

3745-27-13

Procedure to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated.

(A) No person shall, without authorization from the director, engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated. Any person proposing to engage in these activities on land where a hazardous waste facility or solid waste facility was operated shall comply with the requirements of this rule.

(B) "Facility," for the purposes of this rule, means:

- (1) The limits of solid waste placement, solid waste handling area, or area of hazardous waste treatment, storage, or disposal.
- (2) Those areas within three hundred feet of the limits of solid waste placement or area of hazardous waste treatment, storage or disposal if the filling, grading, excavating, building, drilling, or mining activities in these areas are likely to impact the integrity of the waste placement or any ancillary structures.

[Comment: Impacting the integrity of the solid waste placement or hazardous waste treatment, storage or disposal area(s), and any ancillary structures related thereto, includes any activity resulting in damage to leachate tanks or lines or causing waste, leachate, and/or gas to be moved from the limits of waste placement, e.g., by causing slope failure.]

(C)

(1) This rule does not apply to filling, grading, excavating, building, drilling, or mining at any of the following sites:

(a) Facilities where waste was not disposed in the ground or where waste no longer remains, including:

(i) A solid waste landfill facility licensed or permitted or formerly licensed or permitted under Chapter 3745-37 of the Administrative Code for which the owner or operator has closed the solid waste landfill facility by removal and decontamination pursuant to an administrative or judicial authorization.

(ii) A solid waste composting facility.

(iii) A solid waste incinerator.

- (iv) A solid waste transfer facility.
 - (v) A hazardous waste treatment, storage, or disposal facility for which the owner or operator has closed the hazardous waste management unit by removal and decontamination pursuant to rules 3745-55-10 to 3745-55-15, and/or 3745-66-10 to 3745-66-15 of the Administrative Code or pursuant to an administrative or judicial authorization, if that closure was based upon either residential or industrial land use exposure assumptions.
- (b) Those facilities exempted from regulation under Chapters 3745-27 and 3745-37 of the Administrative Code or by rule 3745-27-03 of the Administrative Code.
- (2) This rule does not apply to filling, grading, excavating, building, drilling, or mining in conjunction with one of the following activities:
- (a) Filling, grading, excavating, building, drilling, or mining at facilities where the activities are already authorized through a final action of the director, including:
 - (i) A solid waste facility for which the owner or operator obtained a permit to install, plan approval, or other authorization for the facility in accordance with the requirements of Chapter 3734. of the Revised Code and an effective solid waste disposal license in accordance with the requirements of Chapter 3745-37 of the Administrative Code, and the filling, grading, excavating, building, drilling, or mining is in accordance with the development, operating, maintenance, or monitoring practices authorized at the facility by the permit, license, plan approval, judicial order or other authorization from the director.
 - (ii) A hazardous waste treatment, storage, or disposal facility for which the owner or operator has obtained a permit, plan approval, or other authorization for the facility in accordance with the requirements of Chapter 3734. of the Revised Code or with the requirements of the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C. 6921, as amended, and the filling, grading, excavating, building, drilling, or mining is in accordance with the development, operating, maintenance, or monitoring practices authorized at the facility by the permit, plan approval, or

other authorization.

- (b) Filling, grading, excavating, building, drilling, or mining at facilities where a hazardous waste generator has conducted treatment, storage, or closure in accordance with Chapter 3745-52 of the Administrative Code.
- (c) Filling, grading, excavating, building, drilling, or mining at sites subject to either a written agreement entered into by the director with the federal government or a final order issued by the director and under which a person will perform corrective or remedial investigation or action, ground water investigation, maintenance action to protect a remedy, or other investigation or action to abate air or water pollution or soil contamination, or to protect public health and safety under Chapter 3734., 3746., or 6111. of the Revised Code.

[Comment: A final order issued by the director that consists of or contains an operation and maintenance agreement does not relieve any person from the requirement to obtain an authorization under this rule unless that O&M agreement contains explicit authorization to conduct particular filling, grading, excavating, building, drilling, or mining activities.]

