

In The Supreme Court Of Ohio

OSNABURG TOWNSHIP ZONING
INSPECTOR,

Plaintiff-Appellant,

v.

ESLICH ENVIRONMENTAL, INC.

Defendant/Third-Party
Plaintiff-Appellee,

v.

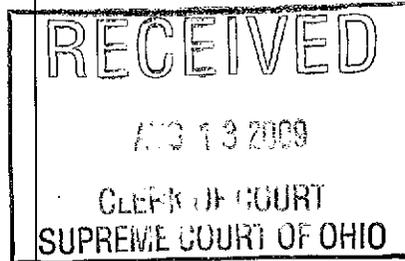
OSNABURG TOWNSHIP, et al.

Third-Party Defendant-
Appellant.

CASE NO. 2009-0228

Appeal from the Ohio Court of Appeals for
Stark County, Fifth Appellate District

Court of Appeals Case No. 2008-CA-00026



MERIT BRIEF OF DEFENDANT/THIRD-PARTY PLAINTIFF-APPELLEE ESLICH ENVIRONMENTAL, INC.

JOHN D. FERERRO (Reg. No. 0018590)
PROSECUTING ATTORNEY
STARK COUNTY, OHIO

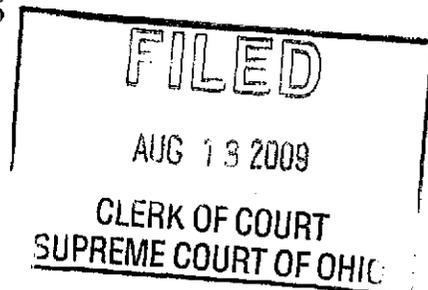
AMY A. SABINO (Reg. No. 0069771)
Counsel of Record
Assistant Prosecuting Attorney
ROSS A. RHOODES (Reg. No. 0073106)
Assistant Prosecuting Attorney
110 Central Plaza, S., Suite 510
Canton, OH 44702
Telephone: (330) 451-7897
Fax: (330) 451-7965

Counsel for Appellants
Osnaburg Township Zoning Inspector,
Osnaburg Township Board of Trustees,
and Osnaburg Township

MICHAEL A. CYPHERT (Reg. No. 0007086)
Counsel of Record
BONNIE S. FINLEY (Reg. No. 0065565)
WALTER & HAVERFIELD LLP
The Tower at Erieview
1301 E. Ninth Street
Suite 3500
Cleveland, OH 44114
Telephone: (216) 781-1212
Fax: (216) 575-0911

STANLEY P. RUBIN (Reg. No. 0011671)
437 Market Street North
Canton, OH 44702
Telephone: (330) 455-5206
Fax: (330) 455-5200

Counsel for Appellee
Eslich Environmental, Inc.



RICHARD CORDRAY (Reg. No. 0038034)
Attorney General of Ohio

BENJAMIN C. MIZER (Reg. No. 0083089)
Solicitor General

Counsel of Record

DAVID M. LIEBERMAN (*pro hac vice*
application pending)

Deputy Solicitor

30 East Broad Street, 17th Floor

Columbus, OH 43215

Telephone: (614) 466-8980

Fax: (614) 466-5087

benjamin.mizer@ohioattorneygeneral.com

Counsel for *Amicus Curiae* State of Ohio

DONALD F. BROSIUS (Reg No. 0007925)

Counsel of Record

PETER N. GRIGGS (Reg. No. 0073819)

STEVEN C. LEIDINGER (Reg. No. 0081246)

LOVELAND & BROSIUS, LLC

50 West Broad Street, Suite 3300

Columbus, OH 43215

Telephone: (614) 464-3563

Fax: (614) 2324-6221

Counsel for *Amicus Curiae*

Ohio Township Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. STATEMENT OF THE CASE AND FACTS1

 A. Eslich Environmental And Its Operator, Stark C&D, Have Legally Operated The C&DD Facility At The Property For The Past Twenty Years1

 B. C&DD Facilities Are Effectively Prohibited Throughout Osnaburg Township3

 C. The Litigation4

II. ARGUMENT6

***Appellee’s Proposition of Law:** A township zoning ordinance that prohibits the operation of a construction and demolition facility on property authorized by a license issued pursuant to a general state law presents an impermissible conflict and cannot be enforced.*

 A. The Location And Regulation Of C&DD Facilities Under Revised Code Chapter 3714 Is Entrusted Exclusively To The Ohio Environmental Protection Agency And Its Approved Health Districts.6

 B. Osnaburg Township Zoning Resolutions Applicable To The Property Are In Conflict With Revised Code Chapter 37148

III. CONCLUSION..... 15

CERTIFICATE OF SERVICE17

APPENDIX18

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aluminum Smelting & Refining Co. v. Denmark Twp. Bd. of Zoning Appeals</i> (Ashtabula Cty.), 2002 Ohio 6690.....	11
<i>American Fin. Services Assn. v. City of Cleveland</i> (2006), 112 Ohio St.3d 170	11-12
<i>Brookpark News & Books, Inc. v. City of Cleveland</i> (Cuyahoga Cty. 1990), 66 Ohio App. 3d 613.....	13
<i>Canton v. State of Ohio</i> (2002), 95 Ohio St.3d 149.....	8, 9, 10
<i>Clarke v. Board of Cty. Comm’rs of Warren Cty.</i> (Warren Cty.), 2006 Ohio 1271.....	12
<i>Fondessy Enters., Inc. v. Oregon</i> (1986), 23 Ohio St.3d 213.....	9, 11
<i>Garcia v. Siffrin Residential Assn.</i> (1980), 63 Ohio St.2d 259.....	8, 9
<i>Ohioans for Concealed Carry, Inc. v. City of Clyde</i> (2008), 120 Ohio St.3d 96.....	10-11
<i>Osnaburg Twp. Zoning Inspector v. Eslich Environmental, Inc.</i> (Stark Cty.) 2008 Ohio 6671.....	5
<i>Sheffield v. Rowland</i> (1999), 87 Ohio St.3d 9.....	5, 8, 9, 10, 13, 14
<i>Village of Struthers v. Sokol</i> (1923), 108 Ohio St. 263.....	5, 9
<i>Yorkavitz v. Board of Twp. Trustees of Columbia Twp.</i> (1957), 166 Ohio St. 349	8
 <u>Statutes and Administrative Regulations</u>	
R.C. § 519.02	7
R.C. § 3714.01	6
R.C. § 3714.02	6
R.C. § 3714.03	7, 13, 14
R.C. § 3714.06	6, 9

R.C. § 3714.096

O.A.C. 3745-37-036

O.A.C. 3745-400-092, 6

Ordinances

Osnaburg Township Zoning Resolution, Section 7223, 13

Osnaburg Township Zoning Resolution, Section 11013, 4, 13

Osnaburg Township Zoning Resolution, Section 11023, 14

I. STATEMENT OF THE CASE AND FACTS

A. Eslich Environmental And Its Operator, Stark C&D, Have Legally Operated The C&DD Facility At The Property For The Past Twenty Years.

Defendant/Third-Party Plaintiff-Appellee Eslich Environmental, Inc. (“Appellee” or “Eslich Environmental”) is the owner of a 175-acre parcel of real property located at 7280 Lisbon St., S.E., Osnaburg Township, Stark County, Ohio (the “Property”). *Stipulated Facts*, ¶ 2 (Appx. 42). The Property has a long history of use as a strip mine and as a disposal site for construction and demolition debris (“C&DD”) materials. *Affidavit of Richard M. Eslich* (“*Eslich Affidavit*”), ¶ 4 (Supp. 1).¹ Since approximately 1961, the Property has been designated as an R-1 Single Family Residential District pursuant to the zoning resolutions adopted by Osnaburg Township. *Stipulated Facts*, ¶ 5 (Appx. 42). Eslich Environmental purchased the Property in July of 1989 expressly to continue its use as a C&DD disposal facility. *Eslich Affidavit*, ¶ 4 (Supp. 1).

Under the zoning resolutions of Osnaburg Township, C&DD facilities may not be located or operated within an R-1 Single Family Residential District. *Eslich Affidavit*, ¶ 11 (Supp. 2); *Stipulated Facts*, ¶ 6 (Appx. 42). However, recognizing the historical use of the Property as a C&DD disposal site, the Osnaburg Township Board of Zoning Appeals acknowledged the existence of a legal non-conforming use for the operation of a C&DD disposal facility on the Property and issued a Certificate of Non-Conforming Use to Eslich Environmental in March of

¹ In Appellants’ Notice of Intention Not to File Supplement, which was filed contemporaneously with Appellants’ Merit Brief, Appellants state that “[t]his case was decided upon summary judgment in the trial court upon stipulated facts.” While the trial court did rely upon the parties’ stipulated facts in rendering summary judgment for Appellee, it also relied upon three unrefuted affidavits submitted by Appellee in connection with the summary judgment proceedings. Accordingly, with the filing of its Merit Brief, Appellee submits a Supplement containing those three Affidavits that are relevant and necessary to determine the questions presented herein, pursuant to Supreme Court Practice Rule VII.

1990. *Eslich Affidavit*, ¶ 5 (Supp. 1); *Stipulated Facts*, ¶ 9 (Appx. 43). The Certificate of Non-Conforming Use is for an indefinite period of time and does not limit the area of disposal on the Property. *Stipulated Facts*, ¶ 10, and Exhibit thereto (Appx. 43, 45). Since that time, Eslich Environmental has continuously used the Property for the operation of a licensed C&DD disposal facility as authorized by the legal non-conforming use status granted by the Osnaburg Township Board of Zoning Appeals. *Eslich Affidavit*, ¶ 6 (Supp. 2); *Stipulated Facts*, ¶ 11 (Appx. 43).

In approximately 1996, non-party Stark C&D Disposal, Inc. (“Stark C&D”) began leasing the Property from Eslich Environmental in order to take over operations of the C&DD disposal facility pursuant to a license issued under Revised Code Chapter 3714 and the new Ohio Environmental Protection Agency (“Ohio EPA”) regulations set forth in Ohio Administrative Code Chapter 3745-400. *Eslich Affidavit*, ¶ 7 (Supp. 2); *Stipulated Facts*, ¶ 12 (Appx. 12). Beginning in 1996, the Stark County Board of Health, acting on behalf of the Ohio EPA as the approved licensing authority in Stark County, Ohio, issued a license to Stark C&D to operate a C&DD facility on the Property. *Eslich Affidavit*, ¶ 8 (Supp. 2). The Stark County Board of Health has renewed Stark C&D’s license every year since 1996 to the present. *Stipulated Facts*, ¶ 17 (Appx. 43); *Supplemental Affidavit of Richard M. Eslich* (“*Supplemental Eslich Affidavit*”), ¶ 4 (Supp. 4).

From 1996 to the present, the state licenses issued to Stark C&D have designated 20.2 acres of the Property as the “active licensed disposal area” (“ALDA”) and an additional 8.5 acres as the “inactive licensed disposal area” (“ILDA”). *Stipulated Facts*, ¶¶ 14 and 15 (Appx. 43). In 2007, the Stark County Health Department denied Stark C&D’s request for an increase in the ILDA from 8.5 acres to 95.5 acres. *Id.* at ¶ 16 (Appx. 43). Thus, Eslich Environmental currently

owns, and Stark C&D currently operates, 20.2 acres of ALDA and 8.5 acres of ILDA at the Property pursuant to a license issued under Ohio Revised Code Chapter 3714. *Id.* at ¶¶ 13-15 (Appx. 43).

In approving Stark C&D's license applications over the years, the Stark County Board of Health has found that the C&DD facility complies with all applicable rules and standards set forth in Chapter 3714 of the Ohio Revised Code regarding the siting and operation of the C&DD facility on the Property. *Eslich Affidavit*, ¶ 9 (Supp. 2). Both Eslich Environmental and Stark C&D have continuously complied with all of the requirements of Ohio law applicable to the operation of the C&DD disposal facility, as well as all additional conditions imposed by the annual renewal of the C&DD license for the Property. *Id.* at ¶ 10 (Supp. 2).

B. C&DD Facilities Are Effectively Prohibited Throughout Osnaburg Township.

In Osnaburg Township, only two areas are currently zoned as I-2 General Industrial pursuant to the Osnaburg Township Zoning Resolutions, and these areas comprise less than one percent (1%) of the total area of Osnaburg Township. *Affidavit of George Smerigan* ("*Smerigan Affidavit*"), ¶¶ 6 and 12 (Supp. 8). Under the Osnaburg Township Zoning Resolutions, C&DD disposal facilities are not *per se* permitted uses in the I-2 General Industrial District in Osnaburg Township. *Id.* at ¶ 5 (Supp. 7-8). Instead, if numerous general and special conditions are met, the operation of a C&DD disposal facility can be a Conditionally Permitted Use in the I-2 General Industrial District under the Osnaburg Township Zoning Resolutions. *Stipulated Facts*, ¶ 7 (Appx. 43); *Osnaburg Township Zoning Resolution*, §§ 722.2.B.4, 1101.2, and 1102. (EE Appx. 9, 16-34).² The applicant is required to demonstrate all general and special conditions

² In the Appendix attached to their Merit Brief, Appellants include portions of the Osnaburg Township Zoning Resolution that became effective on June 23, 2008. *See, Osnaburg Township Zoning Resolution* (Appx. 28). However, the parties submitted their Motions for Summary

“beyond reasonable doubt” to qualify for a Conditionally Permitted Use. *Id.* at § 1101.2 (EE Appx. 16).

In the extremely limited areas of Osnaburg Township that are zoned I-2 General Industrial, the overwhelming majority of land is currently occupied by pre-existing industrial facilities. *Smerigan Affidavit*, ¶¶ 7 and 8 (Supp. 8). While there does exist a vacant 17-acre parcel of property that is located in the I-2 General Industrial zone across the street from Eslich Environmental’s Property, developing this parcel into a C&DD disposal facility is not feasible. *Id.* at ¶ 11 (Supp. 8-9). Therefore, there is absolutely no location in Osnaburg Township’s I-2 General Industrial zone where Eslich Environmental (or any other entity) could lawfully establish and operate a C&DD facility. *Id.* at ¶¶ 13 and 14 (Supp. 9).

C. The Litigation.

In 2007, after nearly two decades of uninterrupted operation and failure to object to a single C&DD license issued by the State, the Osnaburg Township Zoning Inspector filed a Complaint for Injunctive Relief against Eslich Environmental, arguing that its fully-licensed C&DD facility should be confined to its area of operation existing in 1990. Eslich filed a Counterclaim and Third Party Complaint against Osnaburg Township, requesting identical declarations in each as follows: Eslich Environmental’s recognized non-conforming use under the Osnaburg Township Zoning Resolutions extended to the entire 175 acre parcel (Count I); Revised Code Chapter 3714 takes precedence over the conflicting zoning resolution of Osnaburg

Judgment in 2007, citing the 2002 Osnaburg Township Zoning Resolution that was in effect as of that time, and the trial court rendered its decision in January, 2008, in reliance on that version of the Osnaburg Township Zoning Resolution. *See, Judgment Entry* (Appx. 18-24). Likewise, the Fifth District Court of Appeals rendered its decision based upon the 2002 version of the Osnaburg Township Zoning Resolution. *See, Judgment Entry* (Appx. 4-17). Therefore, included in the Appendix attached hereto are relevant portions of the 2002 Osnaburg Township Zoning Resolution that are applicable to this case. *See, Osnaburg Township Zoning Resolution* (EE Appx. 1-34).

