



Division of Materials and Waste Management Response to Comments

Rule: Municipal Solid Waste (MSW) Rules, OAC 3745-27

Agency Contact for this Package

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Ohio EPA held an interested party comment period on October 14, 2015 regarding municipal solid waste rules. This document summarizes the comments and questions received during the associated comment period, which ended on November 16, 2015.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

3745-27-10 Ground water monitoring program for a sanitary landfill facility.

Comment 1: **The proposed changes to OAC 3745-27-10 include reference to Appendix A and Appendix B for the water quality parameters. This change from Appendix I and Appendix II is not needed and will necessitate changes to all the sampling plans in the state including text references and tables. It also may lead to confusion in communicating with the analytical laboratories. We see no reason for this change and recommend that this change not be made. (Kathy Trent, National Waste & Recycling Association)**

Response 1: The change from Appendix I and II to Appendix A and B was made to comply with the Legislative Service Commission's (LSC) rule drafting requirements. DMWM has consulted with LSC, and has been given permission to deviate from this standard. The Appendices will retain their current Roman numeral naming.

Comment 2: **(C)(3)(a)(ii) - Well depth measurements should not be conducted prior to sampling. This is an unnecessary requirement that complicates the sampling event by disturbing the groundwater prior to sampling. Well depth measurements should be made after**

sampling so that there is no potential to affect the sample integrity with the measurement device and to minimize sample turbidity.

(C)(3) ~~Measurement of ground~~Ground water elevations.

(a) Measurement of ground water elevations.

(i) Ground water elevations shall be measured in all wells to be sampled that round of sampling prior to any purging and sampling.

(ii) The total depth of the monitoring ~~well(s)~~wells shall be measured in all wells at least annually for those wells that do not have a dedicated pump installed. The depth of monitoring ~~well(s)~~wells with a dedicated pump shall be measured whenever maintenance allows and the dedicated pump is removed for service or replacement. ~~The measurement of well depth shall be taken prior to any purging and/or sampling.~~

(iii) Ground water elevations in all wells monitoring the same units or portion of units of a sanitary landfill facility shall be measured within a period of time short enough to avoid temporal variations in measured ground water elevation to ensure accurate flow conditions are depicted.

(Kathy Trent, National Waste & Recycling Association)

Response 2:

In response to this comment, the Agency has made the suggested changes to this section of the proposed rule. Paragraph (C)(3)(iii) has been added to the proposed rule to address the timing of ground water elevation measurements.

Comment 3:

(C)(3)(b) - This paragraph needs modification because the language could be interpreted to require that flow is to be determined in both the Upper Aquifer System and Significant Zone of Saturation when half the wells are sampled in any individual zone. Paragraph (C)(3)(a)(i) requires ground-water level measurement when sampling.

~~(b) The owner or operator shall at least semiannually determine ground-water flow directions in the uppermost aquifer system and all significant zones of saturation monitored. For sampling events other than semiannual or background monitoring events and in conjunction with any major sampling event, the owner or operator shall determine groundwater flow directions for any zone monitored whenever more than half of the wells in that zone are sampled during that event, for the uppermost aquifer system and for all significant zones of saturation monitored, the direction of ground water flow each time ground water elevation measurements are performed.~~

(Kathy Trent, National Waste & Recycling Association)

Response 3:

In response to this comment, paragraph (C)(3)(b) has been revised in the proposed rule consistent with the suggested changes.

- Comment 4:** (C)(7)(g) – For consistency with the proposed changes to Rules (D)(7)(c)(ii) and (E)(1), no changes should be made to (C)(7)(g). (Kathy Trent, National Waste & Recycling Association)
- Response 4:** In response to this comment, the Agency is not proposing any changes to paragraph 3745-27-10(C)(7)(g).
- Comment 5:** (D)(5)(a)(ii)(a) and (D)(5)(b)(ii)(a) - The spacing of background sampling events should not be a specific number of days. This could be interpreted to require sampling on a specific day, which may fall on a weekend or holiday or other times when it is not convenient or appropriate to sample. As long as independence and representativeness can be demonstrated, the frequency or spacing of background data collection should be at the discretion of the facility as long as background can be collected within the allotted time frame. Current rules do not dictate background data collection frequency. Rules (D)(5)(a)(ii)(a) and (D)(5)(b)(ii)(a) both currently require the 8 background samples collected be independent with no additional requirement pertaining to the frequency or timing of background data collection. The requirement in the next 540 days for the UAS wells in (a)(ii)(a) should be six samples instead of eight as this will result in approximately quarterly sampling over this 18 month period, which was Ohio EPA's intent. This clarification means that at least 10 background samples will be collected for UAS wells in a 2-year period. (Kathy Trent, National Waste & Recycling Association)
- Response 5:** The proposed rule paragraphs 3745-27-10(D)(5)(a)(ii)(a) and (D)(5)(b)(ii)(a) have been revised in response to this comment.
- Comment 6:** (E)(9)(a) - Some sites have several assessment areas that are hydraulically separate. If all wells in a separate assessment area are below background, the assessment area should be allowed to return to detection monitoring.
- (a) If the owner or operator determines that the concentrations of **all** waste-derived constituents are shown to be at or below background values at the monitoring wells within the assessment monitoring program, or for those wells within a specific assessment monitoring area within an assessment monitoring program, using the statistical procedures described in paragraph (C)(6) of this rule for two consecutive sampling events, then the owner or operator ~~may request, in writing, that the director approve reinstatement of the~~ will notify the director and reinstate the detection monitoring program described in paragraphs (C) and (D) of this rule.*

(b) The owner or operator may demonstrate that a source other than the sanitary landfill facility caused the contamination, or that the statistically significant change resulted from error in sampling, analysis, or statistical evaluation, or from natural variation in ground water quality. A report documenting this demonstration must be submitted to director and request that the director approve reinstatement of the detection monitoring program described in paragraphs (C) and (D) of this rule. ~~(e)~~ Until the director approves reinstatement of the detection monitoring program, the owner or operator shall comply with paragraphs (E)(10) and (F) of this rule.

