

**Bechtel***Interoffice Memorandum*

To	Distribution	File No.	7440/124, 135
Subject	EIN: Ohio Hazardous Waste Regulations	Date	January 10, 1995
		From	D. D. Sexton <i>DDS</i>
		Of	ES&H
Copies to	T. E. Morris G. R. Galen <i>GRG</i> G. L. Palau	At	Oak Ridge Ext. 4-3643

**BACKGROUND**

This Environmental Information Notice (EIN) provides detailed regulatory guidance concerning compliance with the Ohio Hazardous Waste Code. This EIN is based on research of the Ohio Administrative Code (OAC) and conversations of a generic nature with the federal Environmental Protection Agency and Ohio Environmental Protection Agency (see Attachments 1 and 2).

**APPLICABILITY OF FEDERAL VERSUS STATE REGULATIONS**

Since Ohio has an Environmental Protection Agency (EPA) authorized hazardous waste program, the Ohio Hazardous Waste Code contains the applicable requirements for the management of hazardous waste in the state. These state requirements may be more stringent than those found in the federal hazardous waste regulations. However, Federal law is still controlling in situations where issues are addressed in federal hazardous waste regulations but are not covered in the Ohio Hazardous Waste Code.

**SPECIFIC REQUIREMENTS****Fairfield Site**

The Fairfield site contains lead-based paint which exhibits the hazardous waste characteristic of toxicity. The paint is potentially radioactively contaminated.

**ACCUMULATION TIME OF HAZARDOUS WASTE**

Since the quantity of hazardous waste generated at the Fairfield Site is expected to be greater than 100 kg but less than 1,000



kg, the accumulation time provisions for small quantity generators are applicable (OAC 3745-52-34). These provisions exempt small quantity generators from storage permitting requirements provided that the waste is transported off-site within 180 days and that certain other requirements are met. These requirements include container requirements and facility maintenance requirements. In addition, a waste analysis plan and contingency plan must be prepared.

### Container Requirements

#### Use and management

- Containers must be in good condition with no leaks.
- Containers and any liners must be compatible with the waste such that no adverse reactions will take place.
- Containers must be kept closed during storage except when adding or removing waste.

#### Labeling and marking

- The date upon which accumulation begins must be clearly marked on each container.
- Each container must be labeled or marked with an approved label identifying the contents as "Hazardous Waste," while onsite.

#### Inspection

- Containers must be inspected weekly for leaks and deterioration.
- Inspections must be recorded and maintained on file for three years.
- Records must include date and time of inspection, name of inspector, notations of the observations made, and the date and nature of any repairs.

### Facility Maintenance Requirements

Facility maintenance requirements address emergency equipment, arrangements with local emergency authorities, and emergency response. Equipment requirements are to be complied with using a graded approach that depends on the specific hazards associated with the hazardous waste at a given site (OAC 3745-63-31).<sup>1</sup>

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<sup>1</sup> "All facilities shall be equipped with the following, unless none of the hazard posed by waste handled at the facility could require a particular kind of equipment specified" (OAC 3745-65-32).



## Equipment requirements

### Items

If applicable, the following items must be present at the site:

- an internal communications or alarm system,
- a telephone or hand held two way radio,
- a sufficient number of portable fire extinguishers,
- spill control equipment,
- decontamination equipment, and
- adequate water to control a fire (OAC 3745-65-32).<sup>2</sup>

### Testing and maintenance of equipment

Communication, alarm, fire protection, spill control, and decontamination equipment must be tested weekly. Weekly tests must be recorded and records maintained for three years (OAC 3745-65-33).

### Access to equipment

When handling waste, personnel must have immediate access to an alarm or emergency communication device unless the device is not required (see Footnote 1). In addition, aisle space must be maintained to allow for movement of personnel and emergency equipment (OAC 3745-65-34).

### Arrangements with local emergency authorities

Arrangements should be made as appropriate with local police and fire departments and state emergency response teams to familiarize them with the layout of the facility. Arrangements should also be made, as necessary, to familiarize hospitals with the properties of the hazardous waste being stored at the facility (OAC 3745-65-37).

### Emergency response

#### Emergency coordinator

At all times, one employee must be on the premises or on call with responsibility for coordinating emergency response measures.