Township (Count II); and the R-1 Residential use in the former strip mine and disposal site was unconstitutional (Count III).

The Osnaburg Township Zoning Inspector and Osnaburg Township (“Appellants”) moved for summary judgment on Eslich Environmental’s Counterclaim and Third-Party Complaint, and Eslich Environmental moved for summary judgment on Count II of its Counterclaim and Third-Party Complaint only. The trial court denied Appellants’ Motion for Summary Judgment and granted Eslich Environmental’s Motion. The Fifth District Court of Appeals affirmed the granting of summary judgment in favor of Eslich Environmental. In so doing, both the trial court and Fifth District Court of Appeals found that the Osnaburg Township Zoning Resolutions conflicted with the State’s site specific authorization to locate and operate a C&DD facility on the Property. In reaching its conclusions, both the trial court and the Fifth District correctly applied the “conflict test” articulated in *Village of Struthers v. Sokol* (1923), 108 Ohio St. 263, and *Sheffield v. Rowland* (1999), 87 Ohio St.3d 19, finding that the local zoning ordinance applicable to the property impermissibly forbade what the general state statute permitted. As explained by the Fifth District, “[w]hen the requirements of R.C. Chapter 3714 are met and a license is issued thereunder, any zoning regulation that prohibits the operation of such a facility is in direct conflict’ and, thus, ‘the state regulation prevails.’” *Osnaburg Twp. Zoning Inspector v. Eslich Environmental, Inc.* (Stark Cty.), 2008 Ohio 6671, P57, quoting *Sheffield*, 87 Ohio St.3d at 12-13.

II. ARGUMENT

Appellee's Proposition of Law: *A township zoning ordinance that prohibits the operation of a construction and demolition facility on property authorized by a license issued pursuant to a general state law presents an impermissible conflict and cannot be enforced.*

A. **The Location And Regulation Of C&DD Facilities Under Revised Code Chapter 3714 Is Entrusted Exclusively To The Ohio Environmental Protection Agency And Its Approved Health Districts.**

Revised Code Chapter 3714, along with its regulatory program contained in Ohio Administrative Code Chapter 3745-400, governs the location, licensing, and regulation of C&DD disposal facilities throughout the State of Ohio. R.C. § 3714.01, *et seq.* (EE Appx. 35-49).³ Exclusive jurisdiction for this state-wide program is entrusted to the Ohio EPA and its approved Health Districts. R.C. §§ 3714.02 and 3714.09(A) (EE Appx. 37-41, 48). These agencies judge the suitability of a location for a proposed C&DD facility and determine where a C&DD facility can be located based upon the presence or absence of specific site criteria. *Id.* A license cannot be issued unless the location and operation of the facility is protective of public health and safety and the environment. R.C. § 3714.06(A) (EE Appx. 46); *see*, O.A.C. 3745-37-03(D) (setting forth the criteria for issuing a C&DD facility license) (EE Appx. 51).

An application for a license to locate and operate a C&DD facility requires a comprehensive site investigation which allows the Ohio EPA or its approved Health Districts to identify applicable site features and evaluate the suitability of the property. O.A.C. 3745-400-09(C) (EE Appx. 53-55). As examples, the site criteria mandate that C&DD facilities must be

³ Although Supreme Court Practice Rule VI §2(B)(5)(f) provides that Appellants' Appendix should include "[a]ny...statute...upon which appellant relies, to be construed, or otherwise involved in the case," Appellants have failed to include relevant provisions of Ohio Revised Code Chapter 3714 and Ohio Administrative Code Chapter 3745 in their Appendix. Therefore, included in Eslich Environmental's Appendix are relevant sections of those statutes and regulations. References to Eslich Environmental's Appendix herein are cited as "EE Appx." and references to Appellants' Appendix are cited as "Appx."

located a minimum distance from sensitive protected features, including occupied dwellings. R.C. § 3714.03(C) (EE Appx. 43). C&DD facilities cannot be located over a federally declared sole source aquifer or within the boundaries of certain one-hundred year flood plains. R.C. § 3714.03(B) (EE Appx. 43). There must be a prescribed isolation distance between the property's uppermost aquifer system and the bottom of the facility's recompacted soil liner. R.C. § 3714.03(D) (EE Appx. 44). Additionally, recognizing that an approvable site may be located in an area zoned for residential use, this general law requires that the facility install certain protections such as vegetated earthen berms or an equivalent barrier from adjoining property. R.C. § 3714.03(F)(3) (EE Appx. 44).

Townships derive their authority to enact police power ordinances only from the General Assembly. Nowhere in Revised Code Chapter 519 – or any other Chapter of the Revised Code – have townships been authorized to regulate C&DD facilities or to supersede a specific finding under general state law that a site is appropriate for a C&DD facility and is protective of public health and safety and the environment. Indeed, where the zoning authority of a township under Revised Code Chapter 519 is allowed to “co-exist” with a state licensing program, the General Assembly has specifically so provided. *See, e.g.*, R.C. 519.02(A) (granting a township the power to regulate the location of coal or other surface mines licensed under Revised Code Chapters 1513 and 1514) (Appx. 25). Townships have never been, and should not now be, permitted to nullify the technical expertise of the Ohio EPA regarding an appropriate location for a C&DD facility.

B. Osnaburg Township Zoning Resolutions Applicable To The Property Are In Conflict With Revised Code Chapter 3714.

This Court has established and adhered to a three-part test to determine whether a local ordinance impermissibly conflicts with and is preempted by a state statute:

- 1) the ordinance is in conflict with the statute;
- 2) the ordinance is an exercise of the police power, rather than of local self-government; and
- 3) the statute is a general law.

Canton v. State of Ohio (2002), 95 Ohio St.3d 149, 151. Because the above three factors are met in this case, Osnaburg Township's Zoning Resolutions as applied to Eslich Environmental's C&DD facility are preempted by Revised Code Chapter 3714.

Appellants and their Amicus concede that Chapter 3714 of the Ohio Revised Code is a general state law governing the licensing and regulation of C&DD facilities in the State of Ohio. *Appellants' Merit Brief*, p. 12, citing *Sheffield v. Rowland*, 87 Ohio St.3d 9. Indeed, this Court has unequivocally held that "[i]t appears beyond dispute that R.C. Chapter 3714 is a general law..." *Sheffield v. Rowland*, 87 Ohio St.3d at 11. Likewise, Appellants and Amicus concede that zoning ordinances are exercises of police power, rather than exercises of local self-government. *Appellants' Merit Brief*, citing *Yorkavitz v. Board of Twp. Trustees of Columbia Twp.* (1957), 166 Ohio St. 349. *See, Sheffield*, 87 Ohio St.3d at 10, citing *Garcia v. Siffrin Residential Assn.* (1980), 63 Ohio St.2d 259, paragraph two of the syllabus. Thus, it is undisputed that prongs two and three of the *Canton* preemption test have been met.

In this case, the only dispute between the parties is whether the first prong of the *Canton* test has been met, that is whether the Osnaburg Township Zoning Resolutions are in conflict with the licensing program established by Revised Code Chapter 3714. This Court has

repeatedly ruled that a general state law will take precedence over a local ordinance when the ordinance is in conflict with general law. *Sheffield*, 87 Ohio St.3d at 10, citing *Garcia*, 63 Ohio St.2d at 270; *Canton*, 95 Ohio St.3d at 151. In the licensing context, this Court has set forth a clear test to determine whether a conflict exists, as follows:

No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa. There can be no conflict unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other.

Sheffield, 87 Ohio St.3d at 10, citing *Struthers*, 108 Ohio St. at 268, and *Fondessy Enters., Inc. v. Oregon* (1986), 23 Ohio St.3d 213.

In *Sheffield*, this Court struck down a local zoning ordinance that was in conflict with the general state laws governing the location and operation of C&DD facilities licensed by the State. In that case, the operator of a C&DD facility had met all of the rules and standards of Revised Code Chapter 3714 and had been issued a license to install and operate its facility. *Sheffield*, 87 Ohio St.3d at 5. The local zoning ordinances, however, prohibited excavation and the storing of junk or scrap on the operator's property – activities that would have prevented the establishment and operation of the facility. *Id.* at 6. After holding that Chapter 3714 of the Ohio Revised Code was a general law and that zoning ordinances were exercises in police power, this Court held that those local zoning ordinances were in conflict with the general law of Ohio because they effectively prohibited the operation of the C&DD facility. *Id.* at 7. Specifically, this Honorable Court held:

Upon compliance with the requirements of R.C. Chapter 3714 and the issuance of a license, the operator of a proposed construction and demotion facility is authorized to establish such a facility. R.C. 3714.06(A). However, it is readily apparent that the Sheffield Village Codified Ordinances prohibit such a facility. Thus, the ordinances prohibit what the statute permits and are therefore in conflict with R.C. Chapter 3714.

Id. at 6-7. Because the local zoning ordinances applicable to the property in *Sheffield* were in conflict with the authorization to site the C&DD facility pursuant to Chapter 3714 of the Revised Code, this Court held that the local ordinances were preempted by State law. *Id.* at 13. Accordingly, this Court struck down those local zoning ordinances as they applied to the C&DD operator and its property. *Id.*

The facts and circumstances in the case at hand mirror those in *Sheffield*. Here, Eslich Environmental and Stark C&D, the current operator of the C&DD facility, have met all of the rules and standards of Revised Code Chapter 3714 and have been issued annual licenses to operate the C&DD facility at the Property. The state license specifically authorizes Stark C&D to operate a specific 20.2 acres of the Property as ALDA and 8.5 acres as ILDA. However, by zoning all the Property as R-1 Single Family Residential, Osnaburg Township has completely prohibited Stark C&D's operation of the C&DD facility on the Property. Because those zoning ordinances expressly prohibit what the state laws authorize and permit, the Osnaburg Township Zoning Resolutions are in conflict with the general laws of the State of Ohio governing the location and operation of C&DD disposal facilities. Accordingly, the Osnaburg Township Zoning Resolutions, as applied to Stark C&D's use of the Property, are invalid and must yield to the general laws of the State of Ohio.

Recent decisions of this Court support the holding that a local ordinance cannot change the effect of a general law on specific property. For example, in *Ohioans for Concealed Carry, Inc. v. City of Clyde* (2008), 120 Ohio St.3d 96, a municipality attempted to prevent the application of Revised Code 2923.126 (concerning the right of a licensed individual to carry a concealed handgun) in one of its city parks. Like Revised Code Chapter 3714, the concealed handgun law was found to be a "general law" under the *Canton* test. *Concealed Carry*, 120 Ohio

St.3d at 105. Applying that home-rule conflict analysis, this Court recognized the impermissible conflict between the effect of the site specific local ordinance and the State's general law:

Here, the statute creates a right subject to specific exceptions that do not include public parks. Thus, the statute permits a licensed gun owner to carry a concealed handgun in a Clyde city park -- indeed, in any municipal park across the state -- the very conduct prohibited by the Clyde city ordinance. We therefore hold that the Clyde ordinance is in conflict with R.C. 2923.126.

Id. See, American Fin. Services Assn. v. City of Cleveland (2006), 112 Ohio St.3d 170, 179 (“...we conclude that any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes and are therefore unconstitutional.”). Similarly, in this case, Osnaburg Township's zoning ordinance prohibits the operation of a C&DD facility on the Property that the license issued pursuant to the general law in Revised Code Chapter 3714 specifically authorizes. Thus, the Osnaburg Township ordinance prohibits what the state statute specifically allows. Under these circumstances, the state statute takes precedence over the application of the local ordinance.

Throughout their Merit Brief, Appellants cite cases that allegedly recognize the “coexistence” of zoning and state C&DD licensing. For example, Appellants cite *Aluminum Smelting & Refining Co. v. Denmark Twp. Bd. of Zoning Appeals* (Ashtabula Cty.), 2002 Ohio 6690, as a case that “recognized the distinct purposes, yet harmonious coexistence, of local zoning and state regulation.” *Appellants' Merit Brief*, p. 10. However, Appellants fail to mention that the *Aluminum Smelting* decision recognized *Sheffield* for the holding that “zoning ordinances may not be in conflict with general law.” *Aluminum Smelting*, 2002 Ohio 6690, at P24. That court further held that “municipal requirements which alter, impair or limit the operation of state-licensed waste facilities are not valid.” *Id.* at P25, citing *Fondessy*, 23 Ohio St.3d 213. Indeed, in *Aluminum Smelting*, the Court found that the township's zoning ordinance,

which prohibited the operation of an industrial waste landfill licensed by Ohio EPA at that site, was in conflict with the state's general solid waste disposal law in Revised Code Chapter 3734 and, therefore, under *Sheffield*, was invalid. *Id.*

Equally unpersuasive is Appellants' and Amicus' citation to the Twelfth District Court of Appeals' ruling in *Clarke v. Board of Cty. Comm'rs of Warren Cty.* (Warren Cty.), 2006 Ohio 1271. In that case, the landowner challenged the R-1 residential zoning of his property because it denied him any viable economic use of the property. The owner sought zoning that would have allowed a solid waste disposal facility. After finding the R-1 residential classification was unconstitutional as applied, the Court remanded the case to establish a reasonable and constitutional use. Upon rejecting a solid waste classification and rezoning the property for "transitional use," which barred solid waste disposal facilities, the owner appealed. Because the owner had not obtained a state license for the proposed solid waste facility, the Twelfth District understandably found no conflict between the property's new zoning classification and Revised Code Chapter 3734 governing the licensing and regulation of solid waste facilities. Therefore, despite Appellants' intimations to the contrary, this Court's decision in *Sheffield* has not been abrogated, modified, or restricted by any subsequent case.

In their Merit Brief, Appellants request that this Court examine the Osnaburg Township Zoning Resolutions "as a whole" to determine whether there is a conflict between those zoning resolutions and Revised Code Chapter 3714, without regard to a specific application to any particular parcel. Under this approach, Appellants claim that no conflict exists because C&DD disposal sites within the township may be permitted in I-2 Industrial Districts. However, in making their argument, Appellants gloss over the fact that C&DD landfills may be permitted in areas zoned I-2 General Industrial in Osnaburg Township only as a "conditional use." *Smerigan*

Affidavit, ¶ 5 (Supp. 7-8). *See, Osnaburg Township Zoning Resolution*, § 722.2B (EE Appx. 9). Indeed, the conditional use requirements are numerous and require the landowner to demonstrate both the general and specific requirements “beyond reasonable doubt.” *Osnaburg Township Zoning Resolution*, § 1101.2 (EE Appx. 16). Therefore, despite Appellants’ insinuations to the contrary, the areas in Osnaburg Township that are zoned general industrial do not *per se* provide for the location and operation of a C&DD facility. *Smerigan Affidavit*, ¶ 5 (Supp. 7-8).

