

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**H. B. No. 432**

**Representatives Webster, McGregor, Wolpert**

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**A BILL**

To amend sections 3714.01, 3714.02, and 3714.09, to 1  
enact new section 3714.07 and section 3714.021, 2  
and to repeal section 3714.07 of the Revised Code 3  
to replace the construction and demolition debris 4  
facility license fee with a fee on the disposal of 5  
construction and demolition debris at construction 6  
and demolition debris facilities and solid waste 7  
facilities, and to revise the definition of 8  
"construction and demolition debris." 9

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3714.01, 3714.02, and 3714.09 be 10  
amended and new section 3714.07 and section 3714.021 of the 11  
Revised Code be enacted to read as follows: 12

**Sec. 3714.01.** As used in this chapter: 13

(A) "Board of health" means the board of health of a city or 14  
general health district or the authority having the duties of a 15  
board of health in any city as authorized by section 3709.05 of 16  
the Revised Code. 17

(B) "Closure" means either the time at which a construction 18  
and demolition debris facility will no longer accept construction 19  
and demolition debris for disposal or the effective date of an 20

order revoking the license of the facility. ~~The term~~ "Closure" 21  
includes measures performed to protect public health or safety, to 22  
prevent air or water pollution, or to make the facility suitable 23  
for other uses, if any, including, without limitation, the 24  
establishment and maintenance of suitable cover of soil and 25  
vegetation over areas where construction and demolition debris is 26  
buried and the minimization of erosion, the infiltration of 27  
surface water into such areas, the production of leachate, and the 28  
accumulation and runoff of contaminated surface water. 29

(C) "Construction and demolition debris" means those 30  
materials resulting from the alteration, construction, 31  
destruction, rehabilitation, or repair of any ~~manmade~~ physical 32  
structure that is built by humans, including, without limitation, 33  
houses, buildings, industrial or commercial facilities, or 34  
roadways. "Construction and demolition debris" includes 35  
construction materials that are final off-specification, rejected, 36  
or damaged. "Construction and demolition debris" also includes de 37  
minimus solid wastes and particles and dust created during 38  
demolition activities and through transport. "Construction and 39  
demolition debris" does not include materials identified or listed 40  
as solid wastes or hazardous waste pursuant to Chapter 3734. of 41  
the Revised Code and rules adopted under it other than de minimus 42  
solid wastes; materials from mining operations, nontoxic fly ash, 43  
spent nontoxic foundry sand, and slag; or reinforced or 44  
nonreinforced concrete, asphalt, building or paving brick, or 45  
building or paving stone that is stored for a period of less than 46  
two years for recycling into a usable construction material. 47

(D) "Construction materials" means materials that are used 48  
for the alteration, construction, rehabilitation, or repair of any 49  
physical structure that is built by humans. 50

(E) "De minimus solid wastes" means de minimus solid wastes 51  
as defined in rules adopted by the director of environmental 52

protection under section 3714.02 of the Revised Code or by a board  
of health under section 3714.021 of the Revised Code.

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

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~~(E)~~(G) "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.

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

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~~(G)~~(I) "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.

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~~(H)~~(J) "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

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the period, is disposed of or reused or recycled in a beneficial 84  
manner. 85

~~Sec. 3714.02. Within twelve months after July 24, 1990, the~~ 86  
The director of environmental protection shall adopt, and may 87  
amend and rescind, rules in accordance with Chapter 119. of the 88  
Revised Code governing construction and demolition debris 89  
facilities and the inspection of and issuance of licenses for 90  
those facilities. The rules shall ensure that the facilities will 91  
not create a nuisance, fire hazard, or health hazard or cause or 92  
contribute to air or water pollution. The rules shall establish 93  
all of the following: 94

(A) Standards for the design and construction of facilities. 95  
These standards may include, without limitation, requirements for 96  
diking around the areas where debris is buried to prevent runoff 97  
of surface water onto adjacent property. 98

