



## Division of Materials and Waste Management Response to Comments

**Rule:** Construction and Demolition Debris (C&DD) Processing Facility Rules, Ohio Administrative Code (OAC) Chapter 3745-400.

### **Agency Contact for this Package**

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Ohio EPA held a public comment period on June 25, 2020 regarding C&DD processing facilities. This document summarizes the comments and questions received during the comment period, which ended on July 27, 2020.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

### **General Comments**

**Comment 1:** Licensed C&DD landfills should be exempted from the C&DD Processing Facilities rules, as outlined in ORC Section 3714.022 (E). Or “grandfathered” sites should be exempted from the additional requirements. These proposed rules do not appear to be the result of what should have been a cooperative effort with the industry/CDAO. The last interested party meeting that occurred as a collaborative effort was on November 8th, 2018. C&DD landfills are already licensed and regulated (3714.02). C&DD landfills should be able to operate under 1 license and not need a processing license in addition to their landfill license. Current license along with terms and conditions covers this additional registration requirement and closure bonding covers material storage, so we see no sense in additional measures. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)

Facilities [that] have a licensed C&DD facility and a recycling operation within the facility boundary are already subject to comprehensive regulation and enforcement by the Ohio EPA or approved local board of health through their facility license. The licensing authority already has the authority to regulate activities within the C&DD facility boundary. There is no need for a separate license and PTI for the processing operation. (Leslie G. Wolfe, Rosby Resource Recycling)

**Response 1:** The proposed C&DD processing facility rules are a result of careful consideration of comments provided not only from the regulated community during meetings in 2018, 2019, and 2020, but from health departments and other interested parties. ORC Chapter 3714 grants the Director of Ohio EPA (Director) the authority to promulgate licensing rules for both C&DD landfills and C&DD processing facilities. There is no requirement that landfills with an on-site processing facility be granted a single license that covers both operations. While Ohio EPA may be open to exploring this option in the future, no changes were made in response to this comment.

**Comment 2:** **C&DD and solid waste are different wastes with different associated hazards and environmental concerns. It has long been accepted that the chemical constituents typically associated with C&DD pose less of a threat to public health, safety and the environment as compared to solid waste. For this reason, C&DD is regulated through an entirely separate set of statutes and rules than solid waste. The C&DD industry in Ohio has been waiting 15 years for the Director to fulfill [the] statutory mandate to establish regulations for C&DD facility permits to install. The inclusion of C&DD in the voluminous multi-program rules will have a hugely detrimental impact on the C&DD industry in Ohio. It is extremely disappointing to Rosby and other members of this industry to see the agency attempt to shortcut the rulemaking process by adding C&DD facilities into the existing multi-program rules in O.A.C. Chapter 3745-500, rather than taking a deliberate and thoughtful approach to crafting permit regulations that are appropriate for C&DD facilities (Leslie G. Wolfe, Rosby Resource Recycling)**

**The PTI rules must be developed within the frame work 3745-400 to comply with the intent of HB 397. All references to 3745-500 within the 3745-400 rules must be deleted and revised accordingly. It was clear to the C&DD Study Committee that the expertise for reviewing C&DD landfill license applications is within the Ohio EPA and Ohio EPA must be involved in the review of new applications and facility expansions. However, it was never the intent of HB 397 to regulate the C&DD industry in the same manner as solid waste landfills. (Patrick Loper, Bowser Morner)**

**Response 2:** The purpose of the multi-program rules is to allow like provisions to be contained in one location, instead of unnecessarily duplicating them in every program chapter to which they are applicable. A long-standing example of this effort is the licensing rules formerly contained in OAC Chapter 3745-37, now OAC Chapter 3745-501. Promulgated in 1976, they once applied only to solid waste facilities. As infectious waste treatment regulations and construction and demolition debris regulations were adopted, the applicability of the licensing chapter was broadened to include those waste streams. Utilizing multi-program rules in no way assumes waste types are uniform and should be regulated as such. For example, solid waste transfer facilities and composting facilities are both solid waste disposal facilities but are fundamentally different and have several varying provisions in their respective program chapters, OAC Chapters 3745-555 and 3745-560. The rules in OAC Chapter 3745-500 applicable to C&DD processing facilities are generally procedural and detail the requirements on the director and board of health for permit to install and license issuance, alterations, administrative changes to a permit

to install, and exemptions from ORC Chapters 3714 and 3734. No changes were made in response to this comment.

**Comment 3: C&DD Facilities and MSW Transfer stations process and store some of the same materials. So, if C&DD facilities are not exempted, MSW needs to be under the same rules as well. If all C&DD facilities are required to have these additional licensing and costs, the amount of C&DD material destined for MSW facilities is going to grow. They do not have the infrastructure in place to handle the additional debris. There are already long wait lines for users/transporters to enter the facility on a daily basis. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)**

**Response 3:** The rules for solid waste transfer stations are more protective than the proposed rules for C&DD processing facilities. As of 2017, all new and modified solid waste transfer facilities are required to be inside a building and on a pad. Additionally, the definition of C&DD processing facility specifically excludes a facility that is licensed under section 3734.05 of the Revised Code as a solid waste transfer facility or solid waste facility. No changes were made in response to this comment.

**Comment 4: The OEPA C&DD processing website needs to mirror the webinar presentation for comments. There are several slides missing from the actual presentation vs. what is posted online. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)**

**Response 4:** Two different webinar presentations were given with slightly different slides on July 14, 2020 and July 16, 2020. Both have been posted and are available on Ohio EPA's website. No rule changes were necessary in response to this comment.

