



**Re: Interested Party Review – Composting and Multi-Program Rules**

Dear Interested Parties:

The Division of Materials and Waste Management is in the process of conducting a review of the regulations for composting facilities, the multi-program administration, multi-program licensing, and the multi-program financial assurance rules, Ohio Administrative Code (OAC) Chapters 3745-500, 3745-501, 3745-503, and 3745-560. This review is being conducted to satisfy requirements mandated by Ohio Revised Code (ORC) Section 106.03 which requires all state agencies to review each of their rules every five years to determine whether or not to continue the rules without change, amend the rules, or rescind the rules. DMWM has reviewed the current effective rules and has made the preliminary determination that the following rules should be amended:

- 3745-500-02 General administration - definitions.
- 3745-500-03 Incorporation by reference.
- 3745-500-35 Relationships among authorizing documents, rules, and the authority of the director and board of health.
- 3745-503-05 Financial assurance for closure.
- 3745-560-01 Composting facilities - applicability.
- 3745-560-02 Composting facilities - definitions.
- 3745-560-03 Plan view drawing update for class IV composting facilities.
- 3745-560-04 Composting - log of operations and annual report forms.
- 3745-560-05 Composting - closure cost estimate.
- 3745-560-100 Class I composting facility establishment.
- 3745-560-101 Criteria and procedures for approval, termination, revocation, and administrative change of a class I composting facility permit to install.
- 3745-560-105 Alternative materials request for class I composting facilities.
- 3745-560-110 Operational requirements for class I composting facilities.
- 3745-560-130 Compost quality standards for class I composting facilities.
- 3745-560-200 Class II composting facility establishment.
- 3745-560-201 Criteria for approval and termination of a class II composting facility registration.
- 3745-560-202 Construction and commencement of operations at class II composting facilities.
- 3745-560-210 Operational requirements for class II composting facilities.
- 3745-560-220 Compost distribution requirements for class II composting facilities.
- 3745-560-230 Compost quality standards for class II composting facilities.
- 3745-560-300 Class III composting facility establishment.
- 3745-560-302 Construction and commencement of operations at class III composting facilities.
- 3745-560-310 Operational requirements for class III composting facilities.
- 3745-560-320 Compost distribution requirements for class III composting facilities.
- 3745-560-330 Compost quality standards for class III composting facilities.
- 3745-560-335 Closure requirements for class III composting facilities.
- 3745-560-400 Class IV composting facility establishment.
- 3745-560-402 Construction and commencement of operations at class IV composting facilities.
- 3745-560-410 Operational requirements for class IV composting facilities.

Please review and comment on the draft changes to the above rules (new language is underlined and deleted language is shown as ~~strikeout~~). The following summarizes some of the significant draft changes with a brief explanation of the intent.

#### Chapter 3745-500 Draft Changes

- 3745-500-02: General administration – definitions. Draft changes to definitions include:
  - The food scraps definition revised to include both processed and unprocessed vegetables and other residuals from food intended for human or animal consumption and compostable containers or serveware that are commingled with the food scraps.
  - The yard waste definition revised to include produce and plant materials and other specified materials.
- 3745-500-03: Incorporation by reference. Draft changes include updates to document references.
- 3745-500-35: Relationships among authorizing documents, rules, and the authority of the director and board of health. Wording revised for clarity and consistency with similar rule language.

#### Chapter 3745-503 Draft Changes

- 3745-503-05: Financial assurance for closure. Draft changes to update the reference to the Circular 570 publication.

#### Chapter 3745-560 Draft Changes

- 3745-560-01: Composting facilities – applicability rule draft changes:
  - Language regarding the class II and class III composting facility exclusion from composting distribution requirements if all of the facility's compost is exclusively used on the facility owner's property has been moved into the appropriate compost distribution rules [3745-560-220 and 3745-560-320]. Placement of this exclusion in the appropriate compost distribution rules is intended to improve clarity.
  - The exclusion from the requirements of Chapter 3745-560 for any person composting certain materials within an aggregate area of not more than three hundred square feet on any premises would be increased to five hundred square feet. This increase in area is intended to better accommodate small composting operations at community based gardens and institutions, such as schools, universities, prisons, etc., while still maintaining a manageable operational size.
- Language was added to rules 3745-560-01 and 3745-560-05 referencing the opportunity to seek a variance or exemption under rules 3745-500-210 and 3745-500-220. The intent is to improve understanding of this opportunity.
- A new concept is the establishment of a composting facility design capacity and facility operational capacity in the class I permit and class II facility registration. The owner or operator would have the option of establishing an operational capacity less than the facility design capacity. The operational capacity would be the amount of material managed in the materials placement area. The owner or operator can adjust the operational capacity and the size of the materials placement area by submitting an updated registration including a new closure cost estimate based upon the operational capacity. This is intended to provide the owner and operator of a class I and class II composting facility with a means to better tailor closure cost estimates and financial assurance to the materials actually managed on the facility. See rules 3745-560-02 for definitions of design capacity and operational capacity. See rule 3745-560-05 regarding closure cost estimates. See rules 3745-560-100 and 3745-560-200 regarding class I permit applications and class II registrations. See rules 3745-560-110 and 3745-560-210 regarding class I and class II operations. [Note: The rules for class III and class IV do not use the concept of operational capacity since these class III and class IV composting facilities do not have a financial assurance requirement.]
- A new concept is the addition of acidic anaerobic fermentation as a method of composting. See rules 3745-560-02 for definitions of acidic anaerobic fermentation and effective microorganisms (EM). See operational rules 3745-560-110, 3745-560-210, 3745-560-310, and 3745-560-410. See compost distribution rules 3745-560-220 and 3745-560-320. The intent is to allow consideration of this method of composting and acknowledge the resulting material as compost.