More importantly, however, Appellants fail to inform this Court that the property in Osnaburg Township that has been zoned as general industrial represents less than 1% of the Township and is almost completely occupied by existing industrial facilities, thereby precluding the siting of a C&DD facility in those areas. *Smerigan Affidavit*, ¶¶ 6-14 (Supp. 8-9). While there does exist a vacant 17-acre parcel of property that is located in the I-2 General Industrial zone across the street from Eslich Environmental’s Property, developing this property into a C&DD disposal facility is not feasible. *Id.* at ¶ 11 (Supp. 8). Moreover, there was no evidence submitted by Appellant to demonstrate that this parcel could meet the Ohio EPA’s siting criteria in Revised Code 3714.03. Therefore, there exists absolutely no location in Osnaburg Township’s I-2 General Industrial zone where Eslich Environmental, Stark C&D, or any other entity could lawfully establish and operate a C&DD facility. *Id.* at ¶¶ 13 and 14 (Supp. 9). Accordingly, the Osnaburg Township Zoning Resolutions are preempted by general state law because they effectively prohibit the operation of a state-licensed C&DD facility throughout the entirety of Osnaburg Township. *Sheffield*, 87 Ohio St.3d at 11.⁴

⁴ Analogously, other Ohio decisions prohibit the application of a zoning ordinance that has the effect of abolishing a certain industry within a municipality’s boundaries. *See, e.g., Brookpark News & Books, Inc. v. City of Cleveland* (Cuyahoga Cty. 1990), 66 Ohio App.3d 613, 618 (zoning ordinance that relegated sexually-oriented businesses to a very small area of the entire

In *Sheffield*, this Court cautioned that “[n]othing in this decision should be construed to suggest that Sheffield cannot restrict state-authorized facilities to certain districts with appropriate zoning.” *Sheffield*, 87 Ohio St.3d at 12. In this case, Osnaburg Township has gone far beyond restricting C&DD disposal facilities to certain zones that can accommodate a C&DD facility. By permitting those facilities on less than 1% of the area of the township (and only as a conditional use), when the entirety of that area is either occupied by industrial facilities or incapable of being licensed as a C&DD facility, the net effect is a total ban of C&DD facilities within the township. That very act falls within this Court’s prohibition in *Sheffield*.

The Osnaburg Township Zoning Resolutions effectively prohibit Stark C&D's operation of a C&DD facility on the Property and throughout the entire township. The State of Ohio, through the C&DD licensing process, has recognized that Stark C&D's disposal operations within the ALDA and ILDA meet the criteria and limitations in Revised Code Chapter 3714. Notwithstanding compliance with the site-specific criteria in this general law, the Osnaburg Township Zoning Resolutions completely ban the use of the approved ALDA or the approved ILDA for C&DD disposal. Moreover, even if a suitable parcel existed within the I-2 Industrial Zone, which it does not, at least two of the “conditions” for a conditional use as a C&DD facility directly conflict with the express siting conditions of Revised Code 3714.03. (Compare Osnaburg Township Zoning Resolution, Section 1102, subsections 150 (setback from property line) and 151 (setback from all dwellings) with Revised Code 3714.03(C)(2) and (9)). Thus, the zoning resolution is clearly prescriptive because it prohibits what is permitted under the general state statute. Pursuant to this Court’s well-established authority, such a conflict is not permitted. Therefore, both the trial court and the Fifth District Court of Appeals correctly held that the

municipality interfered with the First Amendment’s right to free speech and could not be enforced).

Osnaburg Township Zoning Resolutions are invalid because they conflict with Revised Code Chapter 3714.

III. CONCLUSION

A uniform application of siting criteria by Ohio EPA is essential to protect the public health and safety and the environment in Ohio. Townships lack the technical expertise to evaluate site specific geology and hydrogeology and cannot be permitted to manipulate their zoning ordinances to relegate C&DD disposal facilities to inappropriate – indeed, non-existent – areas in their local community. General laws, like the licensing and regulation of C&DD facilities under Revised Code Chapter 3714, must receive preference where the local township seeks to preclude the operation of an existing C&DD facility fully licensed for decades on specific property determined to be appropriate by the Ohio EPA.

Because the Osnaburg Township Zoning Resolutions prohibit the operation of a C&DD disposal facility on the Property and throughout the entire township, those resolutions must yield to Chapter 3714 of the Ohio Revised Code. Accordingly, neither the trial court nor the court of appeals erred in finding a conflict between the effect of the local ordinance and the general laws of the State of Ohio. Therefore, Appellee Eslich Environmental, Inc. respectfully requests that this Honorable Court affirm the decision of the Fifth District Court of Appeals.

Respectfully submitted,

Michael A. Cyphert /BSF

Michael A. Cyphert (Reg. No. 0007086)

Bonnie S. Finley (Reg. No. 0065565)

WALTER & HAVERFIELD LLP

The Tower at Erieview

1301 East Ninth Street, Suite 3500

Cleveland, Ohio 44114

(216) 781-1212 (telephone)

(216) 575-0911 (facsimile)

Attorneys for Appellee, Eslich Environmental, Inc.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing *Merit Brief of Defendant/Third-Party Plaintiff-Appellee Eslich Environmental, Inc.* was sent by regular U.S. Mail on this 12th day of August 2009 to the following:

Amy A. Sabino
Counsel of Record
Assistant Prosecuting Attorney
Ross A. Rhoades
Assistant Prosecuting Attorney
110 Central Plaza, S., Suite 510
Canton, OH 44702

Counsel for Appellants
Osnaburg Township Zoning Inspector,
Osnaburg Township Board of Trustees,
and Osnaburg Township

BENJAMIN C. MIZER*
Solicitor General
**Counsel of Record*
DAVID M. LIEBERMAN
Deputy Solicitor
30 East Broad Street, 17th Floor
Columbus, OH 43215

Counsel for Amicus Curiae State of Ohio

DONALD F. BROSIUS
**Counsel of Record*
PETER N. GRIGGS
STEVEN C. LEIDINGER
LOVELAND & BROSIUS, LLC
50 West Broad Street, Suite 3300
Columbus, OH 43215

Counsel for Amicus Curiae
Ohio Township Association


One of the Attorneys for Defendant/Third-Party
Plaintiff-Appellee Eslich Environmental, Inc.

In The Supreme Court Of Ohio

OSNABURG TOWNSHIP ZONING
INSPECTOR,

Plaintiff-Appellant,

v.

ESLICH ENVIRONMENTAL, INC.

Defendant/Third-Party
Plaintiff-Appellee,

v.

OSNABURG TOWNSHIP, et al.

Third-Party Defendant-
Appellant.

CASE NO. 2009-0228

Appeal from the Ohio Court of Appeals for
Stark County, Fifth Appellate District

Court of Appeals Case No. 2008-CA 00026

APPENDIX

	<u>Page</u>
Osnaburg Township Zoning Resolution	EE APPX 0001
Section 702, R-1 Single Family Residential District	EE APPX 0004
Section 722, I-2 General Industrial	EE APPX 0007
Article X, Nonconforming Use	EE APPX 0011
Section 1101, Conditional Zoning Certificates, Purpose	EE APPX 0014
Section 1102, Regulations Pertaining to Conditionally Permissible Uses ..	EE APPX 0017
Ohio Revised Code Chapter 3714.....	EE APPX 0035
R.C. § 3714.01	EE APPX 0035
R.C. § 3714.02	EE APPX 0037
R.C. § 3714.03	EE APPX 0042
R.C. § 3714.06	EE APPX 0046
R.C. § 3714.09	EE APPX 0048

	<u>Page</u>
Ohio Administrative Code Chapter 3745	EE APPX 0050
O.A.C. 3745-37-03	EE APPX 0050
O.A.C. 3745-400-09	EE APPX 0052

D, B

OSNABURG TOWNSHIP ZONING RESOLUTION

Osnaburg Township
Stark County, Ohio
May, 2002

Includes Amendments Effective May 22, 2002

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	2
ARTICLE I - PURPOSE AND CONFORMANCE.....	3
ARTICLE II - TITLE.....	4
ARTICLE III - INTERPRETATION OF STANDARDS AND EXEMPTIONS AND LIMITATIONS.....	4
ARTICLE IV - DEFINITIONS.....	6
ARTICLE V - DISTRICT AND BOUNDARIES THEREOF.....	16
ARTICLE VI - GENERAL STANDARDS AND SPECIAL PROVISIONS	18
ARTICLE VII - DISTRICT REGULATIONS	24
SECTION 701 - R-R RURAL/RESIDENTIAL DISTRICT	24
SECTION 702 - R-1 SINGLE FAMILY RESIDENTIAL DISTRICT.....	26
SECTION 703 - R-2 ONE & TWO FAMILY RESIDENTIAL DISTRICT.....	28
SECTION 704 - R-3 LOW DENSITY MULTIFAMILY RESIDENTIAL DISTRICT.....	29
SECTION 705 - R-4 HIGH DENSITY MULTIFAMILY RESIDENTIAL DISTRICT	32
SECTION 706 - R-5 MANUFACTURED HOME & MANUFACTURED HOME PARK DISTRICT	34
SECTION 711 - B-1 SUBURBAN OFFICE DISTRICT	37
SECTION 712 - B-2 NEIGHBORHOOD BUSINESS DISTRICT.....	39
SECTION 713 - B-3 GENERAL BUSINESS DISTRICT	40
SECTION 721 - I-1 LIGHT INDUSTRIAL DISTRICT	43
SECTION 722 - I-2 GENERAL INDUSTRIAL	45
ARTICLE VIII - SIGN REGULATIONS	49
ARTICLE IX - PARKING AND LOADING REQUIREMENTS	54
ARTICLE X - NONCONFORMING USES.	59
ARTICLE XI - CONDITIONAL ZONING CERTIFICATES	62
ARTICLE XII - BOARD OF ZONING APPEALS.	83
ARTICLE XIII - ADMINISTRATION FEES AND ENFORCEMENT.....	87
ARTICLE XIV - VALIDITY AND SEPARABILITY.....	92
ARTICLE XV - REPEALER.....	92
ARTICLE XVI - EFFECTIVE DATE	93

INTRODUCTION

ZONING RESOLUTION FOR OSNABURG TOWNSHIP

STARK COUNTY, OHIO

WHEREAS, the Board of Trustees of Osnaburg Township, Stark County, Ohio, has deemed it advisable to promote the public health, safety, morals, and general welfare for the residents of said township; and,

WHEREAS, a zoning resolution for the building and land use within the unincorporated territory of the township was adopted in 1961, in accordance with Section 519.10 and related sections of the Ohio Revised Code; and,

WHEREAS, five (5) persons have been duly appointed by the Board of Trustees of Osnaburg Township to serve as a Zoning Commission for said Township; and,

WHEREAS, said Zoning Commission has recommended the complete revision of the Osnaburg Township Zoning Resolution and Official Zoning Map, and have submitted such amendments and map to the Board of Trustees of Osnaburg Township under the authority and in accordance with the provisions of Section 519.12 of the Ohio Revised Code on May 9, 1991.

THEREFORE, the Board of Trustees of Osnaburg Township did adopt the amendments to the Zoning Resolution and map on June 19, 1991, under the authority and in accordance with the provisions of the Ohio Revised Code, and said amendments became effective on July 19, 1991.

SECTION 701.3 MINIMUM LOT AND YARD REQUIREMENTS

<u>Lot Area</u>	<u>Lot Frontage</u>	<u>Lot Width at Building Line</u>	<u>Front Yard Depth</u>	<u>Rear Yard Depth</u>	<u>Side Yard Depth</u>
one (1) acre Change Effective: 5-27-98	50 feet	100 feet	60 feet	50 feet	25 feet

SECTION 701.4 MAXIMUM BUILDING HEIGHT - Thirty-five (35) feet

SECTION 701.5 MINIMUM FLOOR AREA FOR SINGLE FAMILY DWELLING - Seven hundred fifty (750) square feet.

SECTION 702 **R-1 SINGLE FAMILY RESIDENTIAL DISTRICT**

SECTION 702.1 PURPOSE

This district is established to accommodate single-family residential dwellings in areas expected to be served with central sewer and/or water facilities.

SECTION 702.2 USES

Within an R-1 Single Family Residential District no building, structure, or premises shall be used, arranged to be used, or designed to be used except for one or more of the following uses:

A. Permitted Uses

1. Single-family dwelling.
2. Public buildings.
3. Churches and other buildings for the purpose of religious worship.
4. Roadside stands (agricultural).
5. Accessory uses or structures incidental to the principal use which do not include any activity conducted as a business.
6. Signs as permitted and regulated by Article VIII.
7. Off-street parking as permitted and regulated in Article IX.
8. Licensed family home (for the developmentally disabled).
9. Home occupations: as permitted and regulated in Article VI Section 603.09

B. Conditionally Permitted Uses

The Board of Zoning Appeals may issue Conditional Zoning Certificates for uses listed herein subject to the general requirements of Article XI and to the specific requirements of Article XI, referred to below:

1. Surface mining and strip mining, top soil removal, subject to Subsections 105, 110, 111, 112, 113, 114, 122, 125, (Amended eff. 10-11-91) and 148 (Amended eff. 2/25/94).
2. Parking lots, accessory to a use permitted in an adjacent zoning district, subject to Subsections 103, 105, 132.
3. Cemetery, subject to Subsections 103, 106, 119, 125.
4. Home occupations, subject to Subsection 115, 122.
5. Institutions for education, subject to Subsections 101, 102, 103, 104, 105, 106, 109, 125, 129.
6. Private or governmentally owned and/or operated picnic areas, playgrounds, parks, swimming facilities, golf courses, tennis clubs, country clubs, riding academies, and other similar recreational facilities or uses, but excluding such commercial recreation uses as drive-in theaters, miniature golf and golf driving ranges, subject to Subsections 101, 102, 103, 104, 105, 108, 114, 121, 122, 125, 126.
7. Mobile home, subject to Subsection 131.
8. Private Fire Stations subject to Subsections 114, 125, and 129.
9. Deleted 12/22/99

SECTION 702.3 MINIMUM LOT AND YARD REQUIREMENTS

<u>Lot Area</u>	<u>Lot Frontage</u>	<u>Lot Width at Building Line</u>	<u>Front Yard Dept</u>	<u>Rear Yard Depth</u>	<u>Side Yard Depth</u>
Without Central Sewer System:					
20,000 sq. ft.	50 feet	100 feet	40 feet	30 feet	10 feet
With Central Sewer System:					
12,000 sq. ft.	50 feet	80 feet	40 feet	30 feet	10 feet

Minimum Side Yard Width on Corner Lot Next to Street - Thirty (30) feet.

SECTION 702.4 MAXIMUM BUILDING HEIGHT - Thirty-five (35) feet

SECTION 702.5 MINIMUM FLOOR AREA FOR SINGLE FAMILY DWELLING - Seven hundred fifty (750) square feet.

SECTION 703 R-2 ONE AND TWO FAMILY RESIDENTIAL DISTRICT

SECTION 703.1 PURPOSE

The purpose of this district is to permit single- and two-family dwellings at medium density in areas generally adjacent to the built-up section of the community or in areas of existing development of such density, and thereby providing a more orderly and efficient extension of public facilities.

