financial assurance associated with 5 years of post closure care carries way too much uncertainty to be acceptable under current economic conditions. It appears to us that the requirement to fund post closure care in addition to the closure costs on an annual basis is superfluous and does nothing more than increase costs. The appropriate time to secure financial assurance for post closure is when the facility decides to proceed to close the facility. There is also no historical basis for what these costs will be, since generally C&DD facilities are finished in such a way that they can be sold for a productive use and do not need any post closure care.

The proposed rule does not provide the owner any flexibility to reduce post closure care costs, and therefore only currently serves to increase the cost of doing business and the financial burden on a stressed economic enterprise.

Ohio Revised Code section 3714.02(I)(2) requires post-closure care financial assurance. Rule 3745-400-16 specifies post-closure care obligations. The purpose is to protect Ohio citizens from picking up the cost of a minimum of five years of care should the owner or operator fail to perform. An owner or operator annually reviews the post-closure care cost estimate under Rule 3745-400-16(D)(7). The review can certainly include reduction for one less year of post-closure care.

ORC 3714.02(I)(2) The rules establishing the financial assurance requirements for the post-closure care of facilities shall address the maintenance of the facility, continuation of any required monitoring systems, and performance and maintenance of any specific requirements established in rules adopted under division (K) of this section or through a permit, license, or order of the director. The rules also shall allow the director or board of health, as applicable, to determine the amount of a surety bond, a letter of credit, or other acceptable financial assurance for the post-closure care of a facility based on a required cost estimate for the post-closure care of the facility. The rules shall require that the owner or operator of a facility provide post-closure financial assurance for a period of five years after the closure of a facility. However, the rules shall stipulate that post-closure care financial assurance may be extended beyond the five-year period if the extension of the post-closure care period is required under rules adopted under division (K) of this section.

#780 - Cyphert, CDAO

400-18: As indicated in prior comments, requiring post-closure care financial assurance prior to the issuance of the annual license is unreasonable. Post-closure care financial assurance should only be required for areas that have or are accepting debris for disposal. There is no need for post-closure care financial assurance for areas that have not yet accepted any debris. The owner/operator should be given a reasonable period of time to obtain the initial required financial assurance for post-closure care (no less than ninety days) or any later increase.

Ohio EPA has revised the rule to require post-closure care financial assurance only for areas that have or are accepting debris for disposal.

#781 - Cyphert, CDAO

The timing of increasing post-closure care financial assurance in Rule 3745-400-18(C) is inconsistent. The initial phrase "not later than 60 days after", in the last sentence of Section (C)(1) should be deleted. Moreover, the sub-sections (a), (b) and (c) should be connected by an "or". In addition, a new sub-section (d), should be added: "Acceptance of C&DD in a new certified area authorized in the annual license."

Ohio EPA has revised and added language that (1) specifies that the post-closure care cost estimate shall be for ALDA and the ILDA containing waste, and (2) defers funding for the unconstructed and uncertified ALDA until submittal of the construction certification report.

#782 - Cyphert, CDAO

Finally, with respect to any particular financial assurance mechanism, it is unreasonable to require that the mechanism be fully funded "prior to the date of the license issuance". The timing of funding should be identical to the funding required in Rule 3745-400-18(C) and include a reasonable period of time to obtain the initial required financial assurance for postclosure care (no less than ninety days) or any later increase.

Ohio EPA has revised the proposed rule to require funding of financial assurance thirty days after license issuance and included a new provision for delaying the funding of that portion of the financial assurance associated with unconstructed and uncertified ALDA until submittal of the construction certification report.

#783 - Cyphert, CDAO

Regarding the use of a financial assurance mechanism for multiple facilities (Rule 3745-400-18(L)), the multiple facilities should not be limited to just C&DD facilities, but any facility requiring financial assurance (e.g., MSW, Industrial, etc.).

Financial assurance for Chapter 3734 facilities is under the sole jurisdiction of the Director while Chapter 3714 financial assurance is held by the licensing authority. Wording of instruments reflect this difference.

#784 - Cyphert, CDAO

Regarding the release of the owner/operator from the requirements of post-closure care financial assurance (Rule 3745-400-18(N)), the licensing authority should be required to respond to the owner or operator within thirty days of receipt of a request for written approval to terminate financial assurance. The licensing authority should be required to either concur or reject the request as a final action, appealable to the Environmental Review Appeals Commission. It is grossly unreasonable for the licensing

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authority to simply do nothing, forcing the owner or operator to continue to incur the cost of financial assurance indefinitely.

The release of the owner/operator from the requirements of post-closure care financial assurance is now found in draft rule 3745-400-18(A)(5)(b). The process has been simplified. Upon the owner/operator or other authorized person's request after post-closure care has been completed, owner/operator or other authorized person shall receive reimbursement or all remaining funds or termination of the financial assurance requirement. This reimbursement or release shall be initiated by the licensing authority in accordance with the rule paragraph specific to the type of financial assurance instrument.