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<sup>2</sup> According to the regulations an automatic sprinkler system is sufficient.



### Postings

The following should be posted at the site next to the telephone:

- the name and telephone number of the emergency coordinator;
- the location of fire extinguishers, spill control material, and if present, fire alarms;
- the telephone number of the fire department (unless the facility has a direct alarm);

### Training

All employees must be trained sufficiently to be familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal operations.

### Hamilton Site

The Hamilton site contains lead sleeves used for anchor bolts which exhibit the hazardous waste characteristic of toxicity when tested for leachability using the TCLP. The lead sleeves are potentially radiologically contaminated.

If the lead sleeves are removed such that they are contained within a concrete core, they may be rendered non-hazardous since the concrete will not allow the lead to leach under TCLP conditions. Although sealing the lead within a concrete core as the cores are removed could be difficult, if accomplished the lead may be considered a solid waste, not requiring management as a hazardous waste.

### ACCUMULATION TIME OF HAZARDOUS WASTE

Based on failing the TCLP, the quantity of hazardous waste generated at the Hamilton Site is expected to be greater than 1,000 kg. Therefore, the accumulation time provisions for large quantity generators are applicable (OAC 3745-52-34). Pursuant to these provisions large quantity generators are exempt from storage permitting requirements provided that the waste is transported off-site within 90 days and the small quantity generator requirements related to containers and facility maintenance are met. In addition, a waste analysis plan and contingency plan must be prepared.



## General Issues

### Permitting Issues

Pursuant to the accumulation time provisions, an Ohio hazardous waste storage permit is not required for either the Fairfield or Hamilton sites. In addition, based on an EPA interpretation of 40 CFR 268.7(a)(4), a treatment permit is not needed for either the Fairfield or Hamilton sites so long as the following requirements are met:

- accumulation time provisions are followed,
- the hazardous wastes are managed in containers which meet Ohio hazardous waste container requirements or in a containment building, and
- treatment is being conducted in the containers, which will remain closed during treatment, or in a containment building.

Unlike Federal hazardous waste regulations, Ohio is silent on the above treatment permitting exemption. The provisions of 40 CFR 268 were enacted pursuant to the Hazardous and Solid Wastes Amendments (HSWA). Federal rules promulgated pursuant to HSWA are effective until a state either adopts or specifically expresses a desire to be more stringent (see Attachment 4). Ohio has neither adopted nor expressed a desire to be more stringent. Therefore, since Ohio has not addressed this issue, it is our opinion that federal law is controlling, the provisions of 40 CFR 268.7(a)(4) are effective in the state of Ohio, and the exemption from a treatment permit in the above mentioned circumstance is available.

In addition, under state accumulation time provisions generators are required to comply with 3745-59-07(a)(4). Although 3745-59-07 copies verbatim 40 CFR 268.7, paragraph (a)(4) of the state regulations (which is the equivalent to the exemption provision at 268.7(a)(4) of the federal regulations) has not been promulgated; it is reserved. Therefore, in lieu of any state requirement, only the federal regulations apply. An opposing argument is that Ohio's failure to promulgate a state equivalent to 268.7(a)(4) indicates their intention to have more stringent requirements. However, if Ohio intended to adopt more stringent requirements than those contained in the federal regulations, they would not have a provision referencing and requiring compliance with a code section which they have not yet promulgated and for which only a federally promulgated law exists.



### Ohio EPA Identification Numbers

Ohio EPA identification numbers have been obtained for both sites. The Ohio EPA identification number for the Fairfield and Hamilton sites are OHP500010665 and OHP500010657, respectively. A copy of the Ohio EPA documentation assigning an identification number should be maintained on file at each site.

### Waste Analysis Plan

An owner or operator who treats, stores, or disposes of any hazardous waste must develop and follow a written waste analysis plan (OAC 3745-54-13). We recommend that FUSRAP work controlling documents be evaluated to determine whether the following required information is already found in existing documentation:

- the parameters for which each hazardous waste is analyzed and the rationale for the selection of these parameters,
- the test methods used to test for the parameters,
- the sampling method used to obtain a representative sample of the waste to be analyzed, and
- the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date (OAC 3745-54-13).