**Comment 5: We are requesting a 90-day extension to the comment period, allowing for follow up meetings of all interested parties in order to discuss this proposal in greater detail. Licensed C&DD facilities were not given adequate notice of the webinar and proposed rules in order to provide input. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)**

**I would strongly encourage the Ohio EPA to withdraw the rules pertaining to the PTI and reach out to the CDAO, C&DD Disposal and Processing Facilities and Consultants through interested party meetings to collaborate and develop a PTI process that is effective, reasonable and not burdensome to the C&DD industry. (Patrick Loper, Bowser Morner)**

**Response 5:** Ohio EPA followed up with CDAO and other stakeholders to discuss their concerns prior to proposing the rules to JCARR, but no formal extension was granted. No rule changes were necessary in response to this comment.

**Comment 6: The CDAO has repeatedly expressed a concern that recyclers of C&DD regularly achieve well over 60% recycling rates based on weight. Significant regulatory expense would create the incentive to operate under the existing MRF exemption used for solid waste MRFs. This point should have bearing on the implementation timeline, regulatory costs, excessive oversight and other items created through the proposed rules. Moving from an unregulated industry to a**

**regulated one is hard to do when an alternative exemption process may be available. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)**

**Response 6:** This comment appears to reference the “legitimate recycling facility” exception from the definition of solid waste transfer facility, which is contained in OAC rule 3745-27-01. That exception applies only to those legitimate solid waste recyclers that would otherwise be regulated pursuant to OAC Chapter 3745-27. The statutory definition of processing facility set forth in ORC Section 3714.01, however, specifically includes locations used for recycling construction and demolition debris generated off-site and those locations would thus not be covered by that solid waste chapter. No changes were made in response to this comment.

**Comment 7:** **With the information provided by the Ohio EPA in this Business Impact Analysis, the Ohio EPA fails to demonstrate that the proposed rules balance the critical objectives with the affected business’ costs of compliance. We appreciate the agency’s attempt to craft transparent and fair rules, however, the proposed rules, when viewed ut totem, will stand in the way of job creation and certainly will eliminate existing jobs in Ohio. The justification of the proposed rules must be balanced with the costs of compliance by the regulated parties and fairness to the regulated parties. (Katherine Beach, Bowser Morner)**

**TABLE 1**  
**AS PROPOSED<sup>1</sup> FINANCIAL IMPACT TO BUSINESS**

Item Description	Cost	Frequency	First Year Cost
PTI Application Fee	\$1,000	Renewal every 5 years	\$1,000
PTI Fee	\$2,000	Renewal every 5 years	\$2,000
Preparation of PTI Application (assumed, consultant; does not include extra information if requested by the OEPA)	\$15,000 - \$20,000	First PTI (one time)	\$3,000 - \$6,400
	\$ 3,000 - \$ 5,000	Renewal every 5 years	\$ 600 - \$1,600
License Application Fee	\$ 750	Annual	\$ 750
Preparation of License Application (assumed consultant)	\$2,500	Annual	\$2,500
Certified Operator Training (assumed, consultant)	\$2,000	Annual	\$2,000
Financial Assurance, 3745-400-56(A)(1)	\$10,000 - \$50,000	Annual	\$10,000 - \$50,000
Financial Assurance, 3745-400-56(A)(2)- Surety Bond	\$0	Total Cash Required	\$0
Financial Assurance, 3745-400-56(A)(2)- Letter of Credit	\$403,333 - \$1,613,333	Total Cash Required	\$403,333 - \$1,613,333
Obtain Financial Assurance for Statement	2.5%	Annual	\$10,083 - \$40,333
<b>Total Annual Cost Directly Attributable to Proposed Rules</b>			<b>\$432,266*- \$1,718,316**</b>

\* No Letter of Credit

\*\* Letter of Credit required; assumes that facility must pay cash for financial assurance

**Response 7:** Prior to rule-writing, Ohio EPA requested financial data from industry partners, but received no specific feedback. Because financial data is facility specific and has been difficult to procure, Ohio EPA relied upon recent cleanup cost data to develop the financial assurance requirements in the interested party draft of the rules. The financial impact provided by Bowser Morner in the comment includes both up-front costs and financial assurance, the latter of which is usually secured with a small percentage of the total value or with other collateral. While it is up to each C&DD processing facility to determine a business model, a greater amount of mixed C&DD storage on-site will result in a higher financial assurance burden. In response to this comment, several changes were made. OAC rule 3745-400-57 was added to allow for a transition period of three years, during which the owner or operator of an existing C&DD processing

facility will be permitted to fully fund financial assurance in annual increments. The three-year funding period will also allow each C&DD processing facility to draw down existing piles of mixed C&DD to reduce the required financial assurance amount. In addition, in response to this comment and subsequent discussions with stakeholders regarding financial assurance costs for processing facilities, OAC rule 3745-400-56 was amended to decrease the fixed per cubic yard financial assurance amount to equal \$35 per cubic yard.

