

Criteria for issuing or modifying solid waste, infectious waste treatment, or construction and demolition debris facility licenses.

(A) Facility Licenses. A licensing authority shall not issue or modify a facility license unless the following requirements are met:

(1) Facility specific criteria and general criteria.

(a) In the case of a solid waste facility or an infectious waste facility, a permit to install or a registration, if required by Chapter 3734. of the Revised Code or the rules promulgated thereunder, has been obtained by the owner or operator.

(b) In the case of a construction and demolition debris facility, all portions of the facility meet the requirements contained in rule 3745-400-06 of the Administrative Code.

(c) In the case of a construction and demolition debris facility, if the licensing authority determines that the facility design requirements and the construction specifications in the license application fail to meet the applicable requirements contained in rule 3745-400-07 of the Administrative Code.

(d) The license application is deemed complete, pursuant to paragraph (A)(2) of rule 3745-37-02 of the Administrative Code.

(e) The facility has not triggered mandatory closure requirements, pursuant to paragraph (D) of rule 3745-37-01 and paragraph (A) of rule 3745-37-04 of the Administrative Code.

(f) Financial assurance for the facility has been established and maintained in accordance with rules 3745-27-15, 3745-27-16, 3745-27-17, and 3745-27-18 of the Administrative Code as applicable, for solid and infectious waste facilities, and in accordance with rules 3745-400-13 and 3745-400-14 of the Administrative Code for construction and demolition debris facilities.

(g) The applicant for the license is the owner or operator of the solid waste, infectious waste treatment, or construction and demolition debris facility, as those terms are defined in rules 3745-27-01 and 3745-400-01 of the Administrative Code.

(2) The owner or operator of the facility for which the license application is pending:

(a) Has managed or operated the facility in substantial compliance with all applicable provisions of Chapters 3704., 3714., 3734., and 6111. of the

Revised Code and any rules, permits, registrations, or other authorizations issued thereunder, and has maintained compliance at the facility with all applicable orders issued by the director, or a board of health maintaining a program on the approved list, the environmental review appeals commission, or courts having jurisdiction in accordance with Chapter 3746-13 of the Administrative Code, in the course of such previous or current management or operations.

[Comment: An applicant may fail to maintain "substantial compliance" when, in case-specific circumstances, the owner or operator's management of the facility has caused actual exposure or the substantial likelihood of exposure of waste or waste derived constituents to human health or the environment, or when an owner or operator of a facility is a chronic violator, or has a pattern of significant ongoing violations. This may be the case regardless of whether the Ohio EPA or an approved health district has initiated or contemplated any kind of escalated enforcement proceedings against the owner or operator. Please note however, that existence of a violation at a facility may or may not necessarily mean that an owner or operator has failed to maintain 'substantial' compliance.]

(b) Has no current unresolved enforcement action pending against it by the approved health district or Ohio EPA to remedy any significant violation at the facility of any provision of Chapters 3714. or 3734. of the Revised Code and the rules promulgated thereunder with regard to construction and demolition debris, solid waste, or infectious waste.

[Comment: The determination of whether a formal enforcement action constitutes 'significant' noncompliance is a case by case determination by the director (or approved health district) which calls into question the ability of the owner and/or operator to operate the facility in compliance with essential operational requirements specified by law. In the event that Ohio EPA has an outstanding enforcement action pending against an applicant who seeks a license from an approved health department, the director will notify the health district if the enforcement action involves significant noncompliance. An inspection letter(s) from Ohio EPA or an approved health district that identifies violations occurring at a particular facility is not considered an enforcement action.]

(3) Any person submitting a license application, who currently owns or operates, or has previously owned or operated one or more facilities subject to Chapter 3714. or 3734. of the Revised Code:

(a) Has managed or operated each facility in substantial compliance with all applicable provisions of Chapters 3704., 3714., 3734., and 6111. of the

Revised Code and any rules, permits, registrations, or other authorizations issued thereunder, and has maintained compliance with all applicable orders issued by the director, a board of health maintaining a program on the approved list, the Environmental Review Appeals Commission (ERAC), or courts having jurisdiction in accordance with Chapter 3746-13 of the Administrative Code, in the course of such previous or current management or operations.

[Comment: Approved health districts are required by paragraph (C)(3)(a) of rule 3745-37-08 of the Administrative Code to conduct a thorough inspection of each facility for which a license application has been submitted no more than sixty days prior to acting on the license to determine whether the facility has been inspected for and found to be in substantial compliance with Chapters 3704., 3714., 3734., and 6111. of the Revised Code, as applicable.]

[Comment: An applicant may fail to maintain "substantial compliance" when, in case-specific circumstances, the owner or operator's management of the facility has caused actual exposure or the substantial likelihood of exposure of waste or waste derived constituents to human health or the environment, or when an owner or operator of a facility is a chronic violator, or has a pattern of significant ongoing violations. This may be the case regardless of whether the Ohio EPA or an approved health district has initiated or contemplated any kind of escalated enforcement proceedings against the owner or operator. Please note however that the mere existence of a particular violation at a facility does not necessarily mean that an owner or operator has failed to maintain 'substantial' compliance.]

- (b) Has no current unresolved enforcement action pending against it by the approved health district or Ohio EPA to remedy any significant violation, at any facility, of all applicable provisions of Chapters 3714. and/or 3734. of the Revised Code and the rules promulgated thereunder with regard to construction and demolition debris, solid waste, or infectious waste.

[Comment: The determination of whether a formal enforcement action constitutes 'significant' noncompliance is a case by case determination by the director (or approved health district) which calls into question the ability of the owner and/or operator to operate the facility in compliance with essential operational requirements specified by law. In the event that Ohio EPA has an outstanding enforcement action pending against an applicant who seeks a license from an approved health department, the director will notify the health district if the enforcement action involves significant noncompliance. An inspection letter(s) from Ohio EPA or an approved health district that identifies violations

occurring at a particular facility is not considered an enforcement action.]

- (4) The person identified as the operator of the facility shall be qualified and have the competence, reliability, and expertise necessary to operate the facility in substantial compliance with all applicable provisions of Chapters 3714. and 3734. of the Revised Code and the rules promulgated thereunder. Appropriate facility personnel shall possess thorough knowledge of applicable operational requirements and the facility's authorizing documents.
- (5) In the case of a new facility, the facility has been inspected by Ohio EPA and the approved health district, and has been determined to be adequately prepared for operations in accordance with its authorizing documents.

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