(B) Standards for control over access to facilities; 99

(C) Standards for the operation of facilities, including, 100  
without limitation, standards for the compaction and covering of 101  
debris disposed of and standards regarding equipment used for the 102  
operation of facilities; 103

(D) Criteria and procedures for granting authorization to the 104  
owner or operator of a facility to dispose of asbestos or 105  
asbestos-containing materials or products at ~~his~~ the owner's or 106  
operator's facility; 107

(E) Criteria and procedures in accordance with which the 108  
director shall allow the disposal of de minimus solid wastes at 109  
construction and demolition debris facilities that are located in 110  
health districts in which the director is administering and 111  
enforcing this chapter under section 3714.09 of the Revised Code. 112  
The rules shall include both of the following: 113

<u>(1) A definition of "de minimus solid wastes" that includes</u>	114
<u>at least the following factors:</u>	115
<u>(a) The wastes are solid wastes as defined in section 3734.01</u>	116
<u>of the Revised Code.</u>	117
<u>(b) The wastes are inert.</u>	118
<u>(c) The wastes constitute not more than one per cent by load</u>	119
<u>of the daily amount of construction and demolition debris disposed</u>	120
<u>of at a construction and demolition debris facility.</u>	121
<u>(2) A determination of what constitutes a load of</u>	122
<u>construction and demolition debris for the purpose of calculating</u>	123
<u>the amount of any solid wastes in the load in order to determine</u>	124
<u>if the wastes are de minimus solid wastes.</u>	125
<u>(F) Requirements for the installation of ground water</u>	126
monitoring wells and the monitoring of ground water quality at any	127
facility where the operation of the facility threatens to	128
contaminate ground water;	129
<del>(F)</del> <u>(G) Requirements respecting written, narrative plans for</u>	130
the operation of facilities;	131
<del>(G)</del> <u>(H) Requirements respecting contingency plans for</u>	132
effective action in response to fire or explosion at a facility;	133
<del>(H)</del> <u>(I) Financial assurance requirements for the closure of</u>	134
facilities. The rules shall require that the owner or operator of	135
a facility, before being issued a license for the facility under	136
section 3714.06 of the Revised Code, submit a surety bond, a	137
letter of credit, or other acceptable financial assurance, as	138
specified by the director in the rules, in an amount equal to the	139
estimated costs for closure of those portions of the facility that	140
have been, are being, or are to be used for the disposal of	141
construction and demolition debris as contained in the closure	142
plan for the facility approved by the board of health of the	143

health district in which the facility is or is to be located or, 144  
if the facility is or is to be located in a health district that 145  
is not on the approved list under division (A) or (B)(1) or (2) of 146  
section 3714.09 of the Revised Code, by the director. 147

~~(I)~~(J) Requirements for the closure of facilities. The 148  
requirements shall include minimum requirements for the closure of 149  
all facilities and such additional requirements as are reasonably 150  
related to the location of the facility and the type and quantity 151  
of materials disposed of in the facility. 152

The rules adopted under this section shall not prohibit the 153  
open burning of construction debris on a construction site in 154  
compliance with division (C)(1) of section 3704.11 of the Revised 155  
Code. 156

Sec. 3714.021. A board of health that is administering and 157  
enforcing this chapter shall adopt rules establishing criteria and 158  
procedures in accordance with which the board shall allow the 159  
disposal of de minimus solid wastes at construction and demolition 160  
debris facilities that are located in the health district. The 161  
rules shall include both of the following: 162

(A) A definition of "de minimus solid wastes" that includes 163  
at least the following factors: 164

(1) The wastes are solid wastes as defined in section 3734.01 165  
of the Revised Code. 166

(2) The wastes are inert. 167

(3) The wastes constitute not more than one per cent by load 168  
of the daily amount of construction and demolition debris disposed 169  
of at a construction and demolition debris facility. 170

(B) A determination of what constitutes a load of 171  
construction and demolition debris for the purpose of calculating 172  
the amount of any solid wastes in the load in order to determine 173

if the wastes are de minimus solid wastes.