3745-400-01

**Comment 8:** Paragraph (C)(6). The term “processing facility” is defined so broadly as to include all C&DD recycling activities at a licensed C&DD disposal facility [that] do not take place inside the facility’s designated unloading zone. As a result, a licensed C&DD facility can only recycle incoming C&DD in the unloading zone unless it applies for and obtains a separate processing facility PTI. Many disposal facilities are doing some level of picking and screening to remove materials for resale. Such facilities should not have to relocate their recycling operation to avoid the high cost and inconvenience of obtaining a separate processing facility PTI. The narrow exception for processing within the designated unloading zone also does not consider whether there is any greater impact to the environment, health or safety when processing occurs outside the unloading zone versus inside. [Ohio EPA] should further amend the final clause of draft rule O.A.C. 3745-400-01(C)(6) as follows:

**And does not include the processing within the designated facility boundary unloading zone at a licensed construction and demolition debris landfill. (Leslie G. Wolfe, Rosby Resource Recycling, Patrick Loper, Bowser Morner)**

**Response 8:** Under ORC Chapter 3714 a C&DD processing facility is generally anywhere that the processing, transferring, or recycling of C&DD occurs or is intended to occur. While the statute does except licensed solid waste facilities from its definition, a C&DD landfill is, notably, not excluded. In order to accommodate C&DD landfill operations, however, Ohio EPA is proposing to interpret the statutory provisions such that C&DD landfills that limit these processing, recycling, and transferring activities to the unloading zone would not trigger the obligation to obtain a separate C&DD processing facility permit and license. No changes were made in response to this comment.

**Comment 9:** Paragraph (C)(6). Nowhere in this definition is the word "processing" described or is it referenced to Item (P)(5). Any processing beyond loading, unloading material handling, or material storage should be considered a C&DD processing facility. (Mayor Mark Kobasuk Village of Newtown, Ohio)

**Response 9:** The definition of processing in OAC rule 3745-400-01(P)(5) is applicable to OAC Chapter 3745-400 in its entirety and does not need to be reiterated in the definition of C&DD processing facility. No changes were made in response to this comment.

**Comment 10:** Recovered Screen Material (RSM) cannot be considered Mixed C&DD as noted in existing guidance documents (referenced in webinar to use in consideration for financial assurance costs). According to OEPA website: “Recovered Screen Material” [RSM] means the fines fraction, consisting of soil and other small

**materials, derived from the processing or recycling of construction and demolition debris which passes through a final screen size no greater than ¾ of an inch. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)**

**Response 10:** The definitions of “mixed C&DD” and “recovered screen material” proposed for adoption in OAC rule 3745-400-01 are consistent with DMWM’s interpretation of guidance documents and information on Ohio EPA’s website. Definitions within the guidance documents will be updated to match the proposed rules. No changes were made in response to this comment.

**Comment 11: Paragraph (N). Does this term include odors which may be considered offensive to the senses? (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 11:** The definition of nuisance in OAC rule 3745-400-01 includes “anything which is injurious to human health or offensive to the senses...” No changes were made in response to this comment.

**Comment 12: Paragraph (P)(5). The definition included in this item does not match the intent in Item (C)(6). (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 12:** Although the Ohio General Assembly included the definition of “processing” in the definition of “C&DD processing facility” in ORC Section 3714.01, separation of the terms in OAC Chapter 3745-400 does not affect the intent. No changes were made in response to this comment.

**Comment 13: The definition of Storage under 3745-400-01 (S)(3) includes the word "temporary" which is an ambiguous term that creates enforcement difficulties. We strongly recommend that the definition of storage be expanded to reference the various storage time limits of various materials such as clean hard fill, unprocessed C&D, solid waste, etc. (Diane Bickett, Cuyahoga County Solid Waste Management District; Barry Grisez Cuyahoga County Board of Health)**

**Response 13:** “Storage” is a term defined in existing rule, and no amendment is proposed at this time. OAC rule 3745-400-58(D)(6) limits storage of mixed C&DD to one year after acceptance. OAC rule 3745400-58(D)(11) requires all solid waste be removed from the site at a minimum of monthly. OAC rule 3745-400-05(B) states that clean hard fill stored more than two years shall be considered illegal disposal of construction and demolition debris. No changes were made in response to this comment.

**Comment 14: Paragraph (T), definition of “Transferring.” Is it the Ohio EPA’s intention that this include the transfer of loose material from a vehicle or container into another vehicle or container even if that material does not touch a working surface such as the ground? (Kathy Trent, NW&RA)**

**Response 14:** The definition of transferring includes the transfer of materials from a vehicle or container into another vehicle or container even if that material does not touch a working surface. However, OAC rule 3745-400-03 includes a provision excluding the transfer of 50 cubic yards or less as long as the material is stored solely in containers and never placed on working surface or on any equipment used to separate construction and demolition debris into individual types of materials. No changes were made in response to this comment.

3745-400-03

**Comment 15: Paragraph (B). What is considered clean? (DeAnna Carriero Baumann's Recycling Center)**

**Response 15:** The definition and management of clean hard fill are specified in OAC rules 3745-400-01 and 3745-400-03. No changes were made in response to this comment.

**Comment 16: Paragraph (C). This processing facility exclusion is too restrictive and not practical. C&DD cannot be processed without it touching the ground. Please consider allowing an exclusion for C&DD processing provided that by the end of the working day all unprocessed C&DD is removed from the processing pad and stored in containers. It is important to provide a similar exclusion provision to C&DD processing facilities as solid waste recycling facilities. (Patrick Loper, Bowser Morner)**

**Response 16:** Recycling of C&DD is an activity included under the definition of "processing facility" in ORC Section 3714.01. This exclusion is intended to relieve small construction and rail operations conducting incidental and limited processing of C&DD from having to be licensed and permitted as a C&DD processing facility. The exclusion mirrors the one in the definition of "solid waste transfer facility" contained in OAC rule 3745-500-02. No changes were made in response to this comment.

