

Final policy regarding regulation of facilities that use thermal and biological conversion technologies to convert solid waste to fuels

After careful review of existing regulations, and consideration of comments from interested parties regarding solid waste-to-fuel conversion facilities, the Agency is finalizing the following policy.

Solid Waste Policy

Ohio EPA will not regulate thermal or biological solid waste-to-fuel conversion facilities as solid waste facilities under the State's solid waste laws unless such facilities are also operating as solid waste transfer facilities. The Agency will regulate thermal or biological solid waste-to-fuel conversion facilities in a manner that is protective under the State's existing applicable air and water pollution control laws.

Scrap tire collection, storage, processing and recovery facilities are NOT included in this policy interpretation and remain subject to all applicable solid waste rules.

Background

Even with Ohio's reduction and recycling efforts, we continue to landfill too much solid waste that has potential economic value. With Ohio's citizens, government officials, environmental interests, solid waste professionals and business community working together, we can position the state to take advantage of an important opportunity to better utilize these materials as an alternative fuel source. The 2009 State Solid Waste Plan recognizes that thermal and biological technologies for converting solid waste to fuel are preferable to incineration and landfill disposal. The State Plan includes a specific state strategy for Ohio EPA to "facilitate implementing technologies that use waste to produce energy." As part of this strategy, the State Plan also states, "Ohio EPA will investigate ways to streamline permitting and regulatory oversight of waste-to-energy facilities.

The Agency also believes its recommended approach supports Ohio's alternative energy portfolio standard as set forth in SB 221, the objectives of the Governor's Executive Order 2011-01K, *Establishing the Common Sense Initiative*, and the objectives of SB 2. Specifically,

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SB 2 and the Executive Order emphasize the importance regulations play in protecting public health and that all of Ohio benefits from regulations that are in the public interest and enforced properly. It requires state agencies to consider alternative means of regulation that might reduce or eliminate the adverse impact on businesses. It also requires state agencies to consider the overall balance between regulatory objectives and the costs of compliance.

These directives are consistent with the core mission of Ohio EPA: protecting the environment and public health.

Regulatory Rationale

Facilities that are either disposing of or transferring solid wastes for disposal are subject to permitting and licensing under Ohio's solid waste laws. The process of incinerating a solid waste is defined as disposal, and such facilities are subject to Ohio's solid waste laws. The solid waste laws do not specifically define solid waste disposal to include thermal or biological processes used to convert solid waste to create gases and/or oils that are subsequently burned as a fuel.

Thermal and biological solid waste-to-fuel conversion facilities are currently subject to Ohio EPA's air pollution control requirements and may require a permit for emission sources and material handling operations. In addition, if these facilities have wastewater discharges, they are required to obtain appropriate permits or authorizations for these discharges. Ohio EPA's storm water permitting program may also help ensure that adequate controls are in place to prevent contaminated run-off from outdoor material handling or storage.

In addition, the activities related to processing solid waste like magnetic separation, wet separation, picking, drying, pressing, baling and crushing that typically occur at legitimate recycling facilities and physical conversion facilities¹ are similar to those that would occur at thermal or biological conversion facilities. Operations at legitimate recycling facilities are exempt from Ohio's solid waste regulations unless the facility is also operating as a solid waste transfer facility. Ohio EPA retains authority to address public nuisances; however, significant problems with these types of operations have not been encountered.

Given the above, the Agency has determined it can regulate thermal and biological conversion facilities in a manner that is protective of human health and the environment under the State's existing air and water pollution control laws. Ohio EPA will not require a solid waste permit or license for these facilities. If necessary, Ohio EPA and local authorities can still use solid waste and public nuisance laws to address public nuisances and open dumping issues at waste-to-fuel conversion facilities.

¹ Physical conversion technologies use sizing/screening, shredding, magnetic separation, wet separation, picking, drying, pressing, grinding, baling, crushing, and pelletizing to create a solid engineered fuel.