- Revisions to the title and content of rules 3745-560-202, 3745-560-302, and 3745-560-402 to address design and construction associated with the commencement of facility operations. The intent is to clarify what facility design and construction needs to be completed prior to commencement of facility operations.
- Revised language regarding leachate management and control of surface water run-on and runoff. See rules 3745-560-02 for definitions for run-on and runoff. See the appropriate construction and commencement of operations rules 3745-560-202, 3745-560-302, and 3745-560-402. See the appropriate operational rules 3745-560-110, 3745-560-210, 3745-560-310, and 3745-560-410. The intent is to clarify the requirements specific to run-on, runoff, and leachate.
- 3745-560-02 draft changes to definitions:
  - New definitions include acidic anaerobic fermentation, design capacity, effective microorganisms (EM), operational capacity, and run-on. Run-on is a newly defined term and is used in the operational rules for requirements. DMWM is interested whether a definition of run-on pertaining to surface water management is useful to industry and its value as a definition in OAC Chapter 3745-560.
  - Revised definitions include additive, agricultural plant material, compostable container, compostable serviceware, inactive composting facility, and runoff.
  - Moved the definitions of feedstock, food scraps, and yard waste. Because these terms are defined in rule 3745-500-02 and used in more than one program chapter, they can be deleted from rule 3745-560-02. [Note: The definitions in rule 3745-500-02 (terms used in more than one program chapter) and the definitions in rule 3745-560-02 all apply to the composting program Chapter 3745-560.]
  - The definition thermophilic stage was deleted since the term is not used in Chapter 3745-560.
- 3745-560-05: Composting - closure cost estimate rule draft changes:
  - Paragraphs (A)(2) and (B) regarding the class II composting facility closure cost estimate and annual review of closure cost estimate has been revised to incorporate the new composting facility operational capacity concept in determining the class II closure cost estimate.
  - Removed language in 3745-560-200(A) and added to paragraph 3745-560-05(F) regarding when class II facilities are not required to have financial assurance. Moving this exclusion into rule 3745-560-05 is intended to improve clarity. The amount of the closure cost estimate would change from \$3,500 to \$5,500 or less. The increase to \$5,500 is consistent with a similar exclusion applicable to transfer facilities and represents the basic cost of maintaining a financial assurance instrument with a financial institution.
- Revised rules 3745-560-130, 3745-560-230, and 3745-560-330 regarding compost quality standards and updated the tables. The intent is to update the various listed preparation and analytical methods.

DMWM has made the preliminary determination that the following rules should be retained without change:

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| 3745-500-01  | General administration - applicability.   |
| 3745-500-50  | Signatures.   |
| 3745-500-130 | Retention and distribution of authorizing documents - procedures for boards of health and Ohio EPA. |
| 3745-500-150 | Alteration to a solid waste permit to install.  |
| 3745-500-220 | Exemptions from solid waste requirements.   |
| 3745-500-330 | Termination of a permit to install issued under Chapter 3734. of the Revised Code.                  |
| 3745-500-350 | Causes for revoking a permit to install issued under Chapter 3734. of the Revised Code.             |
| 3745-500-360 | Administrative change to a permit to install.   |
| 3745-501-01  | Licensing - applicability.  |
| 3745-501-02  | Licensing - definitions.  |
| 3745-501-05  | Licenses required for solid waste facilities.   |
| 3745-501-10  | License applications, application procedures, and remittal of fees after license issuance.          |