#786 - Cyphert, CDAO

The draft revised and new rules for existing C&DD facilities will place an immediate economic hardship on Ohio's existing C&DD facilities. The estimated cost for compliance for the "average" existing facility in the first year is likely to be double its expected gross revenue. The General Assembly never intended C&DD facilities to be treated virtually identical to MSW facilities. The rules must be adjusted to provide reasonable "pay-in" periods to accommodate the expected cost of compliance.

Ohio EPA has revised the rule to incorporate revisions to the closure financial assurance rule 3745-400-13. To accommodate comments received from owners and operators of construction and demolition debris facilities regarding the economic impact of increased costs associated with closure financial assurance and newly established post-closure financial assurance, this draft rule package includes the new rule 3745-400-25 (Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities) and revisions to rules 3745-400-08 (Construction and final closure certification), 3745-400-13 (Financial assurance for construction and demolition debris facility final closure), and 3745-400-14 (Wording of the financial instruments). These rules would provide a five year period to reach full funding of closure and post-closure, defer funding of financial assurance for portions of facilities until submittal of the construction certification report, allow for release of financial assurance as engineered components of the final cap system are certified constructed, and allow continued use of financial assurance instruments established prior to the date of the revised rule.

Rule 3745-400-19

#785 - Cyphert, CDAO

#811 – Loper, Bowser-Morner

#559 – Loper, Bowser-Morner

The provisions of Rule 3745-400-19(B) are ambiguous. Regarding sub-paragraph (1), specific "documentation" required should be stated. Regarding sub-paragraph (2), the nature of the "assessment" should be specified. With respect to sub-paragraph (3), what is the purpose of providing the summary of changes to leachate quantity and quality? What period of time is covered? Post-closure care period only? With respect to sub-paragraph (4), at what point in time is the "rate of leachate generation and quantity" to be designated? Where is this information to be obtained? With respect to sub-paragraph (5), how extensive is the required "discussion" regarding hydrogen sulfide gas migration and generation? If the facility does not have a gas generation system, what type of information is required? Finally, with respect to subparagraph (6), what type of "other information" may be required that is not otherwise contained in the professional's post-closure care certification report? As currently written, this section (D) is far too open-ended. Post-closure care should be concluded upon submittal of an approvable post-closure care certification report.

#864 – Trent, Waste Management

3745-400-19(B)(5)

There does not appear to be any requirement for gas collection or monitoring at a facility. How does the agency intend to evaluate gas migration?

Clarifying language has been added in response to comment. The documentation required in paragraph (B)(1) would be that documentation that the professional skilled in the appropriate discipline relied upon by in certifying that the owner or operator has completed the post-closure activities required in proposed rule 3745-400-16(D) and (E). Ohio EPA has revised language to provide clarity.

The nature of the assessment in paragraph (B)(2) would be that a professional skilled in the appropriate discipline appraisal of the engineering integrity and long term stability of the cap system based upon five years of post-closure care experience under rule 3745-400-16(D) requirements pertaining to monitoring the engineering components stability and need for repair.

Since this is the post-closure certification report, the required summary of changes in leachate quality and quantity would be for the period of the post-closure period. This would be based upon five years of post-closure care experience under rule 3745-400-16(D) requirements pertaining to leachate sampling and analysis.

Ohio EPA will specify in rule that the rate of leachate generation and quantity of leachate at the facility is to be in the last year of post-closure.

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The discussion on hydrogen sulfide gas migration and generation will depend on the circumstances of the facility and five years of post-closure experience. Discussion would include whether there have been detected issues with hydrogen sulfide, complaints, investigations, etc., and if the owner or operator has implemented any control or remediation efforts and their success. What is the skilled professional's appraisal of the generation and migration, getting worse or better, and why?

The request for other information is related to what information the skilled professional relied upon in certifying the owner or operator has completed post-closure care in accordance with rule 3745-400-16.

The post-closure period ends after five years unless the licensing authority has issued an order in accordance with rule 3745-400-17 extending the period.

#856 – Trent, Waste management

3745-400-19 (5) Post Closure Certification Report

The post closure certification report requires a discussion of hydrogen sulfide gas migration and generation by the facility but there is no earlier requirement in the Operations or Closure period to conduct gas monitoring or collection. Please identify where these requirements are mentioned.

Chapter 3745-400 and this draft rule package do not have any specific rules requiring hydrogen sulfide gas monitoring or collection. This proposed rule package does not address implementation of ORC 3714.02(H) hydrogen sulfide contingency plan. Ohio EPA anticipates addressing these issues in future draft rule packages.