- (d) Routine maintenance or emergency repair by a public utility, as defined in section 4905.02 of the Revised Code, on land where a public utility has main or distribution lines above or below the surface, located on an easement or right-of-way where a solid waste facility was operated. Public utilities may engage in any such activity within the easement or right-of-way of such sites without prior authorization from the director for purposes of performing emergency repair or emergency replacement of its lines; of the poles, towers, foundations, or other structures supporting or sustaining any such lines; or of the appurtenances to those structures necessary to restore or maintain existing public utility service. A public utility may enter upon any such easement or right-of-way without prior authorization from the director for purposes of performing necessary or routine maintenance of those portions of its existing lines; of the existing poles, towers, foundations, or other structures sustaining or supporting its lines; or of the appurtenances to any such supporting or sustaining structures, located on or above the land surface on any such easement or right-of-way. Within twenty-four hours after commencing any such emergency repair or replacement or maintenance work, the public utility shall notify Ohio EPA of those activities and shall provide such information regarding those activities

as Ohio EPA may request. Upon completion of the emergency repair or replacement or maintenance activities, the public utility shall restore any land of the solid waste facility disturbed by those activities to the condition existing prior to the commencement of those activities.

- (e) Routine maintenance of final cover or ancillary structures at a facility.
- (f) Routine agricultural, horticultural, recreational, or maintenance activities conducted by occupants of single-family homes on their own premises.

(D) Except as provided in paragraph (C) of this rule:

(1) Paragraph (E) of this rule applies to any person proposing to engage in filling, grading, excavating, building, drilling, or mining on one of the following sites:

- (a) A solid waste landfill presently or formerly licensed or permitted under Chapter 3734. of the Revised Code or licensed in accordance with Chapter 3745-37 of the Administrative Code.

[Comment: For operating facilities undertaking filling, grading, excavating, building, drilling, or mining activities, the use of a permit alteration or modification is recommended.]

- (b) An unlicensed or unpermitted solid waste landfill that accepted solid waste after July 29, 1976.
- (c) An unlicensed or unpermitted solid waste transfer facility or solid waste incinerator that accepted solid waste after May 31, 1991.
- (d) An unregistered, unlicensed, or unpermitted solid waste compost facility that accepted solid waste after June 1, 1992.
- (e) An unregistered, unlicensed, or unpermitted scrap tire monofill facility that accepted scrap tires after March 1, 1996.
- (f) A Class I, II, or III residual waste landfill presently or formerly licensed or permitted under Chapter 3734. of the Revised Code or licensed in accordance with Chapter 3745-37 of the Administrative Code.
- (g) A hazardous waste treatment, storage, or disposal facility that has not

obtained a hazardous waste facility installation and operation permit, a permit renewal, or an approved closure or post-closure plan, and that has not completed closure and post-closure care of any hazardous waste management unit pursuant to rules 3745-55-10 to 3745-55-20, and/or 3745-66-10 to 3745-66-20 of the Administrative Code.

- (h) A hazardous waste treatment, storage, or disposal facility that has completed post-closure of any hazardous waste management unit, as required by rules 3745-55-10 to 3745-55-20, and/or 3745-66-10 to 3745-66-20 of the Administrative Code or pursuant to an administrative or judicial order.
- (i) A solid or hazardous waste facility that received a covenant not to sue under Chapter 3746. of the Revised Code and has an operation and maintenance agreement pursuant to that covenant that does not authorize the proposed filling, grading, excavating, building, drilling, or mining activities.

[Comment: Ohio Administrative Code rule 3745-300-02 delineates which sites are eligible to pursue a covenant not to sue under Chapter 3746. of the Revised Code.]