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| 3745-501-15  | Criteria for issuing or denying facility licenses.   |
| 3745-501-20  | Procedures for the licensing authority for reviewing and considering license applications. |
| 3745-501-35  | Transfer of licenses.  |
| 3745-501-40  | Suspension or revocation of a license.   |
| 3745-503-01  | Financial assurance - applicability.   |
| 3745-503-02  | Financial assurance – definitions.   |
| 3745-503-20  | Wording of financial assurance instruments.  |
| 3745-560-102 | Procedures for commencement of operations at class I composting facilities.                |
| 3745-560-115 | Record keeping requirements for class I composting facilities.                             |
| 3745-560-120 | Compost distribution requirements for class I composting facilities.                       |
| 3745-560-125 | Compost sampling and testing requirements for class I composting facilities.               |
| 3745-560-135 | Closure requirements for class I composting facilities.                                    |
| 3745-560-205 | Alternative materials request for class II composting facilities.                          |
| 3745-560-215 | Record keeping requirements for class II composting facilities.                            |
| 3745-560-225 | Compost sampling and testing requirements for class II composting facilities.              |
| 3745-560-235 | Closure requirements for class II composting facilities.                                   |
| 3745-560-301 | Criteria for approval and termination of a class III composting facility registration.     |
| 3745-560-315 | Record keeping requirements for class III composting facilities.                           |
| 3745-560-325 | Compost sampling and testing requirements for class III composting facilities.             |
| 3745-560-401 | Criteria for approval and termination of a class IV composting facility registration.      |
| 3745-560-415 | Record keeping requirements for class IV composting facilities.                            |
| 3745-560-435 | Closure requirements for class IV composting facilities.                                   |

In addition to commenting on the draft rule language and the changes, DMWM seeks interested party comment on the following concepts and questions. While the draft rules released with this notice to interested parties do not contain draft language regarding the following concepts and questions, DMWM will review interested party comments to evaluate whether additional rule changes should be considered at this time.

- Paragraph (E) in rules 3745-560-110, 3745-560-210, 3745-560-310, 3745-560-410. This paragraph contains a distribution requirement stating that “the owner or operator shall distribute compost product at a minimum rate of one fourth the amount of material received the previous calendar year.” The original intent of this requirement was to prevent composting facilities from developing increasingly large storage piles. When the requirement was established, increasingly large storage piles were a particular concern with examples of facilities where material had been accumulating for multiple years without any distribution of finished compost. At this time, DMWM is interested in comments on this issue and suggestions on how this requirement might be amended to better address the concern.
- Indoor composting. DMWM is aware of an increased interest in the establishment of indoor composting facilities and is considering adding the concept into rule. DMWM would like input from stakeholders on applicable siting criteria, and the identification of current rules in OAC Chapter 3745-560 that should apply to composting facilities with material placement areas located within a building.
- Alternative materials. DMWM is exploring the concept of an approved list for alternative materials. If an alternative material is approved by the director and that material has been determined to be acceptable for use at multiple composting facilities throughout the state, the material could be added to an approved materials list. This would enable broad director approval of an alternative material available to composting facilities without each individual facility submitting an alternative materials request pursuant to OAC 3745-560-105 or 3745-560-205. This concept might also expand the materials allowed at class III and class IV composting facilities.
- Content of the letters of intent required in rules 3745-560-100, 3745-560-200, 3745-560-300, 3745-560-400. DMWM received early stakeholder comment regarding letters of intent and the role of local boards of zoning. DMWM is exploring whether the rules should specify additional information to be included in the letter of intent to ensure consistency of information regarding the intent to establish a composting facility.
- Mulch. Historically, piles of wood chips, brush, and mulch where incidental biological decomposition was naturally occurring were not considered or regulated as composting facilities. If the piles were being periodically turned or moved, if grass clippings were being added, if intentional steps were being taken to promote composting, or if the material was being marketed as compost, then the site was regulated pursuant to OAC Chapter 3745-560. DMWM seeks interested party input and information regarding this distinction between composting facilities and mulching operations.

### **Where can I get a copy of the draft rules?**

You may view the draft rule at <http://www.epa.ohio.gov/dmwm/dmwmnonhazrules.aspx>, or call (614) 644-2621 to obtain a copy. As part of the rulemaking process, Ohio EPA is required to prepare and submit a Business Impact Analysis (BIA) form to Ohio's Common Sense Initiative (CSI) Office. Ohio EPA is also making this form available at this time for public review and comment.

### **When are my comments due?**

Please submit your comments by April 7, 2017.

### **Where should I send my comments?**

Please send your comments to:

Michelle Mountjoy  
Ohio EPA, DMWM  
PO Box 1049  
Columbus, OH 43216-1049

You may also send your comments by fax at (614) 728-5315 or e-mail [michelle.mountjoy@epa.ohio.gov](mailto:michelle.mountjoy@epa.ohio.gov)

### **Who can I talk to about the rules?**

For questions regarding the rule language or review schedule, you may contact Angel Arroyo-Rodriguez at (614) 728-5336, Adam Cummins at (614) 728-5328, or Michelle Mountjoy at (614) 728-5372. Please include a phone number where you can be contacted during the hours of 8:00 am to 5:00 pm.

### **What should I consider as I prepare my comments?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. Estimate potential burden or costs, and explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline.

Thank you for your interest and we look forward to hearing from you.

Sincerely,

Terrie TerMeer, Chief, DMWM  
Division of Materials and Waste Management