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Sec. 3714.07. (A)(1) For the purpose of assisting boards of health and the environmental protection agency in administering and enforcing this chapter and rules adopted under it, there is hereby levied on the disposal of construction and demolition debris at a construction and demolition debris facility that is licensed under this chapter or at a solid waste facility that is licensed under Chapter 3734. of the Revised Code a fee of thirty cents per cubic yard or sixty cents per ton, as applicable.

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(2) If construction and demolition debris is disposed of at a construction and demolition debris facility, the owner or operator of the facility shall determine if cubic yards or tons will be used as the unit of measurement. In estimating the fee based on cubic yards, the owner or operator shall utilize either the maximum cubic yard capacity of the container, or the hauling volume of the vehicle, that transports the construction and demolition debris to the facility or the cubic yards actually logged for disposal by the owner or operator in accordance with rules adopted under section 3714.02 of the Revised Code. If basing the fee on tonnage, the owner or operator shall use certified scales to determine the tonnage of construction and demolition debris that is transported to the facility for disposal.

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(3) If construction and demolition debris is disposed of at a solid waste facility, the owner or operator of the facility shall assess the fee on a per cubic yard or per ton basis as designated in the solid waste management plan of the solid waste management district in which the facility is located for the collection of the district's solid waste disposal fee pursuant to division (B) of section 3734.57 of the Revised Code.

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(4) The owner or operator of a construction and demolition debris facility or a solid waste facility shall collect the fee

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levied under division (A) of this section as a trustee for the health district having jurisdiction over the facility, if that district is on the approved list under section 3714.09 of the Revised Code, or for the state. The owner or operator shall prepare and file with the appropriate board of health or the director of environmental protection monthly returns indicating the total volume or weight, as applicable, of construction and demolition debris received for disposal at the facility and the total amount of money required to be collected on the construction and demolition debris disposed of during that month. Not later than thirty days after the last day of the month to which the return applies, the owner or operator shall mail to the board of health or the director the return for that month together with the money required to be collected on the construction and demolition debris disposed of during that month. The owner or operator may request, in writing, an extension of not more than thirty days after the last day of the month to which the return applies. A request for extension may be denied. If the owner or operator submits the money late, the owner or operator shall pay a penalty of ten per cent of the amount of the money due for each month that it is late.

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(5) Of the money that is collected from a construction and demolition debris facility or a solid waste facility on a per cubic yard or per ton basis under this section, a board of health shall transmit three cents per cubic yard or six cents per ton, as applicable, to the director not later than forty-five days after the receipt of the money. The money retained by a board of health under this section shall be paid into a special fund, which is hereby created in each health district, and used solely to administer and enforce this chapter and rules adopted under it.

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The director shall transmit all money received from the boards of health of health districts under this section and all

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money from the disposal fee collected by the director under this 237  
section to the treasurer of state to be credited to the 238  
construction and demolition debris facility oversight fund, which 239  
is hereby created in the state treasury. The fund shall be 240  
administered by the director, and money credited to the fund shall 241  
be used exclusively for the administration and enforcement of this 242  
chapter and rules adopted under it. 243

(B) The board of health of a health district or the director 244  
may enter into an agreement with the owner or operator of a 245  
construction and demolition debris facility or a solid waste 246  
facility for the quarterly payment of the money collected from the 247  
disposal fee. The board of health shall notify the director of any 248  
such agreement. Not later than forty-five days after receipt of 249  
the quarterly payment, the board of health shall transmit the 250  
amount established in division (A)(5) of this section to the 251  
director. The money retained by the board of health shall be 252  
deposited in the special fund of the district as required under 253  
that division. Upon receipt of the money from a board of health, 254  
the director shall transmit the money to the treasurer of state to 255  
be credited to the construction and demolition debris facility 256  
oversight fund. 257