- (2) Paragraph (F) of this rule applies to any person proposing to engage in filling, grading, excavating, building, drilling, or mining on one of the following sites:
 - (a) An unlicensed or unpermitted solid waste landfill that ceased acceptance of waste prior to July 29, 1976.
 - (b) An unlicensed or unpermitted solid waste incinerator that ceased acceptance of waste prior to May 31, 1991.
 - (c) An unregistered, unlicensed, or unpermitted solid waste compost facility that ceased acceptance of waste prior to June 1, 1992.
 - (d) An unregistered, unlicensed, or unpermitted scrap tire facility that ceased acceptance of waste prior to March 1, 1996.
 - (e) A class IV residual waste landfill licensed or permitted or formerly licensed or permitted under Chapter 3745-30 of the Administrative Code.

- (f) A hazardous waste treatment, storage, or disposal facility operating pursuant to a hazardous waste facility installation and operation permit, permit renewal, or a closure plan or a post-closure plan for any hazardous waste management unit approved in accordance with rule 3745-55-18 or 3745-66-18 of the Administrative Code.
 - (g) A solid or hazardous waste facility that received a covenant not to sue pursuant to Chapter 3746. of the Revised Code and does not have an operation and maintenance agreement pursuant to that covenant.
 - (h) Any other solid or hazardous waste facility not otherwise exempted from this rule.
- (3) Paragraph (G) of this rule applies to any person proposing to engage in filling, grading, excavating, building, drilling, or mining for the purpose of conducting sampling, testing, and/or delineating the limits of waste on a facility.
- (E) Any person proposing to obtain an authorization from the director for a site identified in paragraph (D)(1) of this rule shall provide such information to Ohio EPA as necessary for it to make a determination that such activity will comply with the requirements of Chapter 3734. of the Revised Code, will not create a nuisance, and is unlikely to adversely affect the public safety or health or the environment, including as appropriate, the following information in the following order:
- (1) The location specified on a 7-1/2 minute USGS topographical map and on a topographic map with a maximum scale of one inch equals two hundred feet, legal description, type of facility, demonstration of current property ownership, and demonstration of current facility ownership.
 - (2) The specific activities and their intended purposes for which authorization is requested.
 - (3) Discussion of all previous and existing permits, licenses, approvals, and orders pertaining to past and ongoing waste treatment, storage, or disposal activities issued under local, state, and federal environmental regulations for lands upon which authorization under this rule is requested.
 - (4) Letters of acknowledgment from the owners of all parcels of land to which the authorization pertains.

- (5) Copies of certified mail receipts and a statement certifying that letters of notice stating that authorization under this rule is being requested for the affected site have been sent to the following entities:
 - (a) The board of health of the health district wherein the site is located.
 - (b) The governments of the general purpose political subdivisions where the site is located, i.e., county commissioner, legislative authority of a municipal corporation, and/or the board of township trustees.
 - (c) The local zoning authority having jurisdiction over the geographical area where the site is located, if any.
 - (d) If the site is a solid waste facility, the single county or joint county solid waste management district.
 - (e) The local fire department for the geographical area where the site is located.
- (6) A discussion of the site's present or known prior use of hazardous waste or solid waste treatment, storage or disposal, including a summary and discussion of all available documentation pertaining to the dates of operation, types and quantities of waste handled at the site, and ownership.
- (7) A detailed discussion of the closure and/or post-closure activities, if any, performed at the facility and an evaluation of the present condition of the closed facility.
- (8) A detailed description of the manner by which the proposed filling, grading, excavating, building, drilling, or mining will be accomplished.
- (9) A detailed description of the manner in which the integrity of the waste placement or the ancillary structures will be preserved where the filling, grading, excavating, building, drilling, or mining activities will occur in areas within three hundred feet of the limits of waste placement.
- (10) A detailed plan describing the manner by which the proposed filling, grading, excavating, building, drilling, or mining will be accomplished in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including but not limited to control of air emissions, control of leachate, surface water run-on and run-off, explosive

and toxic gas migration, and protection of ground water.

