

**Response to Comments, PTI Application Number 02-20084
Kimble Transfer Station, Twinsburg Twp., Summit County**

On February 17, 2006, the Ohio Environmental Protection Agency (Ohio EPA) issued a draft permit to install (PTI) to Penn-Ohio Coal Co., d/b/a Kimble Transfer and Recycling (Kimble) for the proposed construction of the Kimble Transfer and Recycling Facility (Facility) located in Twinsburg Township, Summit County. An information session and public hearing were held on March 20, 2006, and written comments on the draft PTI were accepted until March 27, 2006.

The following are responses to the questions and comments received during the hearing and comment period pertinent to the proposed solid waste transfer facility. Comments received are in bold print, followed by Ohio EPA's responses.

1. Several comments were received pertaining to the proximity of the proposed transfer station to residential areas of Twinsburg Township, Macedonia City, and Twinsburg City.

The Ohio Administrative Code (OAC) establishes criteria that Ohio EPA must examine when considering a solid waste transfer station permit application. OAC Rule 3745-27-22(K) requires that the waste handling areas of a solid waste transfer facility not be located within 250 feet of a domicile in existence on the date of receipt of the permit to install application by Ohio EPA. The nearest residential development lies east of the Facility, with the nearest domicile located at least 1,250 feet away from the proposed waste handling area. Therefore, the location of the Facility meets this evaluation criterion.

2. Several comments were received pertaining to the proximity of the proposed transfer station to commercial and industrial areas, a neighborhood recreation center, and a municipal park.

Ohio environmental laws and regulations do not provide Ohio EPA any authority over issues relating to land use or zoning. The OAC establishes criteria that Ohio EPA must examine when considering a solid waste transfer station permit application. Ohio EPA does not have the authority to consider zoning or land use when examining a solid waste transfer station permit application. The proximity of the proposed Facility to adjoining land uses is best addressed at the local level through zoning, which is controlled by local governments. Even though an applicant may meet the applicable criteria to grant a solid waste transfer station permit, it does not preclude the Facility from complying with local zoning requirements.

As for the concerns over the Facility's proximity to a municipal park, Ohio EPA has the authority to ensure that the Facility is not located in a national park, national recreation area, or state park, and that the waste handling areas of the Facility are not located within 500 feet of a state nature preserve, a state wildlife area, a state

scenic river, a national wildlife refuge, or areas designated by the United States Forest Service as either a special interest area or a research natural area in the Wayne national forest. Ohio EPA does not have the authority to consider the Facility's proximity to a municipal park.

3. Several comments were received concerning the current and future values of commercial and residential properties near the proposed transfer station and the compensation of landowners should property values decline.

Many new development activities, such as shopping malls, highways, and factories, impact local property values. Controlling the proximity of these development activities to adjoining land uses in order to protect property values is best addressed at the local level through zoning, which is controlled by local governments.

Ohio environmental laws and regulations do not provide Ohio EPA any authority over issues relating to the location of the Facility and its impacts upon adjacent property values. No Ohio EPA program exists to compensate landowners for potential declines in property values. Ohio EPA develops rules for solid waste facilities to ensure that the facilities are protective of public health and safety and the environment. In addition, the Agency reviews permit applications for these facilities to ensure that the permit application conforms to all applicable requirements.

4. Several comments were received pertaining to the potential of the Facility to generate odors, blowing litter, and dust, and to attract rodents, insects, and birds.

Ohio EPA enforces regulations for fugitive dust emissions and the prohibition of odor nuisances through both the solid waste and the air pollution control programs. With respect to solid waste regulations, the Facility must be managed in such a manner that dust, odors, and rodents do not constitute a nuisance or a health hazard. The regulations require the storage and handling of waste on floors that allow regular wet or dry cleanup operations to prevent odors and other nuisances. In addition, the potential for odors and dust emissions, the attraction of birds, insects, and rodents, as well as blowing litter should be minimized because the Facility is transferring waste in an enclosed building.

