



State of Ohio Environmental Protection Agency

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MAY 26 2010

CERTIFIED MAIL

The Honorable Steve Allen
Chairperson, Board of Directors
207 Main Street
Lore City, OH 43755

Mark Potochnik, Policy Committee Chair
Solvay Advanced Polymers
PO Box 446
Marietta, Ohio 45750

RE: Ohio Revised Code Section 3734.55(C)(1) SouthEastern Ohio Joint Solid Waste Management District Solid Waste Management Plan Disapproval

Dear Mr. Potochnik and Commissioner Allen:

Ohio EPA has reviewed the ratified draft solid waste management plan update (Ratified Plan) submitted by the SouthEastern Ohio Joint Solid Waste Management District (District) and has determined that the Plan is not in compliance with the requirements identified in Division (A) of Section 3734.53 of the Ohio Revised Code (ORC). Enclosed you will find the Director's Final Findings and Orders (Findings and Orders) disapproving the District's Plan. The specific reasons for this action are outlined in Attachment 1 (Statement of Deficiencies) to the enclosed Findings and Orders.

In accordance with ORC 3734.55(C), the Policy Committee for the District must submit to Ohio EPA a revised, ratified solid waste management plan that remedies the deficiencies listed in Attachment 1 within 90 days from the effective date of these Findings and Orders. The Policy Committee has the option of requesting, by resolution, one 60-day extension.

The main deficiencies identified in Attachment 1 are as follows:

- The District's Ratified Plan fails to validly demonstrate that at least 90 percent of the residential population in four of the six counties has or will have access to adequate recycling opportunities.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

- The District's Ratified Plan fails to meet the participation standard for educating residents about recycling opportunities, as required by the *1995 State Solid Waste Management Plan* and the *District Solid Waste Management Plan Format*.

According to ORC 3734.55(C)(2), the procedure for revising a disapproved solid waste management plan is as follows:

- The policy committee must prepare a draft revised solid waste management plan, adopt the draft revised plan by a majority vote, and deliver a copy of the draft revised plan to the board of county commissioners for each county and to the legislative authority of each municipal corporation and township having territory within the District within 60 days of the issuance of these Findings and Orders.
- The entities receiving the draft revised solid waste management plan have 21 days to approve or disapprove the draft revised plan by resolution or ordinance and deliver a copy of the ordinance or resolution to the policy committee.
- As with initial ratification, the draft revised solid waste management plan is considered ratified when townships and municipalities comprising 60 percent of the population of the District have approved the draft revised plan. In addition, the boards of county commissioners of at least four of the six counties and the legislative authorities representing the municipalities with largest populations in at least four of the six counties must approve the draft revised plan.
- Upon declaring the draft revised solid waste management plan ratified, the policy committee must submit the ratified draft revised plan to the director of Ohio EPA for review within 90 days of the issuance of these findings and orders.
- ORC Section 3734.55(C)(1) gives the District's policy committee the ability to apply for a 60-day extension for completing the elements explained in the previous bullet points. To do this, the District's policy committee must adopt a resolution that requests the extension from the director of Ohio EPA and submit the resolution to Ohio EPA. If the director of Ohio EPA grants the extension, then the policy committee has 150 days from the issuance of these findings and orders to submit the ratified, draft, revised plan to Ohio EPA for review.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Environmental Review Appeals Commission within thirty (30) days after notice of this Director's action.

The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeal Commission at the following address:

Environmental Review Appeals Commission
309 S. Fourth Street
Room 222
Columbus, Ohio 43215

Ohio EPA offers any assistance that we can provide to help the District successfully revise the Plan and will work with the District to resolve any outstanding issues. If you have any questions about revising the Plan in accordance with the attached statement of deficiencies, please contact Deb Hoffman, the primary reviewer of your Plan, at (614) 728-5353.

Sincerely,



Chris Korleski, Director
Ohio Environmental Protection Agency

Enclosures (2): Director's Final Findings and Orders
Attachment 1: Statement of Deficiencies

cc (with enclosures): Robert Reiter, Coordinator, SouthEastern Ohio Joint SWMD
Steve Rine, Environmental Supervisor, DSIWM-SEDO
Terrie TerMeer, Assistant Chief, ODNR, DRLP

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature] Date: 5-26-10

OHIO E.P.A.

MAY 26 2010

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the matter of:

SouthEastern Ohio Joint : Director's Final
Solid Waste Management District : Findings and Orders
515 Main Street
Caldwell, Ohio 43724

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the SouthEastern Ohio Joint Solid Waste Management District (District), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Section 3734.55(C).

II. PARTIES

These Orders shall be binding upon the District.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meanings as defined in ORC Chapter 3734 and the rules promulgated thereunder.

IV. FINDINGS

The director of Ohio EPA has determined the following findings:

1. Pursuant to ORC Section 3734.56, the policy committee of a solid waste management district (SWMD) with an approved solid waste management plan that contains a planning period of fifteen or more years is required to submit an amended solid waste management plan that complies with the requirements in Divisions (A), (B), (D), and (E)(1) of ORC Section 3734.53 to the director of Ohio EPA on or before the fifth year anniversary of the date the existing solid waste management plan was approved.
2. The District's existing solid waste management plan was approved on December 1, 2003 and covers a planning period of seventeen years. The District's draft amended solid waste management plan was due to Ohio EPA on December 1, 2008.