SECTION 703.2 USES

Within an R-2 One and Two Family Residential District no building, structure, or premises shall be used, arranged to be used, or designed to be used except for one or more of the following uses:

A. Permitted Uses

1. Single-family dwelling.
2. Two-family dwelling.
3. Public buildings.
4. Churches and other buildings for the purpose of religious worship.
5. Accessory uses or structures incidental to the principal use which do not include any activity conducted as a business.
6. Signs as permitted and regulated by Article VIII.
7. Off-street parking as permitted and regulated in Article IX.
8. Roadside stands (agricultural).
9. Licensed family home (for the developmentally disabled).
10. Home occupations: as permitted and regulated in Article VI Section 603.09.

B. Conditionally Permitted Uses

The Board of Zoning Appeals may issue Conditional Zoning Certificates for any uses as listed in Section 702.2, B, subject to the general requirements of Article XI and to the specific requirements as referred to in Section 702.2, B.

C. Minimum side yard width - twenty-five (25) feet except as otherwise noted in Section 721.4 D.

D. Yards Adjoining a Residential District

When the boundary of any Industrial District adjoins the boundary of any Residential District, the minimum front, side, and rear yard depths as the case may be shall be one hundred (100) feet. Of this one hundred (100) feet, the fifty (50) feet abutting the Residential District shall be landscaped to minimize the industrial effect on the residential lot, with the remaining fifty (50) feet to be used as parking spaces or open space.

SECTION 721.5 MAXIMUM BUILDING HEIGHT - Eighty (80) feet

SECTION 721.6 PARKING AND LOADING REQUIREMENTS - The parking and loading requirements for this district shall be regulated by Article IX hereof.

SECTION 722 I-2 GENERAL INDUSTRIAL

SECTION 722.1 PURPOSE

The purpose of this district is to create areas where heavy industry can operate and still ensure the protection of the neighboring environment.

SECTION 722.2 USES

Within an I-2 General Industrial District no building, structure, or premises shall be used, arranged to be used, or designed to be used except for one or more of the following uses:

A. Permitted Uses

1. All uses specifically permitted in an I-1 Light Industrial District.
2. Automobile assembly and major repair.
3. The following types of manufacturing, processing, cleaning, servicing, testing, or repair activities:
 - a. Pottery and figurines or similar ceramic products using previously pulverized clay and kilns fired only with gas or electricity.
 - b. Electric and neon signs, billboards, and other such structures.
 - c. Laboratories and processing, experimental, film, or testing.
 - d. Light sheet metal products, including heating and ventilating equipment.

- e. Blacksmith, welding, or other similar type of metal shop, including machine shop operations of the tool, die, and gauge types.
 - f. Bag, carpet, and rug cleaning, provided necessary equipment is installed and operated for the effective recovery of dust.
4. The following uses, provided storage is within an enclosed building or an area enclosed on all sides by a solid masonry wall or a minimum six foot (6') solid painted fence with openings no greater than fifteen (15) percent:
 - a. Building materials and lumber yard, including mill work when within a completely enclosed building.
 - b. Contractors' equipment storage yard or plant, or storage and rental of equipment commonly used by contractors.
 - c. Fuel, food, and goods distribution station, warehouse and storage, but excluding coal and coke. Inflammable liquids, underground storage only if located more than three hundred (300) feet from any Residential district.
 - d. Public storage garage and yards.
 5. Warehouses and wholesale business establishments.
 6. Carpenter, cabinet, upholstering, sheet metal, plumbing, heating, roofing, air conditioning, sign painting, and other similar establishments.
 7. Foundry, casting lightweight nonferrous metals, not causing noxious fumes or odors.
 8. Laundry, cleaning, and dyeing plant.
 9. Repair services for machinery and equipment, including repair garages and specialty establishments such as motor, body, and fender, radiator, and tire services involving retreading and vulcanizing.
 10. Stone or monument works if, employing power tools, within a completely enclosed building.
 11. Accessory uses incidental to the uses permitted on the same premises.
 12. Signs, as permitted and regulated by Article VIII hereof.
 13. Communication towers/facilities . (Eff. 12-22-99)

B. Conditionally Permitted Uses

The Board of Zoning Appeals may issue Conditional Zoning Certificates for uses listed herein subject to the general requirements of Article XI and to the specific requirements of Article XI listed below:

1. All uses as conditionally permitted in an I-1 Light Industrial district and subject to the same conditions.
2. Junkyard, subject to Subsection 141.
3. Deleted 12/22/99.
4. Demolition materials site, subject to subsections 102, 103, 104, 105, 106, 107, 108, 109, 112, 113, 114, 122, 129, 134, 149, 150, and 151. (Amended eff. 12/24/93 and 7/22/79).
5. Sanitary landfill sites, subject to subsections 102, 103, 104, 105, 106, 107, 108, 109, 112, 113, 114, 122, 129, 130, 134, 150, and 151. (Amended eff. 12/24/93; 3/25/94 and 7/22/94)

SECTION 722.3 LOT REQUIREMENTS

- A. Minimum Lot Area - twenty thousand (20,000) square feet.
- B. Minimum Lot Width - eighty (80) feet
- C. Minimum Lot Frontage - fifty (50) feet

SECTION 722.4 YARD REQUIREMENTS

- A. Minimum front yard depth - forty-five (45) feet, except as otherwise noted in Section 722.4.
- B. Minimum rear yard depth - twenty-five (25) feet, except as otherwise noted in Section 722.4.
- C. Minimum side yard width - twenty-five (25) feet, except as otherwise noted in Section 722.4.
- D. Yards Adjoining Any Residential District

Where the boundary of an Industrial district adjoins the boundary line of any Residential district, the minimum front, rear, or side yard, as the case may be, shall be one hundred (100) feet. The area abutting the residential boundary, to a depth of fifty (50) feet, shall be landscaped and maintained so as to minimize any undesirable visual effects of an industry on adjacent

residential uses; the balance of the yard area shall be used for open space or vehicular parking.

SECTION 722.5 MAXIMUM BUILDING HEIGHT - Eighty (80) feet

SECTION 722.6 PARKING AND LOADING REQUIREMENTS - The parking and loading requirements for this district shall be regulated by Article IX hereof.

ARTICLE X

NONCONFORMING USE

SECTION 1001 PURPOSE

The purpose of this section is to provide for the continuation of uses that do not conform to the existing zoning, but which were in operation prior to the enactment of this Resolution or amendments thereto.

SECTION 1001.1 REGULATIONS

The lawful use of any building or land existing at the effective date of this Resolution or amendments thereto may be continued, although such use does not conform with the provisions of this Resolution.

A. Alterations and Enlargement

A nonconforming building, structure, or use existing at the time this Resolution takes effect may be altered or enlarged as to extend such use or structure not to exceed an additional fifty (50) percent in square foot area, as determined by the Board of Zoning Appeals.

B. Nonconforming to Nonconforming Use

A nonconforming use may be changed to another nonconforming use provided that the changed nonconforming use is identical or in less conflict with character and use of the district than the existing nonconforming use, as determined by the Board of Zoning Appeals.

C. Reconstruction

Nothing in this Resolution shall prevent the reconstruction, repairing, rebuilding, and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, or acts of God, subsequent to the date of this Resolution and if started within one (1) year of the aforementioned acts, and provided such replacement or repair does not extend the nonconforming use in square foot area.

D. Construction Approved Prior to Resolution

Nothing in this Resolution shall prohibit the completion of construction and use of a nonconforming building for which a zoning certificate has been issued prior to the effective date of this Resolution, or any amendment thereto, provided that construction is commenced within ninety (90) days after the issuance of such zoning certificate, that construction is carried on diligently and without interruption for a continuous period in excess of thirty (30) days, and that the entire building shall have been completed within one (1) year after the issuance of said zoning certificate.

E. Discontinuance or Abandonment

Whenever a nonconforming use has been discontinued for a period of two (2) years or more, any further use shall be in conformity with the provisions of this Resolution.

F. Unsafe Structures

Nothing in this Resolution shall prevent the strengthening or restoring to a safe condition of any portion of a building or structure declared unsafe by a proper authority.

G. Certificate of Nonconforming Use

Within one (1) year of the effective date of this Resolution the Zoning Inspector shall issue a "Certificate of Nonconforming Use" to all known owners of legal nonconforming use property.

1. In accordance with the provision of this section, no use of land, buildings, or structures shall be made other than that specified on the "Certificate of Nonconforming Use" unless said use shall be in conformance with the provisions of the use zone in which the property is located.
2. A copy of each "Certificate of Nonconforming Use" shall be filed in the office of the Zoning Inspector.

H. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein.

ARTICLE XI

CONDITIONAL ZONING CERTIFICATES

SECTION 1101 PURPOSE

The purpose of this section is to provide for issuance of Conditional Zoning Certificates where conditionally permitted uses are provided for in this Resolution.

SECTION 1101.1 PROCEDURES FOR MAKING APPLICATION

Any application for a Conditional Zoning Certificate for any land, structure, or use permitted under this Resolution shall be submitted in accordance with the following procedures:

A. Application Submitted to the Zoning Inspector

Application for a Conditional Zoning Certificate shall be made to the Zoning Inspector and submitted to the Board of Zoning Appeals on a special form for that purpose. Each application shall be accompanied by the payment of a fee of one hundred fifty (150) dollars, which fee shall not be refundable. In addition, the Board, where appropriate, may refer an application to qualified consultants for a report if it deems the proposed use may cause the emission of dangerous or objectionable elements or require special study. The cost of such report shall be at the expense of the applicant.

B. Data Required with Application

1. Form supplied by Board of Zoning Appeals completed by applicant.
2. Site plan, plot plan, or development plan of the entire property being considered, drawn to a reasonable scale and showing the location of all abutting streets, the location of all existing adjacent and proposed structures, the types of buildings, their use, and the acreage or area involved, including that for parking.
3. Sufficient plans and specifications for all proposed development and construction, and where appropriate, reclamation.

C. Review by the Board of Zoning Appeals

The Board of Zoning Appeals shall review the proposed development as presented on the submitted plans and specifications in terms of the standards established in this Resolution. Such review and determination shall be completed within forty-five (45) days of the date of submission, and shall be made at a public meeting.

D. Hearing

After adequate review and study of any application, the Board shall hold a public hearing or hearings upon every application after at least one (1) publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of the hearing. Such notice shall indicate the place, time, and subject of the hearing.

E. Issuance and Revocation of Conditional Zoning Certificates - Violation and Penalty

Only upon conclusion of hearing procedures relative to a particular application and adequate review and study may the Board issue a Conditional Zoning Certificate. The breach of any condition, safeguard, or requirement shall automatically invalidate the certificate granted, and shall constitute a violation of this Resolution. This authority shall be in addition to the authority contained in Section 519.14 (d) of the Ohio Revised Code for the revocation of a Conditional Zoning Certificate.

F. Resubmission of Application for Conditional Use Permit

No application for a Conditional Zoning Certificate which has been denied wholly or in part by the Board should be resubmitted except on grounds of newly discovered evidence or proof of changed conditions which would be sufficient to justify reconsideration. Any new application for a Conditional Zoning Certificate shall be accompanied by the one hundred fifty (150) dollar filing fee.

G. Termination

The Conditional Zoning Certificate shall become void at the expiration of one (1) year after date of issuance unless the structure, alteration, or land use has begun.

H. Continuation of Existing Uses Conditionally Permissible

All known uses existing at the time of passage of this Resolution and conditionally permissible in their respective districts under this Resolution shall be issued Conditional Zoning Certificates by the Zoning Inspector within one (1) year after the passage of this Resolution.

SECTION 1101.2 BASIS OF DETERMINATION

The Board shall determine beyond reasonable doubt that the general standards and the specific standards pertinent to each use indicated herein shall be satisfied by the completion and operation of the proposed development. The Board may also impose such additional conditions and safeguards deemed necessary for the general welfare and protection of individual property rights, and for ensuring that the intent and objectives of this Resolution will be observed.

A. General Standards

The Board shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use on the proposed location:

1. will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity;
2. will not be hazardous or disturbing to existing or future neighboring uses;
3. will not be detrimental to property in the immediate vicinity or to the community as a whole;
4. will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;
5. will be in compliance with state, county, and township regulations;

6. will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets or roads.

SECTION 1102 REGULATIONS PERTAINING TO CONDITIONALLY PERMISSIBLE USES AS LISTED IN SECTIONS 701.2B, 702.2B, 703.2B, 704.2B, 705.2B, 706.2B, 711.2B, 712.2B, 713.2B, 721.2B, AND 722.2B

- 101 All structures and activity areas shall be at least one hundred (100) feet from all property lines.
- 102 Loud speakers which cause a hazard or annoyance shall not be permitted.
- 103 All points of vehicular entrance or exit shall be located no closer than two hundred (200) feet from the intersection of two (2) major thoroughfares, or not closer than one hundred (100) feet from the intersection of a major thoroughfare and a local or collector thoroughfare.
- 104 There shall be no more than one (1) advertisement located on each abutting road identifying the activity.
- 105 No lighting shall constitute a nuisance and shall in no way impair safe movement of traffic on any street or highway; no lighting shall shine directly on adjacent properties.
- 106 Such development shall be located on major thoroughfares or at intersections of major and/or collector thoroughfares.
- 107 Such uses shall not require uneconomical extensions of utility services at the expense of the township.
- 108 Site locations shall be preferred that offer natural or manmade barriers that would lessen the effect of intrusion into a residential area.
- 109 Such uses shall be properly landscaped to be harmonious with surrounding residential uses.

110. No sand or gravel shall be removed or stored or overburden stored within two hundred (200) feet of any lot line not owned or controlled by the developer or operator of said business or his agent nor shall such mineral extraction business be conducted closer to any lot line or street so that areas contiguous and adjacent thereto do not have adequate lateral support.

111 Supplement to State Reclamation Requirements:

- a. Reclamation is required within one year from expiration date of a Conditional Use Certificate or the abandonment of the operation.
- b. All other reclamation requirements for surface mining or strip mining shall be approved by the Division of Reclamation.
- c. A copy of State application, as approved by the Division of Reclamation, and any revisions to the application over the life of the permit, shall be submitted to the Board of Zoning Appeals.
- d. Applications or revisions submitted to the Division of Reclamation subsequent to the issuance of a Osnaburg Township Surface Mining or Strip Mining Certificate shall be presented to the Board of Zoning Appeals within ten (10) days of approval by the Division of Reclamation.

112 Requirements:

- a. Processing equipment to be located at the site in such a way that will minimize adverse noise impact upon surrounding dwellings.
- b. Existing natural and manmade barriers at the site shall be provided as protection and screening against noise, dust and visual protection for all operations.
- c. Haul roads shall be positioned to provide for safe access to State, County and Township roads. These roads shall be hard surfaced for dust control; subject to Osnaburg Township Trustee approval. (Amended eff. 2/25/99)
- d. Stakes of one color shall be set and maintained along the perimeter of the area designated for top soil or mineral removal at 100' intervals or less.