- (11) If waste will still remain on the property, a detailed description of a notation or update to any prior recorded notation to be placed on the deed to the property to notify in perpetuity any potential purchaser of the property that the land has been used as a hazardous waste facility or solid waste facility. The notation shall describe the impacted acreage, including the known location, depth, volume, and nature of waste disturbed at the site.
 - (12) Other such information as Ohio EPA deems necessary to determine that these activities will be in compliance with all applicable laws and regulations administered by the director.
 - (13) A signature as described in paragraph (I) of this rule.
- (F) Any person proposing to obtain an authorization from the director for a site identified in paragraph (D)(2) of this rule shall submit a certified letter to Ohio EPA, thirty days prior to beginning filling, grading, excavating, building, drilling, or mining activities, identifying information necessary to make a determination that the activity will be performed in such a manner that will comply with the requirements of Chapter 3734. of the Revised Code, will not create a nuisance, and is unlikely to adversely affect the public safety or health or the environment. Applications for authorization to engage in filling, grading, excavating, building, drilling, or mining shall include, at a minimum:
- (1) Name of the facility, if any, and type of facility.

[Comment: Refer to paragraph (D)(2) of this rule for a list of facility types subject to this paragraph.]
 - (2) Address of the site.
 - (3) County and township in which the site is located.
 - (4) Name, address, and telephone number of person to contact for additional information regarding the activities at the site.
 - (5) Size of site.
 - (6) Identification of type and amount of waste present at the site, including a description of the process that created the waste and the time period of waste

disposal.

- (7) Description of activities proposed at the site.
 - (8) Description of any institutional control that applies to the site.
 - (9) Description of the manner in which the control of air emissions, control of leachate, surface water run-on and runoff, explosive and toxic gas migration, and protection of ground water will be performed.
 - (10) Letters of acknowledgment from the owners of all parcels of land to which the authorization pertains.
 - (11) A statement that the requirements contained in paragraphs (H)(2) to (H)(6) of this rule will be followed.
 - (12) A statement that the applicable requirements contained in Chapter 3734. of the Revised Code will be followed by the applicant.
 - (13) An affidavit affirming that the assertions made in this application are true.
 - (14) A signature as described in paragraph (I) of this rule.
- (G) Any person proposing to obtain an authorization from the director for filling, grading, excavating, building, drilling, or mining for the purpose of sampling material, pursuant to paragraph (D)(3) of this rule, shall submit the following to Ohio EPA seven days prior to beginning filling, grading, excavating, building, drilling or mining activities:
- (1) A certified letter identifying information necessary for Ohio EPA to make a determination that the activity will be performed in a manner that will comply with the requirements of Chapters 3704., 3734., and 6111. of the Revised Code, will not create a nuisance, and is unlikely to adversely affect the public safety or health or the environment. Applications for authorization to engage in filling, excavating, or drilling for the purpose of sampling material, shall include, at a minimum:
 - (a) Name of the facility, if any, and type of facility.
 - (b) Address of the site.

- (c) County and township in which the site is located.
- (d) Name, address, and telephone number of a person to contact for additional information regarding the activities at the site.
- (e) A statement of the date(s) the sampling activity will occur.
- (f) A statement that the applicable requirements contained in paragraph (H) of this rule will be followed.
- (g) A statement that the applicable requirements contained in Chapter 3734. of the Revised Code will be followed by the applicant.
- (h) A signature as described in paragraph (I) of this rule.

- (2) The letter required in paragraph (G)(1) of this rule shall be received by Ohio EPA at least seven days prior to filling, excavating, or drilling for the purpose of sampling material.

[Comment: Paragraph (H) of this rule provides that filling, grading, excavating, building, drilling, or mining activities for sampling, as identified in paragraph (D)(3) of this rule, can begin after Ohio EPA receives the authorization letter or after eight days, whichever comes first, unless the applicant is notified otherwise.]