OAC Rule 3745-37-08 requires the Summit County General Health District (SCGHD), on behalf of Ohio EPA, to conduct a minimum of quarterly inspections of the Facility for compliance with the operational rules contained in OAC Rule 3745-27-23. Typically the SCGHD conducts more frequent inspections of the facilities in its jurisdiction. The Facility inspections, including incoming loads, are documented

through inspection reports and checklists. Inspection results, which document any compliance issues, can be obtained from the following:

Mr. Darrick Willis, R.S.
Sanitarian, Environmental Health Division
Summit County General Health District
1100 Graham Road Circle
Stow, OH 44224
(330) 926-5600, Fax (330) 923-6436
<http://www.schd.org>

Compliance with the Facility's operations regarding odors and dust is administered by the Akron Regional Air Quality Management District (Akron AQMD) and SCGHD. Complaints can be filed with the following:

Akron Regional Air Quality
Management District
146 South High Street, Suite 904
Akron, Ohio 44308
(800) 589-2480, Fax (330)
<http://156.63.18.80>

Summit County General Health District
Environmental Health Division
1100 Graham Road Circle
Stow, Ohio 44224
(330) 926-5600, Fax (330) 923-6436
<http://www.schd.org>

Akron AQMD may be contacted regarding odors, dust, and other air emissions, while SCGHD may be contacted regarding odors, rodents, and blowing litter.

5. Several comments were received expressing the lack of notification regarding the permit application.

Kimble submitted their permit application in October 2004 and placed a public notice regarding their intent to hold an applicant's meeting in the *Akron Beacon Journal*. Ohio EPA also provided public notice of receipt of the permit application. The applicant's meeting was held by Kimble at the Twinsburg High School on November 18, 2004. Ohio EPA maintained an interested party list, which local officials and citizens could join at any time. In addition, Ohio EPA Northeast District Office endeavored to keep local officials informed of the status of the permit application. Once a recommendation was made to issue a draft permit for public comment, Ohio EPA published public notices of issuance of the draft permit in the *Akron Beacon Journal*, *Twinsburg Bulletin*, and *Macedonia News-Leader*. Although not required to, Ohio EPA chose to hold a combined public information session and public hearing for the proposed solid waste transfer facility. Public notices of the information session and hearing were published, and the combined meeting was held on March 20, 2006. A public comment period for receiving written comments on the draft permit was held between February 27, 2006, and March 27, 2006.

6. **Several comments were received indicating that because Kimble commenced construction of the Facility prior to receiving a final permit, many feel that the application is a “done deal” and that any citizen input from the hearing and public comment period will not be considered.**

Kimble commenced construction on a maintenance building and parking lot that is specifically excluded from the solid waste permit application, therefore, Ohio EPA has no authority to halt construction on a component that is specifically excluded from the permit application. Construction on this building is proceeding based upon local building and occupancy permits issued at the local level. If the transfer station permit application were denied, then Kimble would simply have a maintenance garage at this location.

In April 2006, Kimble commenced construction on the transfer station building that is included in the solid waste permit application. Upon discovery, Ohio EPA issued a Notice of Violation and took appropriate enforcement action against Kimble.

Ohio EPA recognizes the Agency’s mission cannot be achieved without input from the citizens of Ohio. The Agency places a high priority on public involvement and encourages citizens to become involved in the decision-making process. At the public hearing, interested parties commented on the draft PTI for the official record. These comments are provided to Ohio EPA in a transcript of proceedings. Written comments also become part of the official record and are given the same consideration as oral testimony. Ohio EPA prepares a responsiveness summary that is mailed to those that commented. Ohio EPA does not have unlimited authority to address all public concerns relating to a permit application. Some concerns may be regulated by other state, federal, or local agencies. Ohio EPA can only consider citizen comments pertaining to the Facility’s compliance with Ohio’s solid waste rules and regulations.

Following review and evaluation of the permit to install application, a technical recommendation is forwarded to the Director of Ohio EPA (Director). The technical recommendation is accompanied by the responsiveness summary. The Director considers all comments received regarding a permit to install application prior to making a decision on the application. The Director may issue a final permit or a proposed denial or request additional information. As with any final action, an appeal may be filed at the Environmental Review Appeals Commission (Commission). The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Commission within 30 days after notice of the Director’s action. The appeal must be accompanied by a filing fee of \$70.00, which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee

would cause extreme hardship. A copy of the appeal must be served on the Director within three days after filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. The appeal may be filed at:

Environmental Review Appeals Commission
309 South Fourth Street
Room 222
Columbus, OH 43215
(614) 466-8950