3745-400-50

**Comment 17: Paragraph (A)(2) does not appear to address facilities that were not in operation prior to October 6, 2017 but were in operation prior to the (pending) effective date of this rule? (Kathy Trent, NW&RA)**

**Response 17:** In response to the comment, paragraph (A)(2) has been amended to include an owner or operator of a C&DD processing facility in operation after October 6, 2017 but prior to the effective date of this rule. This amendment would require the owner or operator to submit the permit to install application not later than six months after the effective date of this rule.

**Comment 18: Existing facilities that were in operation prior to October 6, 2017 and that are not proposing to expand the horizontal limits of C&DD processing beyond those identified in the registration mandated by Section 4 of S.B. 2 should not be required to obtain a PTI to continue operating. Many of the PTI application requirements, facility design requirements, and operational requirements in draft sections O.A.C 3745-400-50, -52 and -54, will be extremely burdensome, impractical, and potentially impossible for existing processing facilities to achieve. (Leslie G. Wolfe, Rosby Resource Recycling)**

**Response 18:** ORC Section 3714.022 requires all C&DD processing facilities to obtain a permit to install, regardless of when the C&DD processing facility commenced operations. No changes were made in response to this comment.

**Comment 19: Paragraph (A), OAC rule 3745-400-52. Request that a public hearing be required so that the public may be heard for comments on the permit to install application,**

**both initial and renewal applications, and for any alteration of a permit to install. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 19:** Although ORC Chapter 3714 does not require that a public hearing be held for C&DD processing facility permits, that chapter does provide the Director with broad rulemaking authority to establish a C&DD processing facility permitting program. In response to this comment, OAC rule 3745-400-54(E) was updated to require that the permitting authority publish public notice in a newspaper of general circulation at least 60 days prior to issuing an initial permit to install for a C&DD processing facility.

**Comment 20: The proposed rules (OAC 3745-400-50(B) indicating a permit to install (PTI) application fee of \$1,000 is inconsistent with the PTI application fee authorized in 132nd General Assembly Amended Senate Bill Number 2 (SB2). SB2, Section 3714.051 (C)(4), requires an applicant to include an application fee of \$2,000. SB2 further requires the entity (local health department or the Director of the Ohio EPA) to refund the application fee received under division (C)(4) of Section 3714.051 (C)(4) to the applicant not later than six months after a facility that is issued a permit-to-install begins accepting construction and demolition debris. The proposed rule fails to include the requirement to return the application fee to the applicant and must be updated to include the refund of the PTI application fee to the applicant per the law. (Katherine Beach, Bowser Morner; Patrick Loper, Bowser Morner)**

**Response 20:** In consideration of the comment and upon review of ORC Section 3714.051, this rule has been revised to specify an application fee consistent with what is prescribed in statute, to be refunded six months after issuance of the permit to install. The permit issuance fee has been adjusted to provide permitting authorities with necessary funding to administer the program.

**Comment 21: SB2 does not authorize any fee upon issuance of the PTI. The only fees addressed by SB2 are the PTI application fee, the license application fee and the license issuance fee. There should be no fee assessed upon issuance of a PTI, please delete this language from the proposed rules. (Katherine Beach, Bowser Morner; Patrick Loper, Bowser Morner)**

**Response 21:** The Ohio General Assembly granted the Director general authority to adopt rules for C&DD processing facilities, including rules “related to the issuance of permits to install for those facilities.” Fees remitted upon issuance of a permit to install are standard in the permitting process and consistent with how the Division of Materials and Waste Management processes solid waste permits pursuant to ORC 3745.11(Q). Permitting fees for C&DD processing facilities will assist approved health departments in the costs of administering the program. No changes were made in response to this comment.

**Comment 22: Paragraph (E), 3745-400-58(D)(4). Are these regulations intended to stipulate an allowable maximum daily receipt the facility can accept or is this simply intended to evaluate the facilities ability to handle material throughput long-term? (Kathy Trent, NW&RA)**

**Response 22:** The maximum volume of mixed C&DD that is authorized in the effective permit is the volume that will be used to establish financial assurance for the processing facility. This

regulation is intended to ensure the financial assurance amount that was established will be enough to cover the cost of clean-up at the processing facility if necessary. No changes were made in response to this comment.

**Comment 23:** There are regulations and numbers provided that were not announced clearly in the beginning of the rules development and are outside of legislative authority. Paragraph (I) suggests that a C&DD processing facility must renew the PTI, which is not reflective of SB2. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO; Katherine Beach, Bowser Morner)

**Response 23:** Division (B)(9)(f) of ORC Section 3714.022 provides the Director with broad authority to adopt rules relating to C&DD processing facilities, including the expiration of permits to install. No changes were made in response to this comment.

3745-400-52

**Comment 24:** Paragraph (E)(3). Recommend that the calculations and all designs be for a 25-year 10-hour storm event. (Mayor Mark Kobasuk Village of Newtown, Ohio)

**Response 24:** In consideration of the comment, this rule has been amended to maintain consistency with the Division of Surface Water's stormwater program. Instead of specifying a specific storm event for calculations and designs, this rule has been changed to require all stormwater structures to be designed and constructed in accordance with Ohio EPA's Rainwater and Land Development Manual.

3745-400-54

**Comment 25:** We recommend that the Ohio EPA, rather than local health departments, approve the initial PTI permit applications. Local health departments lack expertise from a civil engineer in the review of any submitted engineering plans and also may not have the level of background, expertise, and experience with C&DD needed to review and evaluate a PTI for a C&DD processing facility. The Ohio EPA has this engineering expertise and the basis of knowledge needed to review the initial PTI applications. State review would also help create needed consistency statewide for these facilities.