(Kathy Trent, National Waste & Recycling Association)

Response 6: In response to this comment, the Agency has revised (E)(8)(a) and (b) in the proposed rule consistent with the suggested changes.

Comment 7: **(D)(7)(c) – The rule should not reference guidance, nor include website addresses. Website addresses and guidance documents change over time. (Kathy Trent, National Waste & Recycling Association)**

Response 7: The Joint Committee on Agency Rule Review (JCARR) mandates that all state agencies meet the “incorporation by reference” standards in accordance with ORC 121.72, 121.75, and 121.76. Therefore, DMWM is required to include a publication date and website address for all referenced material not contained in the rule. In response to this comment, DMWM has created a new paragraph (G) in this rule that addresses all incorporation by references instances, and has removed that language from paragraph (D)(7)(c).

Comment 8: **(D)(7)(c)(ii) We suggest the following edits to this paragraph:**

(ii) Demonstrate that ~~a source other than the sanitary landfill facility caused the contamination or that~~ the statistically significant increase over background resulted from a source other than the sanitary landfill facility, or error in the sampling, analysis, or statistical evaluation or from natural variation in ground water quality. A report documenting this demonstration must be submitted to and approved by the director or ~~his~~the director's authorized representative. If the owner or operator is notified by the Director that the alternate source demonstration is rejected ~~does not obtain approval to continue detection monitoring withinnot later than two hundred and ten days fromafter initial sampling~~is notified by the director that the alternate source demonstration is rejected, the owner or operator shall comply with the provisions of paragraph (E) of this rule.

(Kathy Trent, National Waste & Recycling Association)

Comment 9: Paragraph (E) should be amended to provide that alternate source demonstrations (ASDs) submitted pursuant to OAC 3745-27-10(D)(7)(c)(ii) to be self-implementing. The existing rule has resulted in a large Ohio EPA administrative burden for issuing many director's actions and places both the owner/operator and Ohio EPA in the position of potentially missing prescribed regulatory deadlines. It is not required by either Ohio law or USEPA that ASDs be "approved" by the director. DMWM has previously proposed to make ASDs self-implementing. In 2010/2011, DMWM published a number of "multi-program rules" for comment. One of the multi-program rules released for comment was OAC 3745-506-410 which provided for self-implementation of the ASD unless the director issued a letter rejecting the ASD. The draft OAC 3745-506-410(B)(2)(c) states, "If the director does not issue a letter to the owner or operator rejecting the false positive demonstration by the end of the sixtieth day after the date the false positive demonstration report was submitted to Ohio EPA, the false positive demonstration is successful."

(E) Ground water quality assessment monitoring program. The owner or operator shall comply with the following requirements regarding ground water quality assessment monitoring.

(1) General requirements. ~~Unless the director approves~~ If the director rejects the alternate source demonstration report submitted in accordance with paragraph (D)(7)(c) of this rule, the owner or operator shall implement a "ground water quality assessment plan" capable of determining the concentration, rate, and extent of migration of waste-derived ~~constituent(s)~~ constituents in the ground water upon determining a statistically significant increase over background in accordance with paragraph (D)(7) of this rule. The owner or operator shall implement and comply with the ground water quality assessment plan and the requirements of this rule. If there is no rejection of the alternate source demonstration submitted under (D)(7)(c), then the wells will remain in detection monitoring. If there is no alternate source demonstration submitted in accordance with paragraph (D)(7)(c) of this rule, the wells will enter assessment monitoring 135 days from notification of the statistically significant increase over background.

(3) Submission of ground water quality assessment plan. ~~Within Not later than Within ninety one hundred and thirty-five days of after of notifying notification from~~ Ohio EPA that an alternate source demonstration submitted in accordance with rule 3745-27-10(D)(7)(c) to remain in detection monitoring was rejected, of a statistically significant increase over background in accordance with paragraph (D)(6)(b) of this rule, the owner or operator shall submit to the Ohio EPA, and to the operating record in accordance with rule 3745-27-09 of the Administrative Code, a "ground water quality assessment plan."

(5) Assessment monitoring schedule, frequency, and parameters.

(a) ~~Within Not later than~~ Within one hundred thirty-five ninety days of ~~notifying notification from~~ Ohio EPA that an alternate source demonstration report request submitted in accordance with rule 3745-27-10 (D)(7) to remain in detection monitoring was ~~rejected~~ of a statistically significant change in accordance with paragraph (d)(7) of this rule, the owner or operator shall do the following:

(Kathy Trent, National Waste & Recycling Association)

Response 8 & 9: In response to this comment, the proposed ground water monitoring rule does include changes to make the alternative source demonstration in OAC 3745-27-10(D)(7)(c)(ii) more self-implementing. Ohio EPA intends the proposed change to be consistent with Subtitle D 40 CFR 258.55(g)(2). The Agency will work closely with U.S. EPA Region 5 and Ohio stakeholders on the comments pertaining to these proposed amendments.

End of Response to Comments