7. **Several comments were received concerning the number, volume, and speed of the garbage trucks through residential areas, truck operating condition, maintenance of trucks, U.S. Department of Transportation (DOT) compliance history of Kimble's waste hauler subsidiary J&J Refuse, Inc. in neighboring communities, as well as litter and leaking fluids from garbage trucks.**

Ohio environmental laws and regulations do not provide Ohio EPA any authority over issues relating to the potential increase in truck traffic, or compliance history of any waste hauling company that transports waste to a particular transfer facility. Ohio EPA can only consider the compliance history of specific companies that own or propose to operate a solid waste facility. Kimble, including its appropriate subsidiaries, has undergone an extensive background check by the State Attorney General's Office, and has been determined to meet the criteria established in Ohio Law to operate a solid waste facility.

Local communities may have additional restrictions on commercial traffic and vehicle usage within their respective municipalities. Concerns regarding garbage truck operation on public streets or roadways may be directed to the following:

- **Litter Control, Truck Traffic on Municipal Roads - Macedonia City**
Macedonia City Police Department
9691 Valley View Road
Macedonia, Ohio 44056
(330) 468-1234
<http://www.macedonia.oh.us/police.htm>

- **Litter Control, Truck Traffic on Municipal Roads - Twinsburg City**

Twinsburg City Police Department
10075 Ravenna Road
Twinsburg, Ohio 44087
(330) 425-1234
<http://www.mytwinsburg.com/site.cfm/departments/police>

- **Litter Control, Truck Traffic on County and Township Roads**

Summit County Sheriff's Office
53 University Avenue
Akron, Ohio 44308
(330) 643-2181
<http://www.co.summit.oh.us/sheriff>

- **Litter Control, Truck Traffic on State Routes**

Canton Patrol Post
4710 Shuffel Road
North Canton, OH 44720
phone (330) 433-6200
fax: (330) 433-6230
http://statepatrol.ohio.gov/contact_oshp.html

- **Unsecured Loads, Vehicle Safety, Commercial Trucks**

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
(800) 686-7826
<http://www.puco.ohio.gov/Puco.cfm?navitem=tabnav>

- **State Roadways**

Ohio Department of Transportation
6155 Chittenden Road
Hudson, Ohio 44236
(330) 650-1300
<http://www.dot.state.oh.us/dist4>

8. Several comments were received concerning reimbursements to Macedonia residents for roadway assessments to Highland Road due to the additional truck traffic from the Kimble Facility.

Reimbursement for roadway assessments and truck traffic restrictions regarding Highland Road within the Macedonia City limits would be a decision made by Macedonia municipal officials.

9. During the Public Hearing, a citizen expressed concern that socioeconomic issues should be considered during Ohio EPA permit review.

Ohio EPA recognizes that proposals to establish a solid waste facility in any area are controversial and often unpopular. However, Ohio EPA must consider a proposal based on its technical merits and its ability to meet the siting, design, construction, operation, and closure requirements of Ohio's solid waste regulations. Ohio EPA bases its decision to approve or deny a permit application on whether these criteria are met. Issues regarding local land uses and their effects on matters such as property values and socioeconomic issues are concerns addressed locally by zoning boards, planning commissions, and other local regulatory bodies.

10. Several comments were received with regard to the possibility of the operations at the proposed solid waste transfer facility contaminating ground water, and nearby wetlands, streams, and lakes.

The Facility is designed to prevent surface water and ground water contamination. The waste handling floor of the Facility will be sloped to drain any liquid released from the waste (leachate) to floor drains, where it will flow through contained piping to a 4,000-gallon oil-water separator, through a lift station, and then to sanitary sewers along Chamberlin Road. Leachate that flows into this sewer will be treated at the Southerly Wastewater Treatment Plant located in Cuyahoga County. Also, leachate generation will be minimized because the Facility is enclosed, which prevents rainwater from infiltrating the waste. Most of the liquid will come from the dust control and wet clean-up operations. As a result, it is unlikely that the operations from this Facility would cause surface water or ground water contamination.