- e. The storage of minerals, peat or coal from other surface mined or strip mined operations shall be permitted only on sites in Industrial Districts.
 - f. All public and private roads are to be swept and/or cleaned with a street sweeper of the water variety type. (Amended eff. 10/11/91)
 - g. A road bond shall be required. (Amended eff. 10/11/91)
- 113 Truck routes shall be established for movement in and out of the development in such a way that it will minimize the wear on public streets and prevent hazards and damage to other properties in the community.
- 114 All permitted installations shall be maintained in a neat, orderly condition so as to prevent injury to any single property, any individual, or to the community in general; a bond may be required to ensure that this provisions will be met.
- 115 Such uses shall be permitted subject to the following conditions:
- a. Such use shall be permitted to be conducted within a structure accessory to the residence, provided the application so specifies and not more than forty-five (45) percent of the gross floor area of the structure accessory shall be devoted to the use.
 - b. Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes.
 - c. There shall be no more than one (1) non-resident employee or volunteer permitted to be engaged in the proposed use.
 - d. There shall be no display nor stock in trade nor commodities sold except those which are produced on the premises.
 - e. One (1) unlighted name plate not more than three (3) square feet in area announcing the name and home occupation shall be permitted.
 - f. Such uses shall not create a nuisance by reason of noise, odor, dust, vibration, fumes, smoke, electrical interference, or other causes.

- g. Adequate parking spaces shall be provided off-street for any traffic generated by such uses.

116 Special provisions for group dwellings:

- a. Group dwellings shall be considered as one (1) building for the purpose of determining front, side, and rear yard requirements; the entire group as a unit requiring one (1) front, one (1) rear, and two (2) side yards as specified for dwellings in the appropriate district.
- b. Each two (2) or two and one-half (2-1/2) story group dwelling development shall have a minimum court of forty (40) feet in width and forty (40) feet in length, in addition to its required yards, and each one (1) story group dwelling development shall have a minimum court of thirty (30) feet in width and thirty (30) feet in length, in addition to its required yards.
- c. In a group dwelling development, no two (2) separate dwelling structures shall be closer to each other along the sides or end of a court than twenty (20) feet.
- d. The court shall be unoccupied by any vehicles, buildings, or other structures, except utilities.

117 Such uses shall be permitted under the following conditions:

- a. Provided that such facilities be located at the extremity of the business districts so as not to interfere with the pedestrian interchange between stores in the district and provided further that it would not limit expansion of the pedestrian-oriented facilities.
- b. No more than two (2) driveway approaches shall be permitted directly from any thoroughfare and shall not exceed thirty (30) feet in width at the property line.
- c. If the property fronts on two (2) or more streets, the driveways shall be located as far from the street intersections as is practical.
- d. At least a six (6) inch high pedestrian safety curb shall be installed along all street right-of-way lines except at driveway approaches.

- 118 Such uses should be located on a major thoroughfare, adjacent to nonresidential uses, such as commerce, industry, or recreation, or adjacent to sparsely settled residential uses.
- 119 The area proposed for a cemetery shall be used for cemetery purposes only; and shall meet the following requirements:
- a. Except for office uses incidental to cemetery operations, no business or commercial uses of any kind shall be permitted on the cemetery site.
 - b. Minimum area required for a cemetery site shall be ten (10) acres.
 - c. Pavement width of driveways shall be at least twenty (20) feet.
 - d. Sufficient parking space shall be provided as to not deter traffic flow within the cemetery.
 - e. Area drainage and/or sanitary facilities are subject to approval by the County Board of Health, the County Sanitary Engineer, and County Engineer prior to the issuance of a conditional use permit.
 - f. Only signs designating entrances, exits, traffic direction and titles shall be permitted and must be approved by the Board.
 - g. Adequate screening with shrubs, trees, or hedge shall be provided parallel to property lines adjacent to or abutting residential dwellings.
 - h. Location of cemetery buildings and all other structures shall conform to front, side, and rear yard building lines of the particular district in which it is located.
 - i. No gravesites shall be located within one hundred (100) feet of the right-of-way lines of any public road nor within fifty (50) feet of an adjacent property line.

- 120 An integrated planned commercial development, which is a grouping of two (2) or more commercial establishments which have common vehicular parking facilities, controlled access to abutting streets, and are developed under a unified site plan, shall be permitted provided the following conditions are met:
- a. Only those types of business uses permitted for conventional development in the district shall be permitted in integrated planned business developments.
 - b. The minimum setback building line shall be fifty (50) feet measured from the street right-of-way line.
 - c. There shall be twenty (20) feet between buildings.
 - d. Side yards and rear yards shall be required only on the perimeter of the planned development and shall be twenty-five (25) feet except where the business development is adjacent to a residential zone, the side and/or rear yard shall be fifty (50) feet on the side(s) abutting the residential zone only.
 - e. All points of entrance and/or exit shall be located no closer than one hundred (100) feet to the intersection of two (2) streets.
 - f. Review and approval by the Stark County Regional Planning Commission shall be required in accordance with the Stark County Subdivision Regulations before a permit may be granted.
- 121 Only retail uses which are customarily accessory or incidental to the main recreational use shall be permitted, and shall include such uses as refreshment stands, souvenir stands, and concession stands.
- 122 A Conditional Zoning Certificate for a use permitted under these regulations shall be issued for a one (1) year period only. After a one (1) year period has elapsed, a new Conditional Zoning Certificate shall be required and may be issued provided the Board and the Zoning Inspector determine that the said use has been and is being operated according to the specifications of the zoning resolution and the previous Conditional Zoning Certificate. If necessary, the Board may make additional requirements for the continued operation of the use as a prerequisite for reissuance of the Conditional Zoning Certificate.

- 123 Campsites, cabins, rooms, or other accommodations shall be used on a seasonal basis only. No permanent or year 'round occupancy shall be permitted.
- 124 Only retail uses which are customarily accessory and incidental to the main recreational use shall be permitted as part of the park, recreational area, or campground. Included as such retail uses are refreshment stands, souvenir stands, concession stands, park office, and the limited sale of groceries when the customers are primarily the campers using the park.
- 125 All facilities and structures shall meet all county and/or State of Ohio health, building, electrical, and other applicable codes.
- 126 All activities, programs, and other events shall be directly related to the Conditional Use Permit so granted, and shall be adequately and properly supervised so as to prevent any hazard and to assure against any disturbance or nuisance to surrounding properties, residents, or to the community in general.
- 127 The proposed project shall conform to all requirements and/or conditions as the Board may deem necessary to meet the following criteria:
- a. Vehicular approaches to the property shall be so designed as not to create an interference with traffic on surrounding public streets or roads.
 - b. On-site circulation shall be designed to make possible adequate fire and police protection.
 - c. Paved, off-street parking and service areas shall be required. All parking and service areas shall be paved with concrete, asphalt, or equivalent, and shall be located no closer than twenty (20) feet from any residential structure. Paved vehicular access drives of at least ten (10) feet in width shall be required for parking areas of ten (10) vehicles or less capacity, and two-way drives of twenty (20) feet paving width minimum shall be required for parking areas of eleven (11) or more vehicle capacity.

- d. The property must be served by central sewer facilities approved by the appropriate state and county departments and operated and maintained according to the inspection and rules of said departments.
- 128 No zoning certificate shall be issued until final site plans have been submitted and approved in accordance with the Stark County Subdivision Regulations, where applicable, and the Board of Appeals. Zoning certificates shall not be issued until approval by the appropriate state and county departments has been obtained concerning the proposed sanitary sewerage facilities.
- 129 The design and construction of all access drives, access points to public streets, and parking and service areas shall be approved by the Township Trustees, or county or state where applicable.
- 130 All sanitary landfill sites shall be subject to approval by the county and state health departments and subject to their requirements governing landfills. All work connected with such operations shall be done between the hours of 7:30 a.m. and 5:00 p.m. No sanitary landfill site shall be permitted to accept recyclable material.
- 131 A mobile home for residential purposes may be permitted after a public hearing by the Board of Zoning Appeals under an conditional permit and subject to the following conditions:
- a. All mobile homes shall have adequate health facilities available, including running water inside and toilet facilities connected to an approved septic system. Approval in writing from the Stark County Board of Health shall be required stating that all health requirements have been met.
 - b. Such mobile homes shall be permitted for the purpose of providing housing for the members of the immediate family and/or for the following purposes:
 - 1. In case of fire, flood, storm, or any similar act of God which destroyed the present dwelling, a mobile home may be permitted for a period of time determined by the Board.

2. For the purpose of permitting the members of the family to reside in a mobile home for the duration of a sickness or disability and must be substantiated by a doctor's statement of the necessity for care from others.
- c. All mobile homes must have a minimum of seven hundred twenty (720) square feet of floor space and be limited to a single family unit.
- d. The location of the mobile home must meet existing setback provisions.
- e. All mobile homes must be enclosed from ground to floor level of the mobile home with a solid or lattice type enclosure in order to eliminate any unsightly storage areas.
- f. A Conditional Use Permit for a mobile home shall be for a period of not more than one (1) year, but the Board of Zoning Appeals may renew such permit upon application and hearing. The Board may issue such Conditional Use Permit for a period of less than one (1) year.

132 The following requirements shall be met:

- a. The parking lot shall be accessory to and for the use in connection with one (1) or more permitted or conditionally permitted uses in an adjoining business or industrial district.
- b. Such parking lot shall abut at least fifty (50) feet, either directly or across an alley or street on the district in which the use for which the parking is provided, permitted, or conditionally permitted.
- c. Such parking lot shall be used solely for the parking of passenger vehicles, and no commercial repair work or service of any kind shall be conducted on such parking lot.
- d. No sign of any kind, other than those designating entrances, exits, and conditions of use shall be maintained on such parking lot.
- d. Entrances and exits shall be at least twenty (20) feet distance from any adjacent property located in any Residential district.

f. Such parking lot shall be sufficiently screened from each side by a fence, wall, or compact hedge. Such fence, wall, or hedge shall be not less than four (4) feet in height, and no solid portion shall be more than six (6) feet in height and shall be maintained in good condition.

The planting strip for hedges shall be no less than three (3) feet in width. Any space between such fence, wall, or hedge and the side lot line of adjoining premises in a Residential district shall be landscaped with grass, hardy shrubs, or evergreen ground cover and maintained in good condition.

- 133 Outside play areas shall be enclosed by a six (6) foot fence.
- 134 Sufficient parking and "drop off and pick up" areas shall be provided off the public roadway.
- 135 The proposed mini-storage facility shall be limited to only rental of storage facilities and not as a transfer and storage business where the use of vehicles is part of such business.
- 136 There shall be no outside storage adjacent to any residential district or uses.
- 137 Storage of explosive or hazardous materials shall be prohibited.
- 138 Outside storage areas shall be completely enclosed by walls, fences, building, landscaping, or a combination thereof.
- 139 A minimum lot size of one (1) acre shall be required, and no individual compartment or unit shall be more than five thousand (5,000) square feet in area.
- 140 The movie screen shall be set back two hundred (200) feet from property lines and shall not be located to face any public streets.
- 141 The scrap or junk yard use shall be permitted only under the following conditions:

- a. All sites, procedures, and processes shall be subject to the approval of the appropriate county and state agencies; no conditional zoning certificate shall be issued until the necessary county and/or state approvals are obtained.
- b. The site shall be located so as to minimize the potential effect of winds carrying objectionable odors to urbanized or urbanizing areas.
- c. Suitable control measures shall be taken whenever dust or odor is a problem or potential problem.
- d. There shall be no burning of refuse, garbage, or other waste materials.
- e. Scrap yards or junk yards shall be located no closer than two hundred (200) feet to any Residential District and/or public street right-of-way line, and shall otherwise have front, side, and rear setback of at least one hundred fifty (150) feet. At least a fifty (50) foot wide strip in the two hundred (200) foot setback shall be planted for camouflaging purposes according to the following specifications:
 1. The fifty (50) foot wide strip shall be planted with pine, Norway spruce, or other plants of similar screening value.
 2. Said trees shall be planted on a staggered pattern with no more than ten (10) feet between trees.
 3. The fifty (50) foot wide planting strips shall be so located as to achieve the greatest screening or camouflaging effect, and no visual opening shall exist.
 4. Trees shall be planted that are at the optimum transplanting size and age while still being as large as possible.
- f. A minimum area of twenty (20) acres shall be required for a use proposed under this category.
- g. The area of use shall be completely enclosed by a six (6) foot fence (open or closed) and appropriately landscaped to be harmonious with surrounding properties.

- 142 Minimum lot and yard requirements for a group home shall be the same as listed for "Other Permitted Uses" in Section 704.3 of these Regulations for an R-3 Low Density Multifamily Residential District and in Section 705.3 of these regulations for the R-4 High Density Multifamily Residential District.
- 143 No such group home shall be located within a one-mile radius of another such facility for the developmentally disabled.
- 144 Such facility shall be designed to be compatible with surrounding land uses and the residential character of the neighborhood.
- 145 One unlighted name plate not more than three (3) square feet shall be permitted for a licensed group home, as regulated by Article VIII of these regulations.
- 146 Deleted eff. 12/22/99.
- 146.1 Communication Tower/Facility
- A. Communication tower/facility that includes towers requiring a Conditional Use Permit in rural residential and business districts:
- I. Combined with an existing structure:
An antenna may be attached to a nonresidential building or a structure that is a permitted use in the district; including, but not limited to, a church, a township or governmental building or facility, agricultural building, and a building structure owned by a utility. The following conditions shall be met:
- a. Maximum height of the tower shall be 20 feet or 20% of the building height which ever is greater above the existing building or structure.
- b. If the applicant proposes to locate the communication tower/facility equipment in a separate shelter, the shelter shall comply with the minimum setback requirements for the district.

2. Sole use on a lot or combined with another use:
A tower to support an antenna may be constructed on property with a nonresidential use that is a permitted use within the district, including but not limited to a church, hospital, school, township or government building, facility or structure, agricultural use and utility use, subject to the following conditions:
 - a. The tower shall be set back from property line abutting a residential lot by 300 feet.
 - b. In order to locate a Communication Tower/Facility on a property that is vacant or with an agricultural use fly tract shall be a least 5 acres.
3. Isolated on a residential building:
An antenna for a Communication Tower/Facility may be attached to a mid-rise or high-rise apartment building subject to the following conditions:
 - a. If the applicant proposes to locate the Communication Tower/Facility equipment in a separate shelter, the shelter shall comply with the minimum setback requirements for the district.
4. Located in open space:
A Communication Tower/Facility is permitted on land that has been established a permanent open space, or a park subject to the following condition:
 - a. The open space shall be owned by the municipality, county or state government, a homeowners associations, charitable organizations, or a private; non-profit conversation district.
 - b. The tower shall be set back from any property line abutting a residential lot or residence by 300 feet.
 - c. The tower shall be set back from any property line abutting a business or industrial lot by 200 feet.

- B. The following requirements apply to Communication Tower/Facility regardless of the zoning district in which they are to be located.
1. When the proposed Communication Tower/Facility is to include a new tower, a plot plan at a scale of not less than one inch is equal to 100 feet shall be submitted. This plot plan shall indicate all building uses within 300 feet of the proposed facility. Aerial photos and/or renderings may supplement the plot plan.
 2. The applicant shall provide a map indicating the proposed facility and extending outward a minimum of a six (6) miles radius surrounding the facility. This map shall have shown all existing Communication Tower/Facility within this radius and shall show all existing structures that are 100 feet or taller.
 3. The location of the tower and equipment shelter shall comply with all natural resource protection standards established by the Ohio Revised Code.
 4. The Communication Tower/Facility shall comply with the minimum setback requirements for the respective zoning district where the facility will be located unless otherwise indicated.
 5. The height of the tower shall not exceed 300 feet.
 6. A fence of other barrier a minimum height of eight (8) feet with an additional three (3) strands of barb wire on top shall surround the facility including the tower and any accessory buildings.
 7. Supporting cables must be encircled at the point of attachment to the ground with sufficient fencing and or plantings to prevent any individual from coming in contact with any supporting wires or cables.
 8. The applicant shall present a landscaping plan that indicates how the Communication Tower/Facility will be screened from adjoining uses and/or properties. Existing vegetation, trees and shrubs, shall be preserved to the maximum extent possible in the surrounding area. The landscape shall be properly maintained and dead vegetation replaced. The ground shall be kept debris free and no equipment shall be stored outside of the equipment shelter.