(C) If a construction and demolition debris facility or a 258  
solid waste facility is located within the territorial boundaries 259  
of a municipal corporation or the unincorporated area of a 260  
township, the municipal corporation or township may appropriate up 261  
to three cents per cubic yard or up to six cents per ton of the 262  
disposal fee required to be paid by the facility under division 263  
(A) of this section for the same purposes that a municipal 264  
corporation or township may levy a fee under division (C) of 265  
section 3734.57 of the Revised Code. 266

The legislative authority of the municipal corporation or 267  
township may appropriate the money from the fee by enacting an 268

ordinance or adopting a resolution establishing the amount of the 269  
fee to be appropriated. Upon doing so, the legislative authority 270  
shall mail a certified copy of the ordinance or resolution to the 271  
board of health of the health district in which the construction 272  
and demolition debris facility or the solid waste facility is 273  
located or, if the facility is located in a health district that 274  
is not on the approved list under section 3714.09 of the Revised 275  
Code, to the director. Upon receipt of the copy of the ordinance 276  
or resolution and not later than forty-five days after receipt of 277  
money collected from the fee, the board or the director, as 278  
applicable, shall transmit to the treasurer or other appropriate 279  
officer of the municipal corporation or clerk of the township that 280  
portion of the money collected from the disposal fee by the owner 281  
or operator of the facility that is required by the ordinance or 282  
resolution to be paid to that municipal corporation or township. 283

Money received by the treasurer or other appropriate officer 284  
of a municipal corporation under this division shall be paid into 285  
the general fund of the municipal corporation. Money received by 286  
the clerk of a township under this division shall be paid into the 287  
general fund of the township. The treasurer or other officer of 288  
the municipal corporation or the clerk of the township, as 289  
appropriate, shall maintain separate records of the money received 290  
under this division. 291

The legislative authority of a municipal corporation or 292  
township may cease collecting money under this division by 293  
repealing the ordinance or resolution that was enacted or adopted 294  
under this division. 295

(D) The board of county commissioners of a county in which a 296  
construction and demolition debris facility or a solid waste 297  
facility is located may appropriate up to three cents per cubic 298  
yard or up to six cents per ton of the disposal fee required to be 299  
paid by the facility under division (A) of this section for the 300

same purposes that a solid waste management district may levy a 301  
fee under division (B) of section 3734.57 of the Revised Code. 302

The board of county commissioners may appropriate the money 303  
from the fee by adopting a resolution establishing the amount of 304  
the fee to be appropriated. Upon doing so, the board of county 305  
commissioners shall mail a certified copy of the resolution to the 306  
board of health of the health district in which the construction 307  
and demolition debris facility or the solid waste facility is 308  
located or, if the facility is located in a health district that 309  
is not on the approved list under section 3714.09 of the Revised 310  
Code, to the director. Upon receipt of the copy of the resolution 311  
and not later than forty-five days after receipt of money 312  
collected from the fee, the board of health or the director, as 313  
applicable, shall transmit to the treasurer of the county that 314  
portion of the money collected from the disposal fee by the owner 315  
or operator of the facility that is required by the resolution to 316  
be paid to that county. 317

Money received by a county treasurer under this division 318  
shall be paid into the general fund of the county. The county 319  
treasurer shall maintain separate records of the money received 320  
under this division. 321

A board of county commissioners may cease collecting money 322  
under this division by repealing the resolution that was adopted 323  
under this division. 324

**Sec. 3714.09.** (A) The director of environmental protection 325  
shall place each health district that is on the approved list 326  
under division (A) or (B) of section 3734.08 of the Revised Code 327  
on the approved list for the purposes of issuing licenses under 328  
section 3714.06 of the Revised Code. Any survey or resurvey of any 329  
such health district conducted under section 3734.08 of the 330  
Revised Code shall also determine whether there is substantial 331

compliance with this chapter. If the director removes any such 332  
health district from the approved list under division (B) of that 333  
section, ~~he~~ the director shall also remove the health district 334  
from the approved list under this division and shall administer 335  
and enforce this chapter in the health district until the health 336  
district is placed on the approved list under division (B) of 337  
section 3734.08 of the Revised Code or division (B)(1) of this 338  
section. 339