If contained in existing documentation, this information could serve as the basis for a stand-alone plan. A copy of the plan should be kept on site (see Attachment 1).

### Contingency Plan

An owner or operator of a hazardous waste facility must develop a contingency plan for that facility (OAC 3745-54-50). We recommend that FUSRAP work controlling documents be evaluated to determine whether the following required information is already found in existing documentation:

- a description of the actions to be taken in response to fires, explosions, or any unplanned release,
- a description of agreements/arrangements with local police and fire departments, hospitals, and emergency response teams to coordinate emergency services,
- a listing of names, addresses, and telephone numbers of all persons qualified to act as emergency coordinators, (if more than one person is listed, a primary emergency coordinator must be designated and others listed in the order in which they will assume responsibility).



- a listing of all emergency equipment at the facility, and
- an evacuation plan for personnel where there is a chance that evacuation may be necessary (3745-54-52).<sup>3</sup>

If contained in existing documentation, this information could serve as the basis for a stand-alone plan. A copy of the plan should be kept on-site (see Attachment 1).

#### RECOMMENDATION

Ohio EPA should be contacted to ensure that the state agrees with DOE's position regarding the inapplicability of a treatment permit. It is recommended that the state's position be submitted by Ohio regulators to FSRD in writing. In addition, although the contingency plans and waste analysis plans should be kept on file at each site, it is not necessary to submit them to the state.

#### ATTACHMENTS

1. Telecon with Rich Stewart (Ohio EPA)
2. Telecon with EPA RCRA Hotline
3. OAC 3745-65-56
4. Telecon with EPA RCRA Hotline
5. Telecon with Nancy Carnes (DOE-Legal)

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<sup>3</sup> Additional information regarding the steps that the Emergency Coordinator should take in response to various situations is in Attachment 3.



Attachment 1**TELEPHONE CONVERSATION RECORD**

**To:** Rich Stewart                      **Of:** Ohio EPA                      **Phone #:** (614)385-8501  
**From:** David Sexton                      **Of:** BEI                      **Phone #:** (615)574-3643  
**Date:** 01/03/95                      **Time:** 11:00 a.m.  
**Job No.:**                      **File No.:**  
**Subject:** Hazardous Waste Issues

ITEMS OF DISCUSSION	ACTIONS REQUIRED (INCLUDE NAMES AND DATES)
<p>Must copies of contingency plans and waste analysis plans be sent to Ohio EPA or is it sufficient to maintain the plans on file at the facility?</p>	<p>It is acceptable to keep the plans on file at the facility. The plans would only be reviewed by Ohio EPA in the event of a facility audit/inspection.</p>

Attachment 2**TELEPHONE CONVERSATION RECORD**

**To:** EPA Hotline                      **Of:** U.S. EPA                      **Phone #:** (800)424-9346  
**From:** David Sexton                      **Of:** BEI                      **Phone #:** (615)574-3643  
**Date:** 12/29/94                      **Time:** 12:00 a.m.  
**Job No.:**                      **File No.:**  
**Subject:** Hazardous Waste Issues

ITEMS OF DISCUSSION	ACTIONS REQUIRED (INCLUDE NAMES AND DATES)
<p>In 40 CFR 268.7(a)(4) it appears that EPA exempts generators from treatment permits if certain conditions are met (i.e., treatment takes place in containers, accumulation time provisions are met, and a waste analysis plan is prepared). I asked if there was a specific EPA interpretation of this section that more clearly addresses this issue?</p> <p>I asked if I could receive a copy of this interpretation?</p>	<p>Yes, EPA has specifically addressed this issue in a permit policy compendium dated September 10, 1991. As described, a treatment permit is not required if the stated conditions are met.</p> <p>Yes, a copy is on the way.</p>

Attachment 3**3745-65-56 Emergency procedures**

(A) Whenever there is an emergency situation consisting of imminent or actual harm or hazard to human health or the environment, the emergency coordinator (or his designee when the emergency coordinator is on call) shall immediately:

- (1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
- (2) Notify the Ohio EPA emergency response team by use of its twenty-four-hour toll free telephone number -- 1-800-282- 9378.