9. Any applicant requesting permission to install a new tower shall provide evidence of written contact with the service providers who supply service within a quarter mile of the proposed facility. The applicant shall inquire about potential collocation opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as responses(s) shall be presented with the application as a means of demonstrating the need for a new tower. Collocation of providers is strongly encouraged.
10. The tower and all associated structures including the equipment shelter shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission (FCC) of Federal Aviation Administration (FAA). The tower and all associated Structures shall be kept in a good repair. The appearance of all structures shall be maintained and visually appealing.
11. No advertising is permitted anywhere on the facility, with the exception of identification signage. The name and phone number of the responsible party for the facility shall be posted and readily visible on the entrance to the facility.
12. All providers utilizing towers shall present a report to the Zoning Inspector notifying of any tower facility located in Osnaburg Township whose use will be discontinued and the date this use will cease. If at any time the use of the facility is discontinued for 180 days, the Zoning Inspector may declare the facility abandoned. This excludes any dormancy period between construction and the initial use of the facility. The facility's owner/operator and property owner, where applicable, will receive written notice from the Zoning Inspector and instructed to either reactivate the facility's use within 180 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the township can remove or can contract to have removed the facility. The township will then have the authority to use said bond described below for the removal of the facility.
13. The owner/operator of communication tower/facility or the landowner shall provide a \$25,000 bond issued in the name of Osnaburg Township Board of Trustees for each facility. Said bond shall be renewed on a annual basis and evidence of renewal shall

be forwarded to Osnaburg Township. The renewal information shall indicate the applicable Zoning Permit number for the facility. Said bond shall remain in effect at all times for a facility until such facility has been completely removed by the owner/operator. If said Bond is to be canceled, notification or cancellation shall be forwarded to Osnaburg Township 60 days prior to the cancellation date. A replacement bond shall be in place 30 days prior to the cancellation date of the bond to be canceled.

14. No tower under 150 feet shall be artificially lighted except to assure safety or as required by the FAA. Any tower between 150 and 200 feet in height shall follow safety marking and obstruction lighting as prescribed by the FAA. White strobe lighting will not be permitted. Security lighting around the equipment shelter is permitted. Lighting used shall not constitute a nuisance to adjacent properties and no lighting shall shine directly on adjacent properties.
15. "No Trespassing" signs shall be posted around the facility with a telephone number who to contact in the event of an emergency.
16. The applicant shall present documentation that the owner of the property has granted an easement or entered into a lease for the proposed facility and that the vehicular access is provided.
17. A Conditional Use Permit must be obtained from the Board of Zoning Appeals for construction of new tower and for towers attached to existing structures/buildings in Rural/Residential and Business (B-1 & B-2) Districts.
18. A Zoning Certificate is required of all new or replacement towers, accessory equipment, antennas, or equipment shelters.
19. Underground equipment shelters are encouraged, especially in Business Districts. All utilities from the equipment shelter to the main utility lines are to be buried a minimum of 30 inches. This requirement excludes the wiring from the equipment shelter to the antennas.

20. Copies of plot plans and plans for the shelter shall be submitted to the Osnaburg Township Fire Chief and a Fire Permit obtained.
21. The Communication Tower/Facility facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance.
22. The maximum size of the equipment shelter shall not exceed 200 square feet.
23. Vehicular access to the tower and equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use. There shall be no parking of service vehicles on the public right-of ways or streets.
24. The applicant shall demonstrate that the Communication Tower/Facility tower must be located where it is proposed in order to service the applicant's service area. There shall be an explanation of why a tower and this proposed site is technically necessary.
25. Prior to the erection of any communication tower/facility, a registration form, provided by the township's zoning department and maintained thereby, must be completed by the owner of the property upon which the said tower is proposed to be erected. There will be no charge imposed for the registering of a tower.

148 Where the state does not require a bond for reclamation, to guarantee the restoration, rehabilitation, and reclamation of mined-out areas, every applicant granted a mining permit as herein provided, shall furnish a performance bond. (Amended eff. 10/11/91)

- 149 All demolition material sites shall be subject to the Ohio Administrative Code (Chapter 3745-400 and must have prior approval of County and State Health Departments. (Amended eff. 5/22/02)
- 150 All structures and activity areas shall be located at least three hundred (300) feet from all property lines. (Amended eff. 3/25/94)
- 151 All structures and activity areas shall be located at least five hundred (500) feet from all dwellings. (Amended eff. 3/25/94)

ORC Ann. 3714.01

[Retrieve State Legislative Impact® \(\\$\)](#)

PAGE'S OHIO REVISED CODE ANNOTATED
Copyright (c) 2009 by Matthew Bender & Company, Inc
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE
128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE
SECRETARY OF STATE THROUGH JULY 6, 2009 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3714. CONSTRUCTION AND DEMOLITION DEBRIS LAW

Go to the Ohio Code Archive Directory

ORC Ann. 3714.01 (2009)

§ 3714.01. Definitions

As used in this chapter:

(A) "Board of health" means the board of health of a city or general health district or the authority having the duties of a board of health in any city as authorized by [section 3709.05](#) of the Revised Code.

(B) "Closure" means either the time at which a construction and demolition debris facility will no longer accept construction and demolition debris for disposal or the effective date of an order revoking the license of the facility. "Closure" includes measures performed to protect public health or safety, to prevent air or water pollution, or to make the facility suitable for other uses, if any, including, without limitation, the establishment and maintenance of suitable cover of soil and vegetation over areas where construction and demolition debris is buried and the minimization of erosion, the infiltration of surface water into such areas, the production of leachate, and the accumulation and runoff of contaminated surface water.

(C) "Construction and demolition debris" means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways. "Construction and demolition debris" includes particles and dust created during demolition activities. "Construction and demolition debris" does not include materials identified or listed as solid wastes or hazardous waste pursuant to Chapter 3734. of the Revised Code and rules adopted under it; materials from mining operations, nontoxic fly ash, spent nontoxic foundry sand, and slag; or reinforced or nonreinforced concrete, asphalt, building or paving brick, or building or paving stone that is stored for a period of less than two years for recycling into a usable construction material.

(D) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, emitting,

EE APPX 0035

Practitioner's Toolbox ?

History

Section Notes

Resources & Practice Tools

Related Statutes & Rules

OH Administrative Code

or placing of any construction and demolition debris into or on any land or ground or surface water or into the air, except if the disposition or placement constitutes storage.

(E) "Facility" means any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris. "Facility" does not include any construction site where construction debris and trees and brush removed in clearing the construction site are used as fill material on the site where the materials are generated or removed and does not include any site where materials composed exclusively of reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone are used as fill material, either alone or in conjunction with clean soil, sand, gravel, or other clean aggregates, in legitimate fill operations for construction purposes or to bring the site up to a consistent grade.

(F) "Health district" means a city or general health district created by or under the authority of Chapter 3709. of the Revised Code.

(G) "New construction and demolition debris facility" or "new facility" includes an existing facility that is proposing to expand the facility beyond the limits of construction and demolition debris placement approved by a board of health or the director of environmental protection, as applicable, under this chapter.

(H) "Person" includes the state, any political subdivision of the state or other state or local body, the United States and any agency or instrumentality thereof, and any legal entity or organization defined as a person under section 1.59 of the Revised Code.

(I) "Pulverized debris" means a load of debris that, after demolition has occurred, but prior to acceptance of the load of debris for disposal, has been shredded, crushed, ground, or otherwise rendered to such an extent that the load of debris is unidentifiable as construction and demolition debris.

(J) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has at least five years of relevant experience in ground water hydrogeology and related fields that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective measures.

(K) "Storage" means the holding of (construction and demolition debris for a temporary period in such a manner that it remains retrievable and substantially unchanged and, at the end of the period, is disposed of or reused or recycled in a beneficial manner.

(L) "Transfer facility" means a site, location, tract of land, installation, or building that is primarily used or intended to be used for the purpose of transferring construction and demolition debris that was generated off the premises of the facility from vehicles or containers into other vehicles or containers for transportation to a construction and demolition debris facility.

History:

143 v H 366. Eff 7-24-90; 150 v H 432, § 1, eff. 4-15-05; 151 v H 397, § 1, eff. 12-22-05.

EE APPX 0036

ORC Ann. 3714.02

Retrieve State Legislative Impact® (\$)  

PAGE'S OHIO REVISED CODE ANNOTATED
 Copyright (c) 2009 by Matthew Bender & Company, Inc
 a member of the LexisNexis Group
 All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE
 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE
 SECRETARY OF STATE THROUGH JULY 6, 2009 ***
 *** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009

*** OPINIONS OF ATTORNEY GENERAL CURRENT
 THROUGH JUNE 1, 2009 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
 CHAPTER 3714. CONSTRUCTION AND DEMOLITION DEBRIS LAW

Go to the Ohio Code Archive Directory

ORC Ann. 3714.02 (2009)

§ 3714.02. Rules governing construction and demolition debris facilities; closure and post-closure care of facilities; exception for authorized open burning

The director of environmental protection shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code governing construction and demolition debris facilities and the inspection of and issuance of permits to install and licenses for those facilities. The rules shall ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution. The rules shall establish all of the following:

(A) Standards and procedures for the issuance of permits to install under section 3714.051 [3714.05.1] of the Revised Code that shall include all of the following:

(1) Information that must be included in the designs and plans required to be submitted with the application for a permit to install under section 3714.051 [3714.05.1] of the Revised Code and criteria for approving, disapproving, or requiring modification of the designs and plans;

(2) Information that must be included with an application for a permit to install in addition to the information required under section 3714.051 [3714.05.1] of the Revised Code;

(3) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install;

(4) Grounds for the denial, modification, suspension, or revocation of permits to install;

(5) A requirement that a person that is required to obtain both a permit to install under section 3714.051 [3714.05.1] of the Revised Code and a license under section 3714.06 of

EE APPX 0037

the Revised Code obtain both the permit and license prior to operation;

(6) Criteria for establishing time periods after which a permit to install expires;

(7) Any other requirements that the director determines necessary in order to establish the program for the issuance of permits to install under section 3714.051 [3714.05.1] of the Revised Code.

(B) Standards for the design and construction of facilities. The standards may include, without limitation, requirements for diking around the areas where debris is buried to prevent runoff of surface water onto adjacent property.

(C) Standards for control over access to facilities and for the operation of facilities, including, without limitation, standards for the compaction and covering of debris disposed of and standards regarding equipment used for the operation of facilities;

(D) Criteria and procedures for granting authorization to the owner or operator of a facility to dispose of asbestos or asbestos-containing materials or products at the owner's or operator's facility;

(E) Requirements for the installation of ground water monitoring wells and the monitoring of ground water quality at any facility where the operation of the facility threatens to contaminate ground water. The rules shall require that ground water monitoring be capable of determining impacts resulting from the operation of construction and demolition debris facilities. The rules also shall include provisions for ground water assessment and corrective actions for impacts to ground water. Further, the rules shall require that the owner or operator of a construction and demolition debris facility submit a monitoring report to the director or a board of health, as applicable, that has been prepared by a qualified ground water scientist and that includes all of the following:

(1) A determination of any impacts to ground water from the migration of contaminants from the construction and demolition debris facility;

(2) A list of the contaminants from the facility that may be causing contamination of ground water;

(3) Recommendations for actions, if any are necessary, that should be taken to investigate or remediate the source of any ground water contamination.

(F) Requirements for the monitoring and sampling of leachate. The rules adopted under division (F) of this section shall include all of the following:

(1) A requirement that the owner or operator of a construction and demolition debris facility provide for sampling of leachate at least annually. However, the rules shall require that if leachate is recirculated through a facility, the leachate be sampled at least every calendar quarter.

(2) A requirement that the owner or operator of a facility sample for at least seventy-seven parameters that the director shall establish in the rules, which shall include arsenic, copper, and chromium;

(3) Requirements governing facilities that do not have a system for sampling leachate. The rules shall require that the owner or operator of such a facility monitor ground water in accordance with the rules adopted under division (E) of this section for the parameters established in the rules adopted under division (F)(2) of this section.

EE APPX 0038

(4) A requirement that a facility that monitors ground water and leachate add to the parameters monitored by the ground water monitoring system any parameter that is detected through the monitoring of leachate;

(5) Requirements governing the reporting of leachate sampling data. The rules shall require that reports be submitted to the director and the applicable board of health.

(G) Requirements respecting written, narrative plans for the operation of facilities. The rules shall require the owner or operator of a facility to use best management practices. In addition, the rules shall require as a part of the plan of operation of a facility the inclusion of the contingency plans required in rules adopted under division (H) of this section.

(H) Requirements respecting contingency plans for effective action in response to fire or explosion at a facility or to hydrogen sulfide or other gases created by the operation of a facility that pose a nuisance, cause an offensive odor, or pose a threat to public health or safety or the environment;

(I) Financial assurance requirements for the closure and post-closure care of facilities as follows:

(1) The rules establishing the financial assurance requirements for the closure of facilities shall require that the owner or operator of a facility, before being issued an initial license for the facility under section 3714.06 of the Revised Code, submit a surety bond, a letter of credit, or other acceptable financial assurance, as specified by the director in the rules, in an amount determined by the director or the appropriate board of health, as applicable. The rules shall include a list of the activities for which financial assurance may be required. The rules shall allow the director or board of health, as applicable, to adjust the amount of a surety bond, a letter of credit, or other acceptable financial assurance in conjunction with the issuance of an annual license. However, the rules shall require that the amount of a surety bond, letter of credit, or other acceptable financial assurance for the closure of a facility be not less than thirteen thousand dollars per acre of land that has been or is being used for the disposal of construction and demolition debris. The rules shall require an explanation of the rationale for financial assurance amounts exceeding thirteen thousand dollars per acre.

(2) The rules establishing the financial assurance requirements for the post-closure care of facilities shall address the maintenance of the facility, continuation of any required monitoring systems, and performance and maintenance of any specific requirements established in rules adopted under division (K) of this section or through a permit, license, or order of the director. The rules also shall allow the director or board of health, as applicable, to determine the amount of a surety bond, a letter of credit, or other acceptable financial assurance for the post-closure care of a facility based on a required cost estimate for the post-closure care of the facility. The rules shall require that the owner or operator of a facility provide post-closure financial assurance for a period of five years after the closure of a facility. However, the rules shall stipulate that post-closure care financial assurance may be extended beyond the five-year period if the extension of the post-closure care period is required under rules adopted under division (K) of this section.