If the Ohio EPA does not agree and requires the local health departments to be the permitting agency, then the Ohio EPA should provide technical support in the form of engineering review of all plans submitted. We suggest including a statement that says local health departments will be the permitting agency but must obtain approval from OEPA engineering on submitted plans. There is a similar process already in place for variances that are requested by C&DD landfill operators. (Diane Bickett, Cuyahoga County Solid Waste Management District; Barry Grisez, Cuyahoga County Board of Health)

**Response 25:** Division (H) of section 3714.051 of the Ohio Revised Code (ORC) states that "...no person shall establish a processing facility without first obtaining a permit to install issued by the board of health of the health district in which the processing facility is or is to be located or from the director if the facility is or is to be located in a health district that is not on the approved list under section 3714.09 of the Revised Code." This language establishes the health department as the permitting authority in counties with

an approved board of health. However, Division (G) specifies that “A board of health, or its authorized representative, may request the director to review an application, or part of an application, for a permit to install and also may request that the director issue or deny it when the board determines that additional expertise is required. The director shall comply with such a request.” Ohio EPA is and will continue to be a resource to all local boards of health in reviewing applications and issuing permits to install. No changes were made in response to this comment.

**Comment 26: Paragraph (A). Add to this section what constitutes a violation and how fines are determined. Also, add what are the fine amounts. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 26:** Penalties for violations of the C&DD statutes and rules are set forth in ORC Section 3714.11. This section generally provides that violations of ORC Chapter 3714 and the rules promulgated thereunder are subject to penalties of up to \$10,000 for each day of each violation. No changes were made in response to this comment.

**Comment 27: Paragraph (B). Add a line item for groundwater wells and monitoring wells 3745-400-54 (B) located within the 500-foot radius specified in this item as registered with the Ohio Department of Natural Resources. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 27:** In response to this comment, OAC rule 3745-52(B) was amended to require the drawings of the C&DD processing facility environs and items within 500 ft of the horizontal limits of C&DD processing include any public water supply well or developed spring.

**Comment 28: Paragraph (B). SB 2 provides authority to the agency to issue special terms and conditions with approval of the PTI necessary to protect the environment and public safety. Where in SB 2 does the agency have the authority to ask for any information the agency deems appropriate as a precondition for further consideration of a PTI? If this language is not specifically outlined then this rule must be deleted. (Patrick Loper, Bowser Morner)**

**Response 28:** The Ohio General Assembly provided the Director with broad authority to adopt rules governing C&DD processing facilities and the issuance of permits to install for those facilities. This authority not only allows for the establishment of standards and procedures for the issuance of the permits to install, but also explicitly authorizes the inclusion of any other requirements the Director deems necessary to establish the program for the issuance of permits to install for those facilities. Proposed OAC rule 3745-400-54(B) captures a common requirement in DMWM's permitting programs, which simply allows the Agency to ensure it has the information necessary to determine whether a permit to install application satisfies the criteria for issuance. Similar language can be found in OAC rules 3745-501-10, 3745-555-300, 3745-560-101, 3745-560-201, 3745-560-301, and 3745-560-401. No changes were made in response to this comment.

**Comment 29: Paragraph (C)(1,2,3,7,8, and 9). It appears that the Ohio EPA is greatly expanding the requirements for not issuing a PTI beyond the intent and authority of SB 2. Many of the referenced rules are more restrictive than the C&DD landfill**

requirements. Please provide the specific references and language in SB 2 that gives the Ohio EPA the authority for the above referenced rules. If this language is not specifically outlined, then this rule must be deleted.

**Paragraph (C)(5).** The criteria for issuance of a PTI as proposed, exceeds the requirements of Senate Bill 2. The identification of oil/gas wells and the current status is reasonable but denial of a PTI application unless the wells are properly abandoned exceeds the authority granted by SB2. This provision must be deleted to comply with SB 2. (Patrick Loper, Bowser Morner)

**Response 29:** Division (A) of ORC Section 3714.022 grants the director broad rulemaking authority to adopt rules governing the issuance of permits for C&DD processing facilities. ORC Section 3714.051, division (I), further allows the director or a board of health to issue, deny, modify, suspend, or revoke a permit to install in accordance with rules. The language proposed in OAC rule 3745-400-54 as the criteria for issuing C&DD processing facility permits is consistent not only with the broad statutory rulemaking authority for processing facilities but also with the effective criteria for issuance of licenses for C&DD landfills in OAC Chapter 3745-501. No changes were made in response to this comment.

**Comment 30:** (C)(7) and (C)(8) discuss substantial compliance. The sections include the requirement of “.... compliance with environmental laws in this state and other jurisdictions....” When recently revising the licensing rules for solid waste landfills this requirement was changed to compliance with the laws in Ohio (please see OAC rules 3745-501-15(10) and (11). Among other issues was the concern that health departments would have difficulty determining the compliance of facilities in other states. It is suggested that the proposed requirement be changed to compliance with Chapters 3704., 3714., 3734., and 6111. (Kathy Trent, NW&RA)

**Response 30:** In response to the comment, Ohio EPA has amended this rule to be consistent with OAC 3745-501-15.

3745-400-56

**Comment 31:** We strongly recommend that Clean Hard Fill stored at a C&DD processing facility fall under the same financial assurance requirements as unprocessed C&DD. In the event of a state clean-up, this material would have to be removed and managed in the same manner as unprocessed material. Ensuring there are funds in place to manage this material is as important and unprocessed C&DD. (Diane Bickett, Cuyahoga County Solid Waste Management District; Barry Grisez, Cuyahoga County Board of Health)