(B) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(C) In addition to the requirements set forth in paragraphs (A) and (B) of this rule, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, and shall include, but not be limited to, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(D) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

- (1) If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and
- (2) The emergency coordinator shall immediately notify the Ohio EPA emergency response team by use of its twenty-four-hour toll free telephone number -- 1-800-282-9378 and provide the following information:
  - (a) Name and telephone number of reporter;
  - (b) Name and address of facility;
  - (c) Time and type of incident (e.g., release, fire);
  - (d) Name and quantity of material(s) involved, to the extent known;
  - (e) The extent of injuries, if any; and
  - (f) The possible hazards to human health, or the environment inside and outside the facility.

(E) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations,

collecting and containing released waste, and removing or isolating containers.

(F) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(G) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

[Comment: Unless the owner or operator can demonstrate, in accordance with paragraph (C) or (D) of rule 3745-51-03 of the Administrative Code, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage such waste in accordance with all applicable requirements of the hazardous waste rules.]

(H) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

- (1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
- (2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(I) The owner or operator shall notify the director and appropriate local authorities that the facility is in compliance with paragraph (H) of this rule before operations are resumed in the affected area(s) of the facility.

(J) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, the owner or operator shall submit a written report on the incident to the director. The report shall include:

- (1) Name, address, and telephone number of the owner or operator;
- (2) Name, address, and telephone number of the facility;
- (3) Date, time, and type of incident (e.g., fire, explosion);
- (4) Name and quantity of material(s) involved;
- (5) The extent of injuries, if any;
- (6) An assessment of actual or potential hazards to human health or the environment, where this is applicable;
- (7) Estimated quantity and disposition of recovered material that resulted from the incident; and
- (8) Any other information as the director may require.

## ATTACHMENT 4



## TELEPHONE CONVERSATION RECORD

**To:** RCRA Hotline                      **Of:** EPA                                      **Phone #:** (800)424-9346  
**From:** David Sexton                      **Of:** BEI                                        **Phone #:** (615)574-3643  
**Date:** 01/09/95                              **Time:** 2:00  
**Job No.:**                                      **File No.:**  
**Subject:** State vs. Federal Regulations

ITEMS OF DISCUSSION	ACTIONS REQUIRED (INCLUDE NAMES AND DATES)
<p>Under both federal and state accumulation time provisions, generators are required to meet certain standards. Federal law requires compliance with the provisions of 268.7(a)(4). In Ohio, generators are required to comply with the provisions of 3745-59-07(a)(4). This paragraph is the state equivalent to 268.7(a)(4). Ohio has copied all of 40 CFR 268.7, except for paragraph (a)(4). Paragraph (a)(4) is reserved. Thus, there is no paragraph (a)(4) in Ohio. However, EPA has interpreted the provisions of 40 CFR 268.7(a)(4) to exempt a generator from treatment permitting requirements if certain conditions are met. Since Ohio has failed to address the situation covered in paragraph (a)(4), it is my opinion that federal law is applicable (e.g., where there is federal law covering an issue and a state is silent on that issue, federal law is applicable). Does EPA have any policies or directive indicating their view of such a situation?</p>	<p>Yes, it is EPA's policy that where a state does not adequately address the provisions of a federal regulation, either by adopting the regulation or placing more stringent controls on the regulated community, the federal regulation is applicable. This is especially true under HSWA. Since this regulation was promulgated pursuant to HSWA, the federal regulation is effective until it is adopted by the state. Therefore, although the state has adopted most of the federal regulation, their failure to adopt paragraph (a)(4) or adopt (a)(4) in a more stringent fashion means that the federal version of (a)(4) is effective.</p>

Attachment 5**TELEPHONE CONVERSATION RECORD**

**To:** Nancy Carnes                      **Of:** DOE                                      **Phone #:**  
**From:** Ann Ward                         **Of:** BEI                                      **Phone #:** 220-2310  
**Date:** 01/05/95                         **Time:**  
**Job No.:**                                      **File No.:**  
**Subject:** State vs Federal Regulations

ITEMS OF DISCUSSION	ACTIONS REQUIRED (INCLUDE NAMES AND DATES)
<p>In a state that has a U.S. EPA authorized hazardous waste program, where the state is silent in regards to a certain regulatory provision that the U.S. EPA has promulgated, does the federal guideline prevail?</p>	<p>Yes, if the state is silent, the federal guideline prevails.</p>