(J) Requirements for the closure of facilities. The requirements shall include minimum requirements for the closure of facilities and such additional requirements as are reasonably related to the location of the facility and the type and quantity of materials disposed of in the facility. The rules shall require that an owner or operator of a facility, upon the closure of the facility, file in the office of the county recorder of the county in which the facility is located a notice that the property was previously used as a construction and demolition debris facility. The rules shall require that the notice be filed in the same manner as a deed to the property. The rules shall require that the notice include an engineering drawing attachment showing the physical locations of debris placement, an indication of the volumes of debris, and an

EE APPX 0039

indication of the depth of the final cover material.

(K) Requirements for the post-closure care of facilities for a period of five years after the closure of a facility. However, the rules shall require that the post-closure care period may be extended by order of the applicable board of health, the director, or a court of competent jurisdiction if conditions at a facility are impacting public health or safety or the environment or if ground water assessment and corrective measures are required to be conducted at the facility under rules adopted under division (E) of this section. This division does not limit the authority of the director, a board of health, or a court of competent jurisdiction to issue an order under any other applicable chapter of the Revised Code.

The rules adopted under this division shall specify both of the following:

(1) With respect to a facility that permanently ceases acceptance of construction and demolition debris in calendar year 2006, the post-closure care and post-closure care financial assurance requirements do not apply, provided that the owner or operator of the facility gives written notice of the date of the cessation to the applicable board of health or the director, the owner or operator of the facility does not submit a subsequent application for a license renewal for the facility after that cessation, and no order was issued by the applicable board of health, the director, or a court of competent jurisdiction governing the post-closure care of and post-closure financial assurance for that facility prior to the date specified in the written notice.

(2) With respect to a facility that permanently ceases acceptance of construction and demolition debris in calendar year 2007, the required period of time for post-closure care and post-closure care financial assurance shall be one year after the closure of the facility, provided that the owner or operator of the facility gives written notice of the date of the cessation to the applicable board of health or the director, the owner or operator does not submit a subsequent application for a license renewal for the facility after that cessation, and no order was issued by the applicable board of health, the director, or a court of competent jurisdiction governing the post-closure care of and post-closure financial assurance for that facility prior to the date specified in the written notice.

(L) Standards and procedures governing the modification of operation licenses issued under section 3714.06 of the Revised Code;

(M) Procedures and requirements governing the certification of construction and demolition debris by transfer facilities as required under section 3714.082 [3714.08.2] of the Revised Code;

(N) Requirements governing the provision of notification under section 3714.083 [3714.08.3] of the Revised Code by owners and operators of construction and demolition debris facilities of rejected loads and by transporters and shippers of the final disposition of rejected loads;

(O) Requirements governing the certification and training of operators of construction and demolition debris facilities as required under section 3714.062 [3714.06.2] of the Revised Code;

(P) Definitions of "owner" and "operator" for purposes of this chapter.

The rules adopted under this section shall not prohibit the open burning of construction debris on a construction site in compliance with division (C)(1) of section 3704.11 of the Revised Code.

Rules adopted under divisions (E) and (F) of this section apply to all new construction and

EE APPX 0040

demolition debris facilities for which a permit to install is required under section 3714.051 [3714.05.1] of the Revised Code on and after the effective date of this amendment. With respect to a facility that is licensed under section 3714.06 of the Revised Code and operating on the effective date of this amendment: if the facility does not have a ground water monitoring or leachate monitoring system, the facility is not required to comply with rules adopted under division (E) or (F) of this section; if the facility has a ground water monitoring system, but not a leachate monitoring system, the facility shall comply only with rules adopted under divisions (E) and (F)(3) of this section; and if the facility has a leachate monitoring system, but not a ground water monitoring system, the facility shall comply only with rules adopted under division (F) of this section.

History:

143 v H 366 (Eff 7-24-90); 145 v H 685. Eff 3-30-95; 151 v H 397, § 1, eff. 12-22-05.

EE APPX 0041

ORC Ann. 3714.03

Retrieve State Legislative Impact® (\$)  

PAGE'S OHIO REVISED CODE ANNOTATED
Copyright (c) 2009 by Matthew Bender & Company, Inc
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE
128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE
SECRETARY OF STATE THROUGH JULY 6, 2009 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3714. CONSTRUCTION AND DEMOLITION DEBRIS LAW

Go to the Ohio Code Archive Directory

ORC Ann. 3714.03 (2009)

§ 3714.03. Locations where new facility may not be licensed; additional requirements and siting criteria for permit

(A) As used in this section:

(1) "Aquifer system" means one or more geologic units or formations that are wholly or partially saturated with water and are capable of storing, transmitting, and yielding significant amounts of water to wells or springs.

(2) "Category 3 wetland" means a wetland that supports superior habitat or hydrological or recreational functions as determined by an appropriate wetland evaluation methodology acceptable to the director of environmental protection. "Category 3 wetland" includes a wetland with high levels of diversity, a high proportion of native species, and high functional values and includes, but is not limited to, a wetland that contains or provides habitat for threatened or endangered species. "Category 3 wetland" may include high quality forested wetlands, including old growth forested wetlands, mature forested riparian wetlands, vernal pools, bogs, fens, and wetlands that are scarce regionally.

(3) "Natural area" means either of the following:

(a) An area designated by the director of natural resources as a wild, scenic, or recreational river under section 1517.14 of the Revised Code;

(b) An area designated by the United States department of the interior as a national wild, scenic, or recreational river.

(4) "Occupied dwelling" means a residential dwelling and also includes a place of worship as defined in section 5104.01 of the Revised Code, a child day-care center as defined in that section, a hospital as defined in section 3727.01 of the Revised Code, a nursing home as defined in that section, a school, and a restaurant or other eating establishment. "Occupied dwelling" does not include a dwelling owned or controlled by the owner or operator of a construction and demolition debris facility to which the siting criteria established under this

EE APPX 0042

section are being applied.

(5) "Residential dwelling" means a building used or intended to be used in whole or in part as a personal residence by the owner, part-time owner, or lessee of the building or any person authorized by the owner, part-time owner, or lessee to use the building as a personal residence.

(B) Neither the director of environmental protection nor any board of health shall issue a permit to install under section 3714.051 [3714.05.1] of the Revised Code to establish a new construction and demolition debris facility when any portion of the facility is proposed to be located in either of the following locations:

(1) Within the boundaries of a one-hundred-year flood plain, as those boundaries are shown on the applicable maps prepared under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, unless the owner or operator has obtained an exemption from division (B)(1) of this section in accordance with section 3714.04 of the Revised Code. If no such maps have been prepared, the boundaries of a one-hundred-year flood plain shall be determined by the applicant for a permit based upon standard methodologies set forth in "urban hydrology for small watersheds" (soil conservation service technical release number 55) and section 4 of the "national engineering hydrology handbook" of the soil conservation service of the United States department of agriculture.

(2) Within the boundaries of a sole source aquifer designated by the administrator of the United States environmental protection agency under the "Safe Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C.A. 300f, as amended.

(C) Neither the director nor any board shall issue a permit to install under section 3714.051 [3714.05.1] of the Revised Code to establish a new construction and demolition debris facility when the horizontal limits of construction and demolition debris placement at the new facility are proposed to be located in any of the following locations:

(1) Within one hundred feet of a perennial stream as defined by the United States geological survey seven and one-half minute quadrangle map or a category 3 wetland;

(2) Within one hundred feet of the facility's property line;

(3) (a) Except as provided in division (C)(3)(b) of this section, within five hundred feet of a residential or public water supply well.

(b) Division (C)(3)(a) of this section does not apply to a residential well under any of the circumstances specified in divisions (C)(3)(b)(i) to (iii) of this section as follows:

(i) The well is controlled by the owner or operator of the construction and demolition debris facility.

(ii) The well is hydrologically separated from the horizontal limits of construction and demolition debris placement.

(iii) The well is at least three hundred feet upgradient from the horizontal limits of construction and demolition debris placement and division (D) of this section does not prohibit the issuance of the permit to install.

(4) Within five hundred feet of a park created or operated pursuant to section 301.26, 511.18, 755.08, 1545.04, or 1545.041 [1545.04.1] of the Revised Code, a state park established or dedicated under Chapter 1541. of the Revised Code, a state park purchase area established under section 1541.02 of the Revised Code, a national recreation area, any

EE APPX 0043

unit of the national park system, or any property that lies within the boundaries of a national park or recreation area, but that has not been acquired or is not administered by the secretary of the United States department of the interior, located in this state, or any area located in this state that is recommended by the secretary for study for potential inclusion in the national park system in accordance with "The Act of August 18, 1970," 84 Stat. 825, 16 U.S.C.A. 1a-5, as amended;

(5) Within five hundred feet of a natural area, any area established by the department of natural resources as a state wildlife area under Chapter 1531. of the Revised Code and rules adopted under it, any area that is formally dedicated as a nature preserve under section 1517.05 of the Revised Code, or any area designated by the United States department of the interior as a national wildlife refuge;

(6) Within five hundred feet of a lake or reservoir of one acre or more that is hydrogeologically connected to ground water. For purposes of division (C)(6) of this section, a lake or reservoir does not include a body of water constructed and used for purposes of surface water drainage or sediment control.

(7) Within five hundred feet of a state forest purchased or otherwise acquired under Chapter 1503. of the Revised Code;

(8) Within five hundred feet of land that is placed on the state registry of historic landmarks under section 149.55 of the Revised Code;

(9) Within five hundred feet of an occupied dwelling unless written permission is given by the owner of the dwelling.

(D) Neither the director nor any board shall issue a permit to install under section 3714.051 [3714.05.1] of the Revised Code to establish a new construction and demolition debris facility when the limits of construction and demolition debris placement at the new facility are proposed to have an isolation distance of less than five feet from the uppermost aquifer system that consists of material that has a maximum hydraulic conductivity of $1 \times 10^{-5} > \text{cm/sec}$ and all of the geologic material comprising the isolation distance has a hydraulic conductivity equivalent to or less than $1 \times 10^{-6} > \text{cm/sec}$.

(E) Neither the director nor any board shall issue a permit to install under section 3714.051 [3714.05.1] of the Revised Code to establish a new construction and demolition debris facility when the road that is designated by the owner or operator as the main hauling road at the facility to and from the limits of construction and demolition debris placement is proposed to be located within five hundred feet of an occupied dwelling unless written permission is given by the owner of the occupied dwelling.

(F) Neither the director nor any board shall issue a permit to install under section 3714.051 [3714.05.1] of the Revised Code to establish a new construction and demolition debris facility unless the new facility will have all of the following:

(1) Access roads that shall be constructed in a manner that allows use in all weather conditions and will withstand the anticipated degree of use and minimize erosion and generation of dust;

(2) Surface water drainage and sediment controls that are required by the director;

(3) If the facility is proposed to be located in an area in which an applicable zoning resolution allows residential construction, vegetated earthen berms or an equivalent barrier with a minimum height of six feet separating the facility from adjoining property.

EE APPX 0044

(G) (1) The siting criteria established in this section shall be applied to an application for a permit to install at the time that the application is submitted to the director or a board of health, as applicable. Circumstances related to the siting criteria that change after the application is submitted shall not be considered in approving or disapproving the application.

(2) The siting criteria established in this section by this amendment do not apply to an expansion of a construction and demolition debris facility that was in operation prior to the effective date of this amendment onto property within the property boundaries identified in the application for the initial license for that facility or any subsequent license issued for that facility up to and including the license issued for that facility for calendar year 2005. The siting criteria established in this section prior to the effective date of this amendment apply to such an expansion.

History:

143 v H 366. Eff 7-24-90; 151 v H 397, § 1, eff. 12-22-05.

EE APPX 0045

ORC Ann. 3714.06

Retrieve State Legislative Impact® (\$)  

PAGE'S OHIO REVISED CODE ANNOTATED
 Copyright (c) 2009 by Matthew Bender & Company, Inc
 a member of the LexisNexis Group
 All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE
 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE
 SECRETARY OF STATE THROUGH JULY 6, 2009 ***

*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009

*** OPINIONS OF ATTORNEY GENERAL CURRENT
 THROUGH JUNE 1, 2009 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
 CHAPTER 3714. CONSTRUCTION AND DEMOLITION DEBRIS LAW

Go to the Ohio Code Archive Directory

ORC Ann. 3714.06 (2009)

§ 3714.06. Annual operation license; transfer; modification

(A) No person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operation license issued by the board of health of the health district in which the facility is located or, if the facility is located in a health district that is not on the approved list under section 3714.09 of the Revised Code, from the director of environmental protection. Any such license may be issued with such terms and conditions as the board or the director, as appropriate, finds necessary to ensure that the facility will comply with this chapter and the rules adopted under it and to protect the public health and safety and the environment. Licenses issued under this section expire annually on the thirty-first day of December.

(B) During the month of December, but before the first day of January of the next year, each person proposing to continue with operation of a construction and demolition debris facility shall procure a license for the facility for that year from the board of health of the health district in which the facility is located or, if the facility is located in a health district that is not on the approved list under section 3714.09 of the Revised Code, from the director. The application for a license shall be submitted to the board of health or the director, as appropriate, on or before the last day of September of the year preceding that for which the license is sought. An application for a license for a new facility shall be submitted prior to operation of the new facility. The license shall be valid until the time that the next annual license is required to be obtained for the facility under this section.

A person who has received a license, upon sale or disposition of the facility, may, with the approval of the board or the director, as appropriate, have the license as well as a permit to install for the facility transferred to another person. The board or director may disapprove the transfer of the permit or license, as applicable, for any of the reasons specified in division (B) of section 3714.052 [3714.05.2] of the Revised Code for the denial of an application for a permit to install.

(C) Upon issuance of a license by a board of health under this section, the board shall mail a

EE APPX 0046

copy of the license to the director together with a copy of the plans for the operation of the facility or any necessary plan updates, as applicable, that are required under section 3714.061 [3714.06.1] of the Revised Code.

(D) A license issued under this section may be modified in accordance with rules adopted under section 3714.02 of the Revised Code.

History:

143 v H 366. Eff 7-24-90; 151 v H 397, § 1, eff. 12-22-05.

EE APPX 0047

ORC Ann. 3714.09

Retrieve State Legislative Impact® (\$)  

PAGE'S OHIO REVISED CODE ANNOTATED
 Copyright (c) 2009 by Matthew Bender & Company, Inc
 a member of the LexisNexis Group
 All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE
 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE
 SECRETARY OF STATE THROUGH JULY 6, 2009 ***
 *** ANNOTATIONS CURRENT THROUGH APRIL 1, 2009

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
 CHAPTER 3714. CONSTRUCTION AND DEMOLITION DEBRIS LAW

Go to the Ohio Code Archive Directory

ORC Ann. 3714.09 (2009)

§ 3714.09. Approved list of health districts; survey, resurvey of each district; authority of director

(A) The director of environmental protection shall place each health district that is on the approved list under division (A) or (B) of section 3734.08 of the Revised Code on the approved list for the purposes of issuing permits to install and licenses under this chapter. Any survey or resurvey of any such health district conducted under section 3734.08 of the Revised Code shall also determine whether there is substantial compliance with this chapter. If the director removes any such health district from the approved list under division (B) of that section, the director shall also remove the health district from the approved list under this division and shall administer and enforce this chapter in the health district until the health district is placed on the approved list under division (B) of section 3734.08 of the Revised Code or division (B)(1) of this section.

