



## Division of Materials and Waste Management Response to Comments

**Rule:** 3745-520-50 C&DD Ground Water Monitoring Fee Rule

### **Agency Contact for this Package**

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Ohio EPA held a public comment period on June 5, 2014 regarding the fee on the disposal of C&DD for the purpose of funding ground water monitoring. This document summarizes the comments and questions received during the associated comment period, which ended on June 19, 2014.

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.

### **General/Overall Concerns**

- Comment 1:** Ohio EPA's BIA contains significant errors and leaves open significant questions which make continuation of this Rule unjustified. First, in paragraph 14 of the BIA, Ohio EPA asserts that \$333,719.22 was remitted in 2013 under the existing fee program, but over 24.2 trillion tons were disposed in 2013. Those numbers simply do not add up. With over 24.2 trillion tons and a required fee of ten cents per ton, Ohio EPA should have generated about \$2.4 trillion in fees just in 2013. (John Heer, CDAO)
- Comment 2:** Ohio EPA reveals nothing about what money Ohio EPA or the applicable Boards of Health spent and how. There is no information provided regarding how much money has actually been spent on groundwater monitoring since the rule went into effect, and how that money was spent. Ohio EPA also fails to disclose that there is more than \$1.7 trillion in the Ohio EPA's Ground Water Monitoring Fund currently, not including any funds which are held by the various Boards of

**Health. The enabling legislative section also indicates that a priority list must be made and that the director "shall not purchase ground water monitoring wells or pay the costs of conducting monitoring of ground water if the applicable fund does not have sufficient money to pay those costs." Ohio EPA has failed to explain how much is needed for funding the plan at hand. (John Heer, CDAO)**

**Comment 3: Ohio EPA has not justified the continuation of the Rule. Contrary to Ohio EPA's BIA, such a rule is not mandatory. The statute, Ohio Rev. Code 3714.071(E), makes clear that Ohio EPA "may" adopt such a rule, but it is not mandatory. Because the justification presented by Ohio EPA is flawed and questionable, the Rule as proposed should not be retained. (John Heer, CDAO)**

**Response to 1-3:** In response to comments 1 through 3 above, the Division of Materials and Waste Management (DMWM) reviewed objections of insufficient justification, inaccuracies, and lack of information contained in Ohio EPA's Business Impact Analysis (BIA). The comments noted that information regarding the amount of the accumulated fees spent, the types of activities paid out of the fees, and the amount of unspent fees was necessary to evaluate the need for continuance of the fee. The Construction and Demolition Association of Ohio (CDAO) requested that Ohio EPA justify the adverse impact to the regulated community before moving ahead on the determination to retain rule 3745-520-50 without change.

Ohio EPA met with CDAO and provided detailed information in response to their comments and requests for additional information. Following a reassessment of the current fund balance and the estimates of future expenditures over the next several years, Ohio EPA has determined that continuation of the fee at the present time is not necessary. Ohio EPA anticipates sufficient fund balance is available to reasonably cover projected expenditures over the next several years. Ohio EPA will now propose rescission of rule 3745-520-50 with the intent of eliminating the fee and develop a revised Business Impact Analysis (BIA) to reflect the proposed rescission.

Following rescission of the rule, the Agency will continue to monitor the fund balance and projected expenditures. Should the Agency believe that establishment of a fee is again necessary to accomplish the purposes of ORC 3714.071, Ohio EPA would establish the fee through a separate future rule-making effort.

The proposed rescission of rule 3745-520-50 and elimination of the C&DD ground water monitoring fee will result in an impact to approved local health departments. ORC 3714.071 provides that the fee established by rule 3745-520-50 be remitted to the

approved health district having jurisdiction over the C&DD facility. Elimination of the fee means that approved health departments will no longer retain twenty percent of the collected fee for use solely to fund and conduct ground water monitoring at C&DD facilities within the health district. Ohio EPA has conducted specific outreach to alert approved health districts to the Agency's change from the interested party draft determination to retain rule 3745-520-50 and continuance of the fee. Ohio EPA has discussed the elimination of the fee with representatives of the Association of Ohio Health Commissioners (AOHC) and Ohio Environmental Health Association (OEHA).

In addition to public notice procedures required for any proposed rule rescission, Ohio EPA will also provide email notification of the proposed rescission to those subscribed to the C&DD listserv. The various associations (CDAO, AOHC, and OEHA), individual approved health departments and the general public will have opportunity to comment during the public comment and hearing on the proposed rescission of rule 3745-520-50.

**End of Response to Comments**