**Response 31:** Division (C) of ORC Section 3714.022 specifies that the owner or operator of a processing facility must provide financial assurance before obtaining a license for the facility. The financial assurance is required to be the combination of (1) a fixed amount specified by director and (2) the fixed per cubic yard cost of transportation and disposal of mixed construction and demolition debris. While the proposed definition of “mixed C&DD” excludes clean hard fill, unless the clean hard fill is commingled with C&DD, that only affects the second prong of the financial assurance calculation. Each

processing facility will still have to fund the fixed amount of financial assurance specified in rule, which may help offset the costs associated with the removal of any clean hard fill in the event that a state clean-up is required. No changes were made in response to this comment.

**Comment 32:** There are regulations and numbers provided that were not announced clearly in the beginning of the rules development and are outside of legislative authority. The financial assurance numbers proposed were never announced or discussed with industry. Furthermore, the addition of an option to complete the recycling process should be allowed to be included as an option for cleanup and should be considered in the estimates used to create the value prescribed in the rule. This subject alone deserves a meeting between the regulated and regulator community once the remaining rule is finalized. (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)

The fixed per cubic yard amount of \$50 per cubic yard of mixed C&DD is too high and fails to allow a reduced rate in appropriate cases where the estimated cost of a third party removing and disposing the debris is much lower. In particular, processing facilities located within or adjacent to licensed C&DD disposal facilities (and under common ownership) should be allowed to lower their financial assurance by demonstrating (through the C&DD facility license or otherwise) that the C&DD facility has the capacity to accept the maximum volume of mixed C&DD authorized to accumulate on-site at the processing facility and a third-party could transport and dispose of the material for an amount less than \$50 per cubic yard. (Leslie G. Wolfe, Rosby Resource Recycling)

Adjust the financial assurance requirements to around \$10 per cubic yard. (Katherine Beach, Bowser Morner)

Trucking costs [for processing facilities within one mile of a C&DD landfill] range around \$1 to \$2 per yard plus disposal cost of \$6.00 per yard for a maximum total \$8 per yard. The \$50 fixed multiplier is an unreasonable burden and restriction on small businesses trying to make a profit in an extremely difficult industry and economy. This is an important industry that provides valuable recycling efforts to the citizens of and the State of Ohio. Please consider the following change:

**~~fifty dollars~~ the local C&DD disposal fee and trucking costs based on a third party estimate.** (Patrick Loper, Bowser Morner)

**Response 32:** In addition to requesting appropriate financial assurance figures in the Early Stakeholder Outreach portion of the rulemaking process, Ohio EPA included discussion regarding reasonable financial assurance numbers on the agenda for the August 21, 2019 stakeholder meeting. Because Ohio EPA was unable to procure financial data from stakeholders during the ESO period and subsequent industry meetings, the Agency utilized cleanup cost data associated with instances where Ohio EPA has had to clean up illegal disposal sites that were under the guise of a C&DD processing facility. Since that time, ongoing discussions with stakeholders have indicated that a lesser amount of financial assurance may be appropriate. In response to the comment, and in light of those subsequent discussions, this rule was amended to require the fixed per cubic yard financial assurance amount to equal \$35 per cubic yard.

**Comment 33: Build in a five-year transition period for the financial assurance, as was afforded to the C&DD landfill industry. (Katherine Beach, Bowser Morner; Patrick Loper, Bowser Morner)**

**Response 33:** In response to this comment, OAC rule 3745-400-56 was revised to allow for a transition period of three years, during which the owner or operator of a C&DD processing facility will be permitted to fully fund financial assurance in annual increments. The three-year funding period will also allow each C&DD processing facility to draw down existing piles of mixed C&DD to reduce the required financial assurance amount.

**Comment 34: Paragraph (B), OAC rule 3745-400-13 paragraph (A). Request that a public hearing be required so that the public may be heard for comments on the financial assurance mechanisms. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 34:** Public hearings are not required for financial assurance for C&DD or solid waste landfills. The rules addressing financial assurance for C&DD processing facilities will be consistent with these other programs. OAC rule 3745-400-13 specifies which mechanisms are appropriate for C&DD processing facilities. No changes were made in response to this comment.

3745-400-58

**Comment 35: Paragraph (B)(1) requires that the owner/operator “... shall employ measures necessary to minimize the incidence of dirt, and dust on public roads before vehicles leave the processing facility. The members of the NW&RA agree that it is a good practice to employ measures necessary to minimize the incidence of dirt, and dust on public roads before vehicles leave the processing facility however, we believe that this requirement is vague and beyond the authority of the OEPA. The phrase, “... measures necessary to minimize...” can only result in a subjective evaluation of dirt, dust and mud control features. In addition, issues such as road conditions outside of the permitted facility are a matter for local zoning and police. It is suggested that this requirement be deleted. (Kathy Trent, NW&RA)**

**Response 35:** This is consistent with C&DD landfill regulations. Minimizing dirt and dust on public roads from vehicles leaving the facility will prevent a public nuisance. No changes were made in response to this comment.

**Comment 36: Paragraph (B)(1). Include that the roads are to be designed to control storm water runoff and runoff debris (soil, sand, gravel, etc.) from impacting municipal (including villages, townships, etc.), county, or state roads, in such a manner as to represent a hazard to drivers on these roads. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 36:** C&DD processing facilities will be required to obtain a NPDES stormwater permit from the Division of Surface Water for the management of stormwater runoff. No changes were made in response to this comment.