The Facility also has a sedimentation pond and storm water controls to ensure that no greater volume of storm water leaves the property than before development occurred. The storm water management system is designed to remove sediment from storm water runoff before being discharged to ditches along the railroad tracks. The Facility's storm water system operates under a state storm water permit, and is inspected by both Ohio EPA and the Summit County Soil and Water Conservation District. Complaints regarding storm water management should be directed to the following:

- Mr. Kelvin Rogers
Ohio EPA, Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087
(330) 963-1200, Fax (330) 487-0769
kelvin.rogers@epa.state.oh.us

- Mr. David Ritter
Summit County Soil & Water Conservation District
2795 Front Street, Suite D
Cuyahoga Falls, OH 44221
(330) 919-2871, Fax (330) 929-2872
dritter@summitswcd.org

11. Comments were received stating that Ohio EPA gives more consideration to big business than to the citizens of Ohio.

Ohio EPA's statutory role regarding the review of solid waste transfer station permit applications is to review any application submitted to determine compliance with the appropriate criteria established in Ohio laws and regulations. Ohio EPA did not choose to locate this Facility in Twinsburg Township. Kimble chose to submit an application to establish the Facility in this location. Ohio's solid waste regulations contain very specific requirements for siting, design, construction, operation, and closure of solid waste transfer facilities. These requirements protect public health and safety and the environment for the citizens of Ohio. These requirements must be satisfied before the Agency issues any solid waste permit to install. Ohio EPA's role is to review any permit application submitted to determine if it meets the technical requirements for siting, design, construction, operation and closure in accordance with state laws and regulations.

12. Comments were received regarding giving consideration to changing the 250 foot setback from residential areas established by Ohio regulations.

Ohio enacted solid waste transfer facility laws in 1990, and regulations were adopted in 1991. The regulations were revised in 1999, and again in 2004. The setback criterion of 250 feet, contained in OAC Rule 3745-27-22(K), has been unchanged since 1991. Ohio EPA believes that the setback criteria is protective of public health and safety and the environment. The adoption of Ohio EPA's regulations undergo a very public process where rules first drafted, then placed for public comment, and followed by a hearing soliciting public comments. After public comments are received, Ohio EPA considers the comments and proposes the rules for filing with the Joint Committee on Agency Rule Review (JCARR). A public notice is issued and another public hearing is held. Then JCARR holds a hearing and, unless JCARR objects to the rules, the rules are enacted.

13. Comments were received regarding Kimble's compliance history, particularly at its landfill in Tuscarawas County relating to hazardous waste and ground water monitoring. Commentors questioned how Ohio EPA could grant approval to Kimble for a transfer station when it fined Kimble for accepting hazardous waste at its landfill in Dover.

The Director must consider a number of factors in determining whether an application for a permit should be denied due to an applicant's compliance record. The first is whether the company, or any "key employee" of the company, has been convicted of specific types of crimes. These crimes range from murder and arson to criminal conviction for violating federal or state environmental protection laws. In looking at these situations, the Director must also consider whether the company or person has demonstrated rehabilitation. A company demonstrates rehabilitation by implementing formal management controls to minimize or prevent recurrence of the specific types of violations. Such controls may include, for example, instituting an environmental auditing program or an antitrust compliance auditing program.

Secondly, the Director must consider the company's history of compliance with Ohio's environmental regulations and whether the company is presently in substantial compliance. This consideration must weigh the number and severity of violations and the number of facilities, the company's response to correct violations, and whether the company is on a legally enforceable schedule that will correct any violations. These are the factors the Director considers in evaluating a company's operating and compliance history with respect to issuing a permit for a new solid waste facility.

By issuing the permit to Kimble, the Director has made the necessary determination that the applicant has satisfied the requirements of the background check required by Ohio Revised Code (ORC) Chapter 3734, and has demonstrated sufficient reliability, expertise, and competency to operate the solid waste transfer facility in substantial compliance with applicable laws, rules, and regulations.

It is not uncommon for solid waste facilities operating in Ohio to have been cited for violations at one time or another. An applicant whose past violations have been resolved through a Director's enforcement action is one who is considered to be on a legally enforceable schedule to return to compliance. In addition, although an applicant may have been subject to an enforcement action in the past, the Director specifically considers the applicant's compliance efforts with the outcome of any enforcement action when considering a permit.

Regarding concerns about hazardous waste acceptance, the Facility is required to have a polychlorinated biphenyl (PCB) and hazardous waste detection program to ensure that unauthorized wastes are not accepted at the Facility.