(B) (1) Upon the request of the board of health of a health district that is not on the approved list under division (A) or (B) of section 3734.08 of the Revised Code, the director may place the board on the approved list for the purpose of permitting and licensing construction and demolition debris facilities under this chapter if the director determines that the board is both capable of and willing to enforce all of the applicable requirements of this chapter and rules adopted under it.

(2) The director shall annually survey each health district on the approved list under division (B)(1) of this section to determine whether there is substantial compliance with this chapter and rules adopted under it. Upon determining that there is substantial compliance, the director shall place the health district on the approved list under that division. The director shall make a resurvey when in the director's opinion a resurvey is necessary and shall remove from the approved list under division (B)(1) of this section any health district not substantially complying with this chapter and rules adopted under it.

(3) If, after a survey or resurvey is made under division (B)(2) of this section, the director determines that a health district is not eligible to be placed on the approved list or to continue on that list, the director shall certify that fact to the board of health of the health

EE APPX 0048

district and shall administer and enforce this chapter and rules adopted under it in the health district until such time as the health district is placed on the approved list.

(4) Whenever the director is required to administer and enforce this chapter in any health district under division (A) or (B)(3) of this section, the director is hereby vested with all of the authority and all the duties granted to or imposed upon a board of health under this chapter and rules adopted under it within the health district. All disposal fees required to be paid to a board of health by section 3714.07 of the Revised Code and all such previous fees paid to the board, together with any money from construction and demolition debris facility license fees that were required to be paid to the board under section 3714.07 of the Revised Code as that section existed prior to April 15, 2005, that have not been expended or encumbered shall be paid to the director and deposited by the director to the credit of the construction and demolition debris facility oversight fund created in section 3714.07 of the Revised Code.

(C) Nothing in this chapter limits the authority of the director to initiate and pursue any administrative remedy or to request the attorney general, the prosecuting attorney of the appropriate county, or the city director of law of the appropriate city to initiate and pursue any appropriate judicial remedy available under this chapter to enforce any provision of this chapter and any rules or terms or conditions of any permit or license or order adopted or issued under this chapter with respect to any construction and demolition debris facility regardless of whether the facility is located in a health district that is on the approved list under this section.

History:

143 v H 366. Eff 7-24-90; 150 v H 432, § 1, eff. 4-15-05; 151 v H 397, § 1, eff. 12-22-05.

EE APPX 0049

OAC Ann. 3745-37-03

Copyright © 2009 Anderson Publishing Company

*** THIS DOCUMENT IS CURRENT THROUGH OHIO REGISTER FOR THE WEEK OF April 13 through April 17, 2009 ***

3745 Ohio Environmental Protection Agency
Chapter 3745-37 Licenses for Solid Waste, Infectious Waste Treatment, or Construction and Demolition Debris Facilities

OAC Ann. 3745-37-03 (2009)

3745-37-03. Criteria for issuing solid waste facility licenses, infectious waste treatment facility licenses, or construction and demolition debris facility licenses.

(A) The board of health or the director, whichever is applicable, shall not issue a solid waste facility license unless:

(1) A permit to install, if required by section 3734.05 of the Revised Code has been obtained by the applicant; and

(2) Detail plans have been approved by the director, if required by section 3734.05 of the Revised Code; and

(3) In the case of a previously or currently operating site or facility, the applicant operated the facility in substantial compliance with all applicable provisions of Chapter 3734. of the Revised Code and with Chapters 3745-27 and 3745-37 of the Administrative Code during the period of effectiveness of the last license held for the facility; and

(4) In the case of new facilities, the facility is adequately prepared for operations, and has been inspected by the health commissioner and by the director or his authorized representative; and

(5) The person identified as the operator of the facility is competent and qualified to operate the facility in substantial accordance with Chapter 3734. of the Revised Code and Chapters 3745-27 and 3745-37 of the Administrative Code; and

(6) The solid waste facility treating infectious waste has an infectious waste notation and has met the requirements under rule 3745-27-32 of the Administrative Code.

(B) The board of health or the director, whichever is applicable, shall not issue an infectious waste treatment facility license unless:

(1) A permit to install, if required by section 3734.05 of the Revised Code, has been obtained by the applicant; and

(2) Detail plans have been approved by the director, if required by division (B)(2)(e) of section 3734.05 of the Revised Code; and

(3) In the case of a previously or currently operating site or facility, the applicant operated the facility in substantial compliance with all applicable provisions of Chapter 3734. of the Revised Code and with Chapters 3745-27 and 3745-37 of the Administrative Code during the period of effectiveness of the last license held for the facility; and

EE APPX 0050

(4) In the case of new facilities, the facility is adequately prepared for operations, and has been inspected by the health commissioner and by the director or his authorized representative; and

(5) The person identified as the operator of the facility is competent and qualified to operate the facility in substantial accordance with Chapter 3734. of the Revised Code and Chapters 3745-27 and 3745-37 of the Administrative Code.

(C) The licensing authority shall not issue a construction and demolition debris facility license unless:

(1) All portions of the proposed facility meet the requirements contained in rule 3745-400-06 of the Administrative Code; and

(2) The applicant has operated the facility in substantial compliance with all applicable provisions of Chapter 3714. of the Revised Code and with Chapters 3745-400 and 3745-37 of the Administrative Code; and

(3) The owner or operator, who has previously or is currently responsible for the management or operation of one or more facilities licensed under Chapters 3714. or 3734. of the Revised Code, has managed or operated such facility in substantial compliance with applicable provisions of Chapters 3714., 3704., 3734., and 6111. of the Revised Code, and any rules and permits issued thereunder, and has maintained compliance with all applicable orders issued by the director, or from a board of health maintaining a program on the approved list, the environmental board of review, or courts having jurisdiction in accordance with Chapter 3746-13 of the Administrative Code, in the course of such previous or current management or operations.

(D) The licensing authority of a construction and demolition debris facility may impose such special terms and conditions as are appropriate or necessary to ensure that the facility will comply with Chapter 3714. of the Revised Code and Chapter 3745-400 of the Administrative Code, and to protect public health and safety and the environment.

History:Effective: 9-30-96.

OAC Ann. 3745-400-09

Copyright © 2009 Anderson Publishing Company

*** THIS DOCUMENT IS CURRENT THROUGH OHIO REGISTER FOR THE WEEK OF April 13 through April 17, 2009 ***

3745 Ohio Environmental Protection Agency
Chapter 3745-400 Disposal Methods for Construction and Demolition Debris; Licensed Facilities

OAC Ann. 3745-400-09 (2009)

3745-400-09. Site characterization.

(A) Site characterization for employment of the recompacted soil liner requirement.

(1) A recompacted soil liner, as described in paragraph (F)(5)(a) of rule 3745-400-07 of the Administrative Code, is required for all unfilled areas in a facility except

When the *in situ* and/or added geologic material separating the uppermost aquifer system(s) from the bottom of the leachate collection system in unfilled areas meets the criteria in paragraphs (A)(2) and (A)(3) of this rule, and one of the following:

(a) When, in an existing facility, the *in situ* and/or added geologic material separating the uppermost aquifer system(s) from all placed debris meets the criteria in paragraphs (A)(2) and (A)(3) of this rule.

(b) When the unfilled areas of an existing facility meet the requirements of paragraph (A)(1) of this rule and a barrier layer is constructed on existing placed debris in accordance with paragraph (F)(5)(d) of rule 3745-400-07 of the Administrative Code.

(c) When the unfilled areas of an existing facility meet the requirements of paragraph (A)(1) of this rule and a minimum fifteen foot horizontal separation exists between existing placed debris and the limits of debris placement in unfilled areas.

(2) The *in situ* and/or added geologic material shall have the following:

(a) A minimum thickness of five feet with a maximum permeability of 1×10^{-5} cm/sec.

(b) A maximum permeability equivalent to two feet of soil with a permeability of 1×10^{-6} cm/sec.

(3) Added geologic material, if any, shall meet the requirements in paragraph (F)(5)(b) of rule 3745-400-07 of the Administrative Code.

(B) Site characterization for the ground water monitoring requirement. A ground water monitoring well system, as described in paragraph (A) of rule 3745-400-10 of the Administrative Code, is required for a facility accepting debris on or after September 30, 1996, unless all of the following conditions are met:

(1) The limits of debris placement are not within five feet of the uppermost aquifer system.

(a) The five feet of isolation material between the uppermost aquifer system and the limits of debris placement shall have a permeability equivalent to at least five feet of soil with

EE APPX 0052

a maximum permeability of 1×10^{-6} cm/sec.

(b) None of the geological material to be included as the minimum five feet of isolation material shall have a permeability greater than 1×10^{-5} cm/sec

(2) The limits of debris placement are not within the boundaries of a sole source aquifer designated by the Administrator of the United States environmental protection agency under the "Safe Drinking Water Act", 88 Stat. 1660 (1974), 42 U.S.C.A. 300F, as amended;

(3) The limits of debris placement are not within the limits of any unconsolidated aquifer systems delineated on the Ohio department of natural resources ground water resource maps as yielding at least one hundred gallons per minute.

(4) The limits of debris placement are not within the limits of an Ohio EPA endorsed wellhead protection area or source water protection area for ground water.

(5) The limits of debris placement are not within one thousand feet of a public water supply well in a public water supply well field delivering less than seventy-five thousand gallons per day.

(6) The limits of debris placement are not within one thousand five hundred feet of a public water supply well in a public water supply well field delivering seventy-five thousand or more gallons per day.

(7) The limits of debris placement are not within one thousand feet of any water supply well or developed spring.

[Comment: New facilities required to have ground water monitoring must implement the system prior to accepting debris for disposal see paragraph (R)(4) of rule 3745-400-11 of the Administrative Code .]

(C) Site characterization report.

(1) The purpose of the site characterization report is to have a qualified ground water scientist provide documentation that the standards established in rule 3745-400-06 of the Administrative Code (prohibited locations), paragraph (A) of this rule (liner), and paragraph (B) of this rule (ground water monitoring) are met and that the ground water monitoring system as outlined in rule 3745-400-10 of the Administrative Code is capable of determining the quality of the ground water under the facility.

The site characterization report is a part of the facility design plan as outlined in paragraph (A) of rule 3745-400-07 of the Administrative Code. The owner or operator of a new facility shall submit the site characterization report with the first license application.

The site characteristics shall be documented in a narrative report using such maps and cross sections as to clearly convey the nature of the site and the hydrogeology beneath the facility. If the facility meets the standards in paragraph (A) of this rule, the hydrogeologic investigation can be conducted in phases, of which each phase shall be described in the site characterization report.

(2) The site characterization report shall contain documentation that the ground water scientist meets the qualifications of a qualified ground water scientist as defined in paragraph (GG) of rule 3745-400-01 of the Administrative Code.

(3) The qualified ground water scientist shall make a final summary as to whether the standards established in rule 3745-400-06 of the Administrative Code (prohibited locations),

EE APPX 0053

paragraph (A) of this rule (liner), and paragraph (B) of this rule (ground water monitoring) are met. The final summary shall state each standard and whether the standard has been met. The final summary shall be signed by the qualified ground water scientist.

(4) The site characterization report shall contain the following publicly available information to support the final summary:

(a) An applicable map prepared under the "National Flood Insurance Act of 1968" 82 Stat. 572, 42 U.S.C.A. 4001, as amended, showing where the facility is located with respect to the one hundred year flood plain of a watercourse. If no such map has been prepared for the watercourse, the location of the facility and the delineation of the one hundred year flood plain shall be shown on a plan sheet. The boundaries of the one-hundred-year flood plain of a watercourse shall be determined by the applicant for a license based upon a design storm of seven inches of precipitation in twenty-four hours and upon standard methodologies set forth in "Urban Hydrology for Small Watersheds" (soil conservation service technical release number 55) and section 4 of the "National Engineering Hydrology Handbook" of the soil conservation service of the United States department of agriculture.

[Comment: Note that the above mentioned maps also include flood plains not associated with a watercourse. Location in such flood plains is not prohibited by section 3714.03 of the Revised Code. However, there may be other authorities, such as local zoning boards or the federal emergency management agency, that may otherwise restrict a facility from locating in a flood plain.]

(b) A map showing the location of the facility with respect to the sole source aquifer designated by the administrator of the United States environmental protection agency under the "Safe Drinking Water Act", 88 Stat. 1660, 42 U.S.C.A. 300F, as amended. If a sole source aquifer is not in the vicinity, a statement of that fact will be sufficient

(c) The ground water resource map for the applicable county prepared by the Ohio department of natural resources showing where the facility is located.

(d) A map showing the location of the facility with respect to Ohio EPA endorsed wellhead protection area or source water protection area for ground water. If a wellhead protection area or source water protection area for ground water is not in the vicinity, a statement to that fact will be sufficient.

(e) A map showing the location of the facility and all public water supply wells within two thousand feet of the limits of debris placement. The yield of any public water supply well field shall also be stated.

(f) A map showing the location of the facility and all water supply wells within one thousand five hundred feet of the limits of debris placement.

(5) The site characterization report shall contain the following site specific hydrogeologic information to support the final summary. The hydrogeologic information shall be collected from borings, test pits, and/or piezometers. The minimum number of locations utilized to collect data for the hydrogeologic investigation shall be equal to the first whole number above the number represented by the square root of the number of acres which comprise the limits of debris placement. The hydrogeologic investigation shall be documented in a narrative report using such maps and cross sections as to clearly convey the nature of the hydrogeology beneath the facility.

[Comment: Test pits need to be recompacted and borings need to be plugged to meet the standards in paragraph (A) or (B) of this rule.]

EE APPX 0054

(a) A description of the consolidated and unconsolidated stratigraphic units from the ground surface down to the uppermost aquifer system. This description shall include the following:

(i) Sedimentary, including for unconsolidated formations, the textural classification using the "Unified Soil Classification System."

(ii) Hydraulic conductivity.

(iii) Thickness and lateral extent.

[Comment: Boreholes, when located near the perimeter of the facility, may be used to establish the wells for ground water monitoring.]

(b) A description of the methodology, equipment, and procedures used to identify and characterize the hydrogeology beneath the facility as required by paragraphs (C)(5)(a) and (C)(5)(c) of this rule, including the following:

(i) Well and piezometer construction specifications.

(ii) Water level measurement procedures.

(iii) The drilling and soil sampling methods used in characterizing the soil and its hydrogeologic properties under the facility.

(iv) All boring logs, test pit logs, soil analytical data, and any other data generated while preparing this report. A map shall be submitted showing the location of all borings, test pits, and soil sampling sites.

[Comment: This information may be shown on the map required in paragraph (F)(3)(h) of rule 3745-400-07, of the Administrative Code, which may also show the ground water monitoring well system as required for paragraph (A) of rule 3745-400-10 of the Administrative Code and for rule 3745-37-02 of the Administrative Code.]

(c) When ground water monitoring is required for a facility, a description and documentation of the first continuous significant zone of saturation underlying the facility. This description and documentation shall include the depth to and lateral and vertical extent of the first continuous significant zone of saturation underlying the facility. This description, using narrative, cross sections, and potentiometric maps, shall include the direction of flow within the first continuous significant zone of saturation underlying the facility.

History: Eff 9-30-96; 8-31-02.

EE APPX 0055