**Comment 37:** Paragraph (B)(2) discusses an “occupied building”. There is a definition for an “occupied dwelling” in OAC rule 3745-400-01, but not an occupied building. This should be changed to an occupied dwelling. (Kathy Trent, NW&RA)

**Response 37:** In response to this comment, the phrase “occupied building” was changed to “occupied dwelling.”

**Comment 38:** Paragraph (B)(2) requires that a processing facility with horizontal limits of C&DD processing within 500 feet of an occupied building that is not owned by the owner or operator of the processing facility construct and maintain a barrier to minimize the visibility of the processing facility operations. The members of the NW&RA agree that it is a good practice to have a barrier to minimize the visibility of waste facility operations however, we believe that this requirement is vague and beyond the authority of the OEPA. The phrase, “.... minimize the visibility....” can only result in a subjective evaluation. In addition, issues such as screening should be left to local zoning officials. It is suggested that this requirement be deleted. (Kathy Trent, NW&RA)

**Paragraph (B)(2).** A barrier should be constructed if the facility may be seen from the closest residential structure, if it greater than 500 feet. (Mayor Mark Kobasuk Village of Newtown, Ohio)

**Response 38:** This language is consistent with the requirement found in the construction and demolition debris landfill operation rule, OAC 3745-400-11. No changes were made in response to this comment.

**Comment 39:** Paragraph (C). Please provide a definition reference for items 2, 3, and 6 based upon other regulations. See 3745-500-02(H)(I) and (I)(2). (Mayor Mark Kobasuk Village of Newtown, Ohio)

**Response 39:** The introductory language in OAC rule 3745-400-01 clarifies that terms defined in the rule are applicable to the entirety of OAC Chapter 3745-400. Paragraph (H)(1) defines “hazardous waste,” and paragraph (S)(2) defines “solid wastes.” Supplemental cross references to definitions throughout OAC Chapter 3745-400 are not necessary. In response to the comment, a definition of “infectious waste” was added to paragraph (I).

**Comment 40:** What materials are prohibited? According to 3745-400-58 (C), prohibited materials are defined as pulverized debris, hazardous waste, infectious waste, containerized bulk liquids, asbestos materials, and solid waste. Are these considered the “prohibited” materials for “RSM”? Does this mean that RSM is considered a commodity or product if the “prohibited” materials have been removed after processing or if the recycling center does not accept “prohibited” materials to begin with? If it says these materials are “prohibited”, C&D facilities cannot accept them anyways which means they should not be in the RSM at all making it “useful.” (DeAnna Carriero Baumann's Recycling Center)

**Response 40:** OAC rule 3745-400-58 restricts the owner or operator from accepting any of the prohibited materials identified in paragraph (C) for processing at the C&DD processing facility. The rules clarify that RSM is a type of mixed C&DD and includes only fines and

residuals generated from sorting and screening “C&DD from which all prohibited materials have been removed.” No changes were made in response to this comment.

**Comment 41:** We strongly recommend that the rules apply the same time limits on the storage of processed C&DD as it does unprocessed C&DD. This will help ensure processed materials are moved through the facility rather than accumulating on site.

**We also strongly recommend that processed C&DD stored at a C&DD processing facility be included under the same financial assurance requirements as unprocessed C&DD. In the event of a state clean-up, processed material would have to be removed and managed just as unprocessed material. Requiring financial assurance on the processed material will help ensure that funds are available for any potential cleanup. (Diane Bickett, Cuyahoga County Solid Waste Management District; Barry Grisez, Cuyahoga County Board of Health)**

**Response 41:** All material at the C&DD processing facility must remain within the horizontal limits of C&DD processing as identified in the effective permit to install. Given these restrictions, it would benefit the owner or operator to minimize the amount of processed C&DD stored on site. ORC Section 3714.022, division (C), specifies that a financial assurance instrument be funded by the owner or operator of a processing facility in a fixed amount specified by director plus the fixed per cubic yard cost of transportation to and disposal of mixed construction and demolition debris. No changes were made in response to this comment.

**Comment 42:** We strongly recommend that the rules require some basic level of processing equipment used by C&DD processing facilities that operating within current industry best practices. At a minimum, we ask that scales be required to assist regulators with reviewing compliance with the record-keeping rules and material flow. Scales help track incoming and outgoing loads and are key to reviewing compliance. Having minimum facility standards would also help ensure consistency across the state and assist with the PTI review process. (Diane Bickett, Cuyahoga County Solid Waste Management District; Barry Grisez, Cuyahoga County Board of Health)

**Response 42:** C&DD processing facilities have varying degrees of equipment based on their facility design, business model, and capacity. Although scales are encouraged, it is not practical to require all C&DD processing facilities to use them. Facilities are required to keep a daily log of incoming and outgoing loads. Those loads may be measured in cubic yards, which does not require a scale. The unit of cubic yards is used throughout statute and rules. No changes were made in response to this comment.

**Comment 43:** We recommend changing rule 3745-400-58 (D)(6) to read as follows: “Store unprocessed mixed construction and demolition debris, processed construction and demolition debris, and RSM at the processing facility for no longer than one year after acceptance. (Diane Bickett, Cuyahoga County Solid Waste Management District; Barry Grisez, Cuyahoga County Board of Health)

**Response 43:** The definition of mixed C&DD includes any C&DD that contains more than one type of debris. Under the C&DD processing facility rules RSM is specifically identified as a type

of mixed C&DD and not a single type of debris. Ohio EPA does not specifically restrict the storage of piles of construction and demolition debris that have been segregated into a single type of debris to one year. No changes were made in response to this comment.