(B)(1) Upon the request of the board of health of a health 340  
district that is not on the approved list under division (A) or 341  
(B) of section 3734.08 of the Revised Code, the director may place 342  
the board on the approved list for the purpose of licensing 343  
construction and demolition debris facilities under section 344  
3714.06 of the Revised Code if ~~he~~ the director determines that the 345  
board is both capable of and willing to enforce all of the 346  
applicable requirements of this chapter and rules adopted under 347  
it. 348

(2) The director shall annually survey each health district 349  
on the approved list under division (B)(1) of this section to 350  
determine whether there is substantial compliance with this 351  
chapter and rules adopted under it. Upon determining that there is 352  
substantial compliance, the director shall place the health 353  
district on the approved list under that division. The director 354  
shall make a resurvey when in ~~his~~ the director's opinion a 355  
resurvey is necessary and shall remove from the approved list 356  
under division (B)(1) of this section any health district not 357  
substantially complying with this chapter and rules adopted under 358  
it. 359

(3) If, after a survey or resurvey is made under division 360  
(B)(2) of this section, the director determines that a health 361  
district is not eligible to be placed on the approved list or to 362

continue on that list, ~~he~~ the director shall certify that fact to 363  
the board of health of the health district and shall administer 364  
and enforce this chapter and rules adopted under it in the health 365  
district until such time as the health district is placed on the 366  
approved list. 367

(4) Whenever the director is required to administer and 368  
enforce this chapter in any health district under division (A) or 369  
(B)(3) of this section, ~~he~~ the director is hereby vested with all 370  
of the authority and all the duties granted to or imposed upon a 371  
board of health under this chapter and rules adopted under it 372  
within the health district. All ~~construction and demolition debris~~ 373  
~~facility license disposal~~ fees required to be paid to a board of 374  
health by section 3714.07 of the Revised Code and all such 375  
previous fees paid to the board, together with any money from 376  
construction and demolition debris facility license fees that were 377  
required to be paid to the board under section 3714.07 of the 378  
Revised Code as that section existed prior to the effective date 379  
of this amendment, that have not been expended or encumbered shall 380  
be paid to the director and ~~by him~~ deposited by the director to 381  
the credit of the construction and demolition debris facility 382  
oversight fund created in section 3714.07 of the Revised Code. 383

(C) Nothing in this chapter limits the authority of the 384  
director to initiate and pursue any administrative remedy or to 385  
request the attorney general, the prosecuting attorney of the 386  
appropriate county, or the city director of law of the appropriate 387  
city to initiate and pursue any appropriate judicial remedy 388  
available under this chapter to enforce any provision of this 389  
chapter and any rules or terms or conditions of any license or 390  
order adopted or issued under this chapter with respect to any 391  
construction and demolition debris facility regardless of whether 392  
the facility is located in a health district that is on the 393  
approved list under division (A) or (B)(1) or (2) of this section. 394

**Section 2.** That existing sections 3714.01, 3714.02, and 395  
3714.09 and section 3714.07 of the Revised Code are hereby 396  
repealed. 397

**Section 3.** The Construction and Demolition Debris Facility 398  
Oversight Fund that is created in section 3714.07 of the Revised 399  
Code, as enacted by this act, is a continuation of the 400  
Construction and Demolition Debris Facility Oversight Fund that 401  
was created in section 3714.07 of the Revised Code, as repealed by 402  
this act. Money credited to the Fund under former section 3714.07 403  
of the Revised Code shall be used for the purposes specified in 404  
section 3714.07 of the Revised Code, as enacted by this act. 405