FINAL

SUBJECT:	Solid Waste Guidance: Corrective Measure Plans [OAC Rule 3745-27-10(F)(2) to (10)]	NUMBER: GD0410.102 ISSUED: 06/30/96 REVISED: 07/29/97 PAGE: 1 of 4

PURPOSE: To provide guidance on OAC Rules 3745-27-10(F)(2) to (10) concerning the contents and approval of a Corrective Measures Plan (CMP).

BACKGROUND: OAC Rule 3745-27-10(F)(2) to (5) and (7) establish the requirements for the contents of a CMP. OAC Rules 3745-27-10(8), (9) and (10) describe the criteria for selecting a remedial procedure (RP) to be enacted at the facility. Several issues regarding these rules have been raised:

1. What is meant by "practicable remedial procedure?";

2. Whether a CMP needs to evaluate more than one RP;

3. Whether a "no action" RP has to be proposed in a CMP with the information required under OAC Rules 3745-27-10(F)(2), (3) and (7) or if a "no action" RP can be submitted with just the information required by OAC Rule 3745-27-10(F)(8); and

4. How clean-up levels are established under OAC 3745-27-10(F)(7).

This guidance is intended to address these and other issues.

GUIDANCE:

1. OAC Rule 3745-27-10(F)(1) and (2) require, in part, that all "practicable remediation procedures" be evaluated within the CMP. "Practicable remediation procedures" means those RPs that:

   - The owner/operator has the practicable capability of implementing; or

   - Are proportional to the size of the contamination and the risk posed by the contamination.

   When considering the practicable capability of the owner/operator, the economic and technical capabilities of the owner/operator should be taken into consideration. The CMP only has to include those RPs that the owner/operator has both the financial and technical ability to implement if they are chosen.

   US EPA has stated (56FR51090) "that the practicable capabilities of the owner or operator to implement the corrective action program are vital to the overall success of the program. If the owner or operator cannot properly support and administer all phases of the corrective action program, the goals (protection of human health and environment) may not be met, resulting in wasted expenditures of resources and continued environmental degradation." If an RP is beyond the practicable capability of the owner/operator, then the RP is not a practicable remediation procedure and does not have to be included in the CMP. If the owner operator claims that an RP is impracticable due to financial or technical capabilities, then the owner operator must submit evidence supporting that position.

The RP must be proportional in scope to the size of the contamination and the risk posed by the contamination to be considered practicable. The practicable RPs considered when dealing with a small non-hazardous inorganic plume in an isolated sand zone should be different and much smaller in scope than those RPs considered for remediating a hazardous organic compound plume in a high yield aquifer next to a public drinking water supply well.

OAC Rule 3745-27-10(F)(2) also requires that all practicable RPs be evaluated in the CMP. This should mean that more than one RP should be evaluated in the CMP. If only one RP is evaluated than the owner/operator needs to explain in the CMP why there is only one practicable RP to evaluate.

2) OAC Rule 3745-27-10(F)(3) requires that each RP (including any "no action" RPs) be fully evaluated according to the factors listed in this rule. This is necessary in order to clearly delineate and document the reasons for selecting the final RP. It may be inherently obvious to the facility and the Ohio EPA why a particular RP is selected, but without this documentation of the comparison between the several RPs, the public may not be able to ascertain the logic in the Agency's decision. DDAGW staff should utilize the procedural document Procedure for DDAGW Review and Comment on Sanitary Landfill Facility Corrective Measures Plan (IPO405.102: Issued: 1/24/95) when reviewing a CMP.

3) OAC Rule 3745-27-10(F)(4) requires a public meeting to be held within 60 days of submitting the CMP. For more information read DDAGW proposed policy: Solid Waste Policy: Public Meeting Requirements for the Corrective Measures Program [OAC Rule 3745-27-10(F)(4)] (DDAGW-04-05-101).

4) OAC Rule 3745-27-10(F)(5) allows the agency to require a facility to evaluate a specific RP as part of a CMP. If a CMP does not evaluate all practicable RPs, then the agency can request the facility to evaluate a specific practicable RP. The Agency can also use this rule to require a owner/operator to document that a specific RP is impracticable or force the owner/operator to evaluate the RP if the documentation is not satisfactory.

5) OAC Rule 3745-27-10(F)(7) provides the criteria for setting clean-up levels to be attained by the RP. Clean-up levels must be proposed in the CMP. These clean-up levels are set assuming a potential receptor is going to be directly exposed to the contaminated ground water at the facility. Clean-up levels are determined by two factors:

   a) If a contaminant has had a maximum contaminant level (MCL) established for it under the Federal Safe Drinking Water Act, then the MCL is the clean-up level. There are only two exceptions to this

i) The owner/operator demonstrates in the CMP that background levels at the facility are higher than the MCL in which case the clean-up level can be set at the background concentration; or

ii) A different clean-up level (higher or lower) is necessary due to factors spelled out in OAC Rule 3745-27-10 (F)(7)(c); and

b) If no MCL has been established for a contaminant then the background concentration is the clean-up level. There are only two exceptions to this rule:

i) A different clean-up level is necessary due to the factors listed in OAC Rule 3745-27-10 (F)(7)(c); or

ii) An alternate clean-up standard is established using the criteria in OAC Rule 3745-27-10(F)(7)(d). OAC Rule 3745-27-10(F)(7)(d) only applies to contaminants for which no MCL has been established.

6. OAC Rule 3745-27-10(F)(8) sets out criteria, in addition to those in paragraphs F(3) and F(7), that the owner/operator must meet in order for a "no action" decision to be approved by the Director. The owner/operator must still submit a CMP and compare the "no action" RP to other practicable RPs as required by paragraph F(2) as this allows the Director to fully evaluate the "no action" RP. Also, paragraph F(8) does not grant a waiver from complying with paragraphs F(3) or F(7).

A "no action" RP may only be approved under the provisions of paragraph F(8). In order for a "no action" RP to be approved by the Director, the CMP must show, using the evaluation of the factors in paragraph F(3), that:

a) The ground water under the facility is so contaminated from another source that remediating the contamination from the facility would do little or nothing to alleviate the overall risk caused by the regional contamination. If the "no action" is approved under this provision then a special condition should be attached to the approval reserving the right of the Director to require remediation of the facility's contamination in the event an attempt is made to remediate the regional contamination; or

b) That the zone of saturation containing the contamination is not currently or reasonably expected to be a source of drinking water and the contamination is not expected to migrate to surface or ground waters utilized by humans or other environmental receptors in a concentration that will exceed clean-up limits established in paragraph F(7). In other words, the contamination is in a zone no one would want to drink from and the contamination isn't migrating anywhere; or

c) The remediation is technically impractical; or

d) The only practicable RPs would merely transfer the contamination from the ground water to the air or a surface water in an unacceptable manner.

Any approval of a "no action" RP under paragraph F(8) shall be accompanied with a special condition requiring continued monitoring of the contamination. Concentration levels should be established in the special condition above which a re-evaluation of the "no action" RP shall be undertaken.

7) OAC Rule 3745-27-10(F)(9) allows the Director to require the owner/operator to implement source control measures to eliminate the possible or continuing release of additional contaminants even when a "no action" RP has been approved under paragraph F(8). This action can be taken when the "no action" RP is approved or at a later date after the no action RP is approved if continued monitoring demonstrates the need for source control.

8) OAC Rule 3745-27-10(F)(10) is the mechanism for approval of all RPs except the "no action" RP. Any approval of an RP under this paragraph must contain a schedule of implementation of the RP and a ground water monitoring program for monitoring the progress of the RP within it.