**Comment 44: (D)(14) should be revised to state “.. conduct a topographic survey...” (Kathy Trent, NW&RA)**

**Response 44:** In response to this comment, the phrase “aerial survey” was changed to “topographic survey”.

**Comment 45: Paragraph (D)(14). This requirement should be every year and not upon the request by the director or approved board of health. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 45:** Ohio EPA would like to maintain flexibility to determine when facilities should conduct a survey based on site specific conditions. This requirement gives Ohio EPA that flexibility when needed. Please note that this requirement was amended in response to comments to require a topographic survey be provided upon request instead of an aerial survey.

**Comment 46: The fire prevention and response plan should be submitted to (H) the local fire department for approval as part of the permit application. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 46:** In response to this comment, Ohio EPA amended the rule to require a copy of the fire prevention and response plan be submitted to the local fire department.

**Comment 47: [This rule] makes no mention of the pre-acceptance of material similar to OAC 3745-400-11. We would assume similar language would apply for the CDD Processing Facilities. (Kathy Trent, NW&RA)**

**Response 47:** The pre-acceptance program at a construction and demolition debris facility allows a landfill to place debris directly in the working face without first placing the load in the unloading zone and removing prohibited materials. A construction and demolition debris processing facility does not have a comparable unloading zone and working face. Therefore, a pre-acceptance program is not applicable to a construction and demolition debris processing facility. No changes were made in response to this comment.

3745-400-60

**Comment 48: Additional information is needed regarding the Health Department and/or OEPA’s authority to shut down operation. Is this dependent on whom the permit and annual license is authorized by? What criteria is involved? (John Kurtz, Michael Dinneen, James Hemmelgarn, CDAO)**

**Response 48:** OAC rule 3745-400-60(A) specifies the circumstances that trigger final closure of a processing facility. No changes were made in response to this comment.

3745-500-02

**Comment 49: Paragraph (G). Add definition for groundwater wells and monitoring wells. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 49:** “Ground water monitoring well” is a generally accepted industry term used to classify structures that allow samples to be obtained and analyzed to determine the quality of ground water and the levels of any contaminants that might be present. An inclusive definition of the term would be difficult to promulgate and Ohio EPA instead relies on the description of a ground water monitoring system contained in OAC rule 3745-400-10. No changes were made in response to this comment.

**Comment 50: Paragraph (N)(2). Does this term include odors which may be considered offensive to the senses? (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 50:** The definition of nuisance in OAC rule 3745-500-02 includes “anything which is injurious to human health or offensive to the senses...” No changes were made in response to this comment.

**Comment 51: Paragraph (O). Add a definition for nuisance odors. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 51:** Ohio EPA interprets the definition of nuisance in paragraph (N) of OAC rule 3745-500-02 to include nuisance odors. No changes were made in response to this comment.

3745-500-120

**Comment 52: This hearing should be opened to the general public. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 52:** The hearing required by proposed OAC rule 3745-500-120(B)(1)(d) is required to be held by the approved board of health in accordance with ORC Section 3709.20, which governs hearings by those entities. No changes were made in response to this comment.

3745-500-220

**Comment 53: A public hearing should be held if the director or the 3745-500-220 (D) approved board of health is contemplating issuing an exemption to obtain input from the general public. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 53:** The statute granting the Director the authority to issue exemptions from the C&DD statutes and rules does not require that a public hearing be held. This is also true of the exemption authority granted for the solid waste program in ORC Section 3734.02(G). No changes were made in response to this comment.

**Comment 54: Proposed 3745-501-05 specifies that each license must be renewed every year. The Business Analysis fails to specify that the license application fee of \$750 must be paid every year. (Katherine Beach, Bowser Morner)**

**Response 54:** Although it was not specifically stated that the \$750 license fee is to be paid annually, question 16 in the Business Impact Analysis does note that the nature of the adverse impact of these rules includes costs to obtain an annual license. No changes were made in response to this comment.

3745-501-10

**Comment 55: Add the license shall also be submitted in a bookmarked Portable Data File (PDF). (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 55:** License applications are entered into Ohio EPA's online eBusiness Center (eBiz) and can be downloaded and saved as a PDF upon submission. The eBiz system does not allow applications to be saved as bookmarked PDFs. No changes were made in response to this comment.

3745-501-15

**Comment 56: Add to this section, that a public meeting must be held, and all questions must be appropriately answered to the satisfaction of the director or approved board of health. Also add to this section what constitutes a violation and how fines are determined. Also, add what are the fine amounts. (Mayor Mark Kobasuk Village of Newtown, Ohio)**

**Response 56:** This rule is a multi-program rule that applies to all of Ohio EPA DMWM's licensed facilities. DMWM has over 195 licensed facilities, it would be infeasible for each facility to hold a public hearing with the licensing authority every year prior to receipt of an annual license. Any operational questions the licensing authority has should be resolved prior to issuance. Because violations differ in complexity and severity, it would be impractical to attempt to list every possible instance that could constitute a violation and the associated penalty. However, ORC Section 3714.11 generally provides that violations of ORC Chapter 3714 and the rules promulgated thereunder are subject to penalties of up to \$10,000 for each day of each violation. No changes were made in response to this comment.

**End of Response to Comments**