- (3) Filling, grading, excavating, building, drilling, or mining authorized by this paragraph, for the purpose of conducting sampling must be conducted in accordance with the following:

- (a) No more than five cubic feet per acre of material shall be disturbed.
- (b) No material shall be disturbed below ten feet of the surface.
- (c) All solid waste or hazardous waste removed during filling, grading, excavating, building, drilling, or mining shall be stored in accordance with Chapter 3734. of the Revised Code until such time as these materials are properly characterized and treated or disposed. Any liquid wastes released during filling, grading, excavating, building, drilling, or mining activities shall be stored in accordance with Chapter 3734. of the Revised Code until such time as these wastes are properly characterized and treated or disposed.

- (d) Each excavation or bore hole shall be backfilled within forty-eight hours of its creation.
- (e) Any excavation or bore hole may be backfilled with the material excavated, or may be backfilled with soils, asphalt concrete, concrete, or bentonite. All backfilling must be completed in a manner so as not to compromise the integrity of the facility.
- (f) Within thirty days of completion of the activities, a certification report containing a report of the location of sampling where wastes were encountered, a written explanation of what was done with any sampled material, and a written confirmation that any excavation or borehole has been backfilled in accordance with this paragraph shall be submitted to Ohio EPA.

[Comment: Maintaining the integrity of a facility may require replacement of engineered barrier layers.]

(H) Any person engaging in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated and required to obtain authorization under this rule shall comply with the following:

- (1) For sites identified in paragraph (D)(1) of this rule, no filling, grading, excavating, building, drilling, or mining activities shall occur until the director issues an authorization for that activity.
- (2) For sites identified in paragraph (D)(2) of this rule, filling, grading, excavating, building, drilling, or mining may occur thirty-one days after submitting a request for authorization to the director pursuant to paragraph (F) of this rule, unless the applicant is notified otherwise.
- (3) For sites where the sampling of material as identified in paragraph (D)(3) of this rule is proposed, filling, grading, excavating, building, drilling, or mining may occur eight days after submitting a request for authorization to the director pursuant to paragraph (G) of this rule, unless the applicant is notified otherwise.
- (4) If solid or hazardous waste or soils are removed from a closed facility, representative sampling of waste and potentially contaminated soil shall be performed. Copies of sample analysis results and the selection of the appropriate treatment or disposal method shall be submitted, along with a copy of a letter of acceptance from a treatment or disposal facility, to Ohio

EPA prior to any removal of waste or contaminated soil from the property. Waste and contaminated soils which have been removed from the closed facility must be collected and disposed of in accordance with all applicable state and federal laws and regulations pertaining to environmental protection, including Chapter 3734. of the Revised Code.

- (5) All filling, grading, excavating, building, drilling, or mining activities shall be performed in compliance with Chapters 3704., 3734., and 6111. of the Revised Code and applicable local, state, and federal laws and regulations pertaining to environmental protection, including but not limited to protection of ground water and control of air emissions, leachate, and surface water run-on and run-off.
- (6) No excavation of waste shall occur unless the excavated waste is replaced within previously existing horizontal and vertical limits of waste placement or is treated or disposed of at a licensed, permitted treatment or disposal facility, in accordance with Chapter 3734. of the Revised Code and the regulations promulgated thereunder. Any wastes that are suspected or known to be hazardous and are removed from the horizontal and vertical limits of waste placement during filling, grading, excavating, building, drilling, or mining activities, shall be stored in accordance with Chapter 3734. of the Revised Code until such time as these wastes are properly characterized and treated or disposed. Any liquid wastes released during filling, grading, excavating, building, drilling, or mining activities shall be stored in accordance with Chapter 3734. of the Revised Code until such time as these wastes are properly characterized and treated or disposed.
- (7) If excavation occurs outside the limits of waste at the site, the material used to backfill any excavated areas may not consist of solid or hazardous waste.
- (8) Filling, grading, excavating, building, drilling, or mining activities shall be performed in a manner that prevents migration of leachate, explosive gas, or toxic gas from the facility.
- (9) Upon completion of filling, grading, excavating, building, drilling, or mining activities at a closed facility, the condition of the facility cap shall be restored in accordance with the appropriate provisions of Chapter 3734. of the Revised Code and the rules promulgated thereunder, as were applicable at the time the facility originally submitted certification of closure, or the rules the facility was required to close under if certification was never submitted.
- (10) For sites identified in paragraph (D)(1) or (D)(2) of this rule, the owner or

operator shall provide a certification report within sixty days of completion of the filling, grading, excavating, building, drilling, or mining activities. This report shall contain the following:

