

3745-52-11

Hazardous waste determination and recordkeeping.

A person who generates a "waste" (as defined in rule 3745-51-02 of the Administrative Code) shall make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to all applicable hazardous waste rules. A hazardous waste determination is made using the following steps:

- (A) The hazardous waste determination for each waste shall be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of the management of the waste that the waste has, or may have, changed the waste's properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the waste classification of the waste may change.
- (B) A person shall determine whether the waste is excluded from regulation under rule 3745-51-04 of the Administrative Code.
- (C) If the waste is not excluded under rule 3745-51-04 of the Administrative Code, the person shall then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under rules 3745-51-30 to 3745-51-35 of the Administrative Code. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under 40 C.F.R. 260.20 and 40 C.F.R. 260.22 to demonstrate to the administrator that the waste from this particular site or operation is not a hazardous waste.
- (D) The person then shall determine whether the waste exhibits one or more hazardous characteristics as identified in rules 3745-51-20 to 3745-51-24 of the Administrative Code by following the procedures in paragraph (D)(1) or (D)(2) of this rule, or a combination of both, as follows:
- (1) The person shall apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (e.g., information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or the waste's constituents. A test other than a test method provided in rules 3745-51-20 to 3745-51-24 of the Administrative Code, or an equivalent test method approved by the administrator under 40 C.F.R. 260.21,

may be used as part of a person's knowledge to determine whether a waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing the waste shall obtain a "representative sample" (as defined in rule 3745-50-10 of the Administrative Code) of the waste for the testing.

(2) When available knowledge is inadequate to make an accurate determination, the person shall test the waste according to the applicable methods provided in rules 3745-51-20 to 3745-51-24 of the Administrative Code or according to an equivalent method approved by the administrator under 40 C.F.R. 260.21 and in accordance with the following:

(a) Persons testing the waste shall obtain a representative sample of the waste for the testing.

(b) Where a test method is specified in rules 3745-51-20 to 3745-51-24 of the Administrative Code, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(E) If the waste is determined to be hazardous, the generator shall refer to Chapters 3745-51, 3745-54 to 3745-57, 3745-65 to 374-69, 3745-205, 3745-256, 3745-266, 3745-270, and 3745-273 of the Administrative Code for other possible exclusions or restrictions pertaining to management of the specific waste.

(F) Recordkeeping for small quantity generators and large quantity generators. A small quantity generator or large quantity generator shall maintain records that support the hazardous waste determinations, including records that identify whether a waste is a "hazardous waste" (as defined in rule 3745-51-03 of the Administrative Code). Records shall be maintained for at least three years after the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records shall comprise the generator's knowledge of the waste and shall support the generator's determination, as described in paragraphs (C) and (D) of this rule. The records shall include, but are not limited to, the results of any tests, sampling, waste analyses, or other determinations made in accordance with this rule; records that document the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated; the composition of the waste and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described in paragraph (D)(1) of this rule. The periods of record retention provided in this rule are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the director.

(G) Identifying hazardous waste numbers for small quantity generators and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators shall identify all applicable EPA hazardous waste numbers in rules 3745-51-20 to 3745-51-24 and 3745-51-30 to 3745-51-35 of the Administrative Code. Prior to shipping the waste off site, the generator also shall mark the containers with all applicable EPA hazardous waste numbers according to rule 3745-52-32 of the Administrative Code.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]

Replaces: 3745-52-11 rescinded, 3745-52-40 portion
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Certification

09/21/2020

Date

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TO BE RESCINDED

3745-52-11 **Hazardous waste determination.**

Any person who generates a "waste," as defined in rule 3745-51-02 of the Administrative Code, shall determine if that waste is a hazardous waste using the following method:

- (A) The generator should first determine if the waste is excluded from regulation under rule 3745-51-04 of the Administrative Code.
- (B) The generator shall then determine if the waste is listed as a hazardous waste in rules 3745-51-30 to 3745-51-35 of the Administrative Code.

[Comment: Even if the waste is listed, the generator still has an opportunity under 40 CFR 260.22 to demonstrate to the administrator that the waste from the generator's particular facility or operation is not a hazardous waste.]

- (C) For purposes of compliance with Chapter 3745-270 of the Administrative Code, or if the waste is not listed as a hazardous waste in rules 3745-51-30 to 3745-51-35 of the Administrative Code, the generator shall then determine whether the waste is identified in rules 3745-51-20 to 3745-51-24 of the Administrative Code by either:
 - (1) Testing the waste according to the methods in rules 3745-51-20 to 3745-51-24 of the Administrative Code, or according to an equivalent method approved by the U.S. EPA region V regional administrator pursuant to 40 CFR 260.21.
 - (2) Applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.
- (D) If the waste is determined to be hazardous, the generator shall refer to Chapters 3745-51, 3745-54 to 3745-57, 3745-65 to 3745-69, 3745-205, 3745-256, 3745-266, 3745-270, and 3745-273 of the Administrative Code for possible exclusions or restrictions pertaining to management of the specific waste.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]

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