



State of Ohio Environmental Protection Agency

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## DSIWM Guidance 0601

### Variances and Exemptions

May 29, 2004

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#### APPLICABLE STATUTE and RULES

ORC 3734.02(A), (G)  
OAC 3745-27-03(B), (C)  
OAC 3745-30-15

#### PURPOSE

This document is an internal operating procedure comparing the requirements of variances and exemptions (attached table).

#### APPLICABILITY

This document is applicable to the solid waste program.

#### BACKGROUND

A variance or exemption is needed to deviate from a solid waste statute or rule requirement. Typically, the owner or operator makes the variance or exemption request when applying for a permit, and usually the Ohio EPA acts on the variance or exemption at the same time as the permit.

A modification or alteration is needed to deviate from a requirement established by an authorizing document (permit, plan, etc.).

#### POINT OF CONTACT

If you have questions regarding this document or would like additional information, please contact:

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#### DISCLAIMER

This document is intended for guidance purposes only. Completion of the activities and procedures outlined in this document shall not release an owner or operator from any requirement or obligation for complying with Ohio Revised Code (ORC) Chapter 3734, the OAC rules adopted thereunder, or any authorizing documents or orders issued thereunder, nor shall it prevent Ohio EPA from pursuing enforcement actions to require compliance with ORC Chapter 3734, the OAC rules or any authorizing documents or orders issued thereunder.

Bob Taft, Governor  
Jennette Bradley, Lieutenant Governor  
Christopher Jones, Director

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|                         | <b>Variance</b>  | <b>Exemption</b>   |
|-------------------------|--|--|
| Citations               | if from Rule: OAC 3745-27-03(C)<br>OAC 3745-30-15 for RSW<br>if from Statute: ORC 3734.02(A)   | if from Rule: OAC 3745-27-03(B)<br><br>if from Statute: ORC 3734.02(G)   |
| Applicability/Person:   | Not stated in statute or rule, but in practice, same as Exemption.   | Any person generating, collecting, storing, treating, disposing of, or transporting solid wastes, or processing solid wastes that consist of scrap tires.  |
| Applicability/Activity: | Alters or varies a requirement of a rule or statute. For example, if a rule requires a quarterly monitoring frequency, and an applicant desires semiannual monitoring frequency.   | Completely relieves an applicant from a rule or statute (includes any requirement to obtain a registration certificate, permit, or license or comply with the manifest system or other requirements of the solid waste statute). For example, if a rule requires a quarterly monitoring frequency, and that requirement will not be applied to the facility. |
| Content of Application  | The application shall contain detail plans, specifications, and information regarding objectives, procedures, controls, and other pertinent data required by the director.   | Not stated in statute or rule, but in practice, the same as a Variance.  |
| Fee                     | A nonrefundable fee of \$15, payable to the State of Ohio, shall be paid upon submittal of the application. An application may contain more than one variance request. If the application is submitted with an application for a permit-to-install, the variance application fee shall be paid in addition to the permit-to-install application fee. | None.  |
| Public Hearing          | The director may hold a public hearing on a request for a variance or renewal of a variance. If a hearing is held, the statute contains explicit requirements on how to conduct the hearing.   | Not stated in statute or rule, but in practice, the same as a Variance.  |

|                          | <b>Variance</b>   | <b>Exemption</b>  |
|--------------------------|---|---|
| Timeframes to Act:       | The director shall issue, renew, or deny an application for a variance or renewal of a variance within six months of the date it is received. When a variance is requested with a permit application, the action on the variance is usually issued with the permit action.  | No timeframes in which to act. When an exemption is requested with a permit application, the action on the exemption is usually issued with the permit action.  |
| Director shall Consider: | The relative interests of the applicant, other persons and property affected by the variance, and the general public. However, ultimately the director is going to consider any and all information that is relevant to making the determination according to the approval criteria in the next row.                              | The quantities involved or the specific circumstances. However, ultimately the director is going to consider any and all information that is relevant to making the determination according to the approval criteria in the next row.   |
| Approval Criteria:       | Construction, operation, closure and post-closure activities of the solid waste facility will not create a nuisance or a hazard to the public health or safety or the environment, and is unlikely to result in a violation of any other requirements of ORC Chapters 3704, 3714, 3734 and 6111 and any rules adopted thereunder. | Proposed activity is unlikely to adversely affect the public health or safety or the environment. Must be consistent with and equivalent to regulations adopted by the U.S. EPA under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, except as otherwise provided by the solid waste statute. |
| Type of Action           | Not Discretionary (Director must take an action to approve or deny).  | Discretionary (Director can decline from taking an action)  |

|                      | <b>Variance</b>   | <b>Exemption</b>   |
|----------------------|---|--|
| Contents of Approval | The approval (as a Director's letter or as orders) must state the specific provision or provisions whose terms are to be varied and also state specific terms or conditions imposed upon the applicant in place of the provision(s). The approval may contain orders to take actions within set timeframes in order to prevent the creation of a nuisance or a hazard to the public health or safety or the environment. The approval may be granted for a period specified by the director and may be renewed on such terms and for such periods as the director determines to be appropriate. | The approval is issued as an order. Not stated in statute or rule, but in practice, timeframes and periods can be same as a Variance.  |
| Denial               | Requires a written order stating the findings upon which the denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or variance holder by certified mail.   | Director can decline to act on an exemption request. The Environmental Review Appeals Commission has determined that this type of response from the director is not an "action" and is therefore not appealable. |
| Appeal               | Action is appealable to the Environmental Review Appeals Commission (ERAC).   | An approval is issued as an order which is appealable to the Environmental Review Appeals Commission (ERAC).   |
| Exclusions           | <p>Variations cannot be granted to establish or expand a solid waste facility within the boundaries of a state park etc (see ORC 3734.02(M) for details).</p> <p>Variations cannot be granted from any rule adopted under section ORC 3734.021 Rules and standards for generators and transporters of infectious waste; treatment facilities.</p>   | Exemptions cannot be granted to establish or expand a solid waste facility within the boundaries of a state park etc (see ORC 3734.02(M) for details).   |