(a) A verification to Ohio EPA that the following activities have been completed:

(i) The owner or operator has filed with the board of health having jurisdiction and with Ohio EPA, a plat or revised existing plat for the unit(s) of the solid waste facility or hazardous waste facility and information describing the acreage, exact location, depth, volume, and nature of the waste deposited in the unit(s) of the solid waste facility or hazardous waste facility that was impacted by the filling, grading, excavating, building, drilling, or mining activities.

(ii) If waste still remains on the property, the owner shall update any prior recorded notation on the deed to the property, in accordance with state law, to notify any potential purchaser of the property that the land has been used as a hazardous waste facility or solid waste facility and that its use is restricted. The notation shall describe the acreage impacted by the filling, grading, excavating, building, drilling, or mining activities; and the exact location, depth, volume, and nature of waste disposed of at the site.

(b) A notarized statement that if a protective layer, engineered cap, or surface soil on the site was disturbed, to the best of the owners or operators knowledge, the protective layer, engineered cap, or surface soil has been restored to a condition more protective than or equivalent to the condition prior to the activities being performed on the site.

(I) Applications for authorization to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated shall be signed. The signatures shall constitute personal affirmation that all statements or assertions of fact made in the application are true and complete and comply fully with applicable state requirements, and shall subject the signatory to liability under applicable state laws forbidding false or misleading statements, and shall be notarized. The signature shall be made as follows:

(1) In the case of a corporation, by a principal executive officer of at least the level of vice president, or his duly authorized representative if such representative is responsible for the overall operation of the site.

- (2) In the case of a partnership, by a general partner.
 - (3) In the case of a sole proprietorship, by the owner.
 - (4) In the case of a municipal, state, federal, or other governmental site, by the principal executive officer, the ranking elected official, or other duly authorized employee.
- (J) No person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated unless such activity will not result in violation of applicable laws and regulations administered by the director, will not create a nuisance, and will not adversely affect the public safety or health or the environment.
- (K) Ohio EPA may ask for additional information or impose special terms and conditions upon any person engaging in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated as is appropriate or necessary to ensure compliance with all applicable laws and regulations administered by the director, and to ensure protection of public health and safety and the environment.
- (L) Any request for authorization from the director, notwithstanding its deficiency, may be considered and acted upon if sufficient information is provided in the request for the director to determine whether the criteria set forth in paragraphs (E), (F), and (G) of this rule are satisfied.
- (M) If the person to whom the authorization was granted has not begun the activities described therein, unless otherwise specified, an authorization to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated shall terminate upon the occurrence of one of the following:
- (1) For facilities identified in paragraphs (D)(1) and (D)(2) of this rule, within three years of the issuance date of the authorization.
 - (2) For facilities identified in paragraph (D)(3) of this rule, within eighteen months of the submission date for the authorization.
- (N) The director may deny authorization to any person from engaging in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated if he concludes at any time that any applicable

laws have been or are likely to be violated or that continued implementation of the activities may cause a risk to human health or safety or the environment.

- (O) The director may revoke an authorization to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated if he concludes at any time that any applicable laws have been or are likely to be violated or that continued implementation of the approved plans may cause a threat to human health or safety or the environment.
- (P) Authorization to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated shall be granted, extended, revoked, or denied in accordance with the provisions of Chapters 119. and 3745. of the Revised Code and Chapter 3745-47 of the Administrative Code.
- (Q) Authorization to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated does not exempt a facility from closure or other requirements of Chapter 3734. of the Revised Code.