14. **Several comments were received regarding the operating hours of the proposed transfer station, in particular the noise from operating equipment at early morning hours. Complaints have been raised by Twinsburg residents who live near the Glenwillow Transfer Station regarding noise complaints as early as 4:30 A.M.**

There are no Ohio laws or Ohio EPA rules that limit the operating hours of a solid waste facility, and information regarding proposed operating hours is not required as part of the permit to install application. However, issuance of a permit to install does not override local zoning or other ordinances that may address the hours of operation at a solid waste facility.

- 15. A comment was received regarding the unprofessional manner of Kimble's hauling company (J&J Refuse) in handing the Village of Northfield's hauling contract. The commentor indicated J&J Refuse used trucks that were in disrepair, damaged utility lines by carelessly operating, and violated the agreed operating hours.**

Municipalities have the ability to regulate garbage haulers in their jurisdictions, including the authority to register and inspect them for fitness of service, and to hold owners responsible for damages to property and disturbance of the general peace if they violate the terms of their agreement. A response concerning Ohio EPA's authority to regulate garbage trucks outside the Facility's boundary can be found in the response to Comment No. 7. A response concerning Ohio EPA's authority to regulate operating hours can be found in the response to Comment No. 14.

- 16. A comment was received concerning the number of exhaust vents proposed in the transfer station.**

There are two roof-mounted exhaust vents installed at the Facility.

- 17. A comment was received regarding the amount of financial assurance. The commentor was concerned about whether the financial assurance will be adequate to close the Facility if Kimble is unable or unwilling to do so, and wanted to know who has the responsibility to make sure the financial assurance fund is maintained.**

The amount of financial assurance for the Facility is \$72,710. The purpose of the financial assurance is to provide the financial resources for the State of Ohio to close the Facility in accordance with Ohio's solid waste rules in the event that Kimble is unable or unwilling to close the Facility. Specific items for closure include the following: removal of all wastes within the Facility for disposal in a licensed landfill; pressure washing of walls and floors; posting of signage declaring the Facility closed; publishing notices in the newspaper announcing that the Facility is closed; baiting for rodents and insects; and preparing a certification report and submitting the report to Ohio EPA documenting that these activities have taken place. Ohio's regulations require that an estimate for closure and corresponding executed financial assurance instrument be included with the permit application, and that an updated estimate with the corresponding instrument be provided annually

to Ohio EPA. Kimble will be required to maintain this instrument, and the State of Ohio will ensure that Kimble complies with this requirement.

18. Comments were received regarding the failure of the applicant or Twinsburg Township to involve surrounding communities in the process for permitting the proposed transfer station. Reference was made to a February 10, 2005 resolution opposing the Transfer Station.

With the submission of a permit application, Ohio's regulations require that an applicant provide a letter of intent to the governments of the general purpose subdivisions where the transfer station will be situated, in this case Twinsburg Township and Summit County. There is no obligation for the applicant to provide letters of intent to governments of the general purpose subdivisions adjacent to the general purpose subdivisions in which the transfer station is proposed to be located. Kimble placed its public notice for the applicant's meeting in the *Akron Beacon Journal*. As a courtesy, Ohio EPA placed its public meeting and hearing notices for this Facility not only in the *Akron Beacon Journal*, but also in the *Twinsburg Bulletin* and the *Macedonia News-Leader*, and has endeavored to keep local officials from Macedonia City, Twinsburg City, and Northfield Village informed of the permit status throughout 2005 and 2006. Ohio EPA is in receipt of the February 10, 2005, resolution and will include the document as part of the comments received for the public record.

19. Comments were received concerning actions taken if there is a spill at the Facility.

As a part of the permit application, Ohio EPA regulations require that Kimble prepare an emergency action plan in the event that an incident such as a spill occurs at the Facility. Specific items include immediate notification of local fire officials, local health departments, and Ohio EPA. Spills will be isolated utilizing a chemical absorbent, such as Floor Dry™ or absorbent clay. Kimble will collect, manage, and dispose of the isolated material with concurrence from Ohio EPA and the SCGHD in accordance with applicable federal, state, and local regulations. Provisions also include preventing a spill from entering the sanitary sewer system unless authorized to do so.