3. On December 30, 2008, Ohio EPA received a draft amended solid waste management plan from the District's Policy Committee.
4. Pursuant to ORC Section 3734.55, the director of Ohio EPA is required to provide the policy committee of a SWMD with a written, nonbinding advisory opinion regarding a draft solid waste management plan and any recommended changes to it that the director considers necessary to effect its approval.
5. On February 13, 2009, Ohio EPA sent a nonbinding advisory opinion concerning the draft amended solid waste management plan received on December 30, 2008 to the District's policy committee.
6. Pursuant to ORC Section 3734.55, the policy committee of a SWMD is required to submit a draft solid waste management plan that has been ratified in accordance with the criteria established in Division (B) of ORC Section 3734.55 to the director of Ohio EPA to be reviewed for compliance with Divisions (A), (B), (D), and (E)(1) of ORC Section 3734.53.
7. On March 1, 2010, Ohio EPA received a ratified, draft, amended solid waste management plan from the District's Policy Committee.
8. For the reasons contained in the Statement of Deficiencies which is included as Attachment 1 to these Orders, the director has determined that the District's ratified, draft, amended solid waste management plan is not in compliance with Division (A) of ORC Section 3734.53.

V. ORDERS

1. The District's ratified, draft, amended solid waste management plan is hereby disapproved.
2. In accordance with Division (C) of ORC Section 3734.55, the District's policy committee shall submit a revised, ratified solid waste management plan to the director that remedies the deficiencies specified in Attachment 1 within ninety (90) days after the effective date of these Orders.

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

VII. NOTICE

All documents required to be submitted to Ohio EPA by the District pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Solid and Infectious Waste Management
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43215-1049
Attn: Deb Hoffman

VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against the District for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the District to perform additional activities pursuant to ORC Chapter 3734 or any other applicable laws in the future. Nothing herein shall restrict the right of the District to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the District. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations which may occur.

IX. EFFECTIVE DATE

The effective date of these Orders is the date the Orders were entered into the Ohio EPA Director's Journal.

IT IS SO ORDERED:



Chris Korleski, Director
Ohio Environmental Protection Agency

Attachment 1 to the Findings and Orders

Statement of Deficiencies for the SouthEastern Ohio Joint Solid Waste Management District's Ratified Draft Solid Waste Management Plan Update

The ratified draft solid waste management plan update (Ratified Plan) for the SouthEastern Ohio Joint Solid Waste Management District (District) does not meet the requirements of Ohio Revised Code (ORC) Section 3734.53(A). Some of the deficiencies that were found in the Ratified Plan and which are discussed in these comments were also discussed in Ohio EPA's nonbinding advisory opinion, issued on February 13, 2009, concerning the District's draft solid waste management plan update (Draft Plan).

The deficiencies that are identified in this Statement of Deficiencies identify the key elements of the Ratified Plan which must be addressed prior to re-ratifying and re-submitting the solid waste management plan update to Ohio EPA. Following each deficiency is a suggested remedy for addressing the deficiency. All references to the "Format" refer to the *District Solid Waste Management Plan Format*, version 3.0, issued in 1996.

Measurement of Progress Towards Waste Reduction Goals (Section VII)

Statutory/Regulatory Authority

According to ORC Section 3734.53(A), "The solid waste management plan of any county or joint solid waste management district shall...provide for compliance with the objectives of the state solid waste management plan and rules adopted under section 3734.50 of the Revised Code."

Ohio Administrative Code (OAC) Rule 3745-27-90 codifies the objectives of the *1995 State Solid Waste Management Plan (1995 State Plan)*.

According to OAC Rule 3745-27-90(E), "The solid waste management plan shall demonstrate compliance with paragraph (E)(1) or (E)(2) of this rule." The District has attempted to demonstrate compliance with OAC Rule 3745-27-90(E)(1) in its Ratified Plan. OAC Rule 3745-27-90(E)(1) codifies the requirements established by Goal #1 of the *1995 State Plan*. This rule prescribes that a solid waste management plan must demonstrate that the solid waste management district will:

- Meet a residential standard by making available sufficient recycling opportunities to provide at least 90 percent of the residential population in each county in the solid waste management district access to recycling opportunities that collect at least four materials designated as highly amendable to recycling and recovery programs;
- Meet a participation standard by providing education and awareness strategies for each program or activity that is used to meet the access standard; and
- Either provide or evaluate the feasibility of providing financial incentives to increase participation in the programs and activities used to meet the access standard.

OAC Rule 3745-27-90(B)(3) requires solid waste management plans to “Be prepared in a format prescribed by the director in accordance with division (A) of section 3734.53 of the Revised Code.” At the time the District was required to begin preparing its solid waste management plan update, the “format prescribed by the director” was version 3.0 of the *District Solid Waste Management Plan Format*.

The relevant portions of the *Format* for demonstrating compliance with Goal #1 are summarized in the following bulleted points:

- Section III.E. -This section of the *Format* requires the solid waste management plan to provide information regarding the existing recycling programs and activities available to residents and businesses during the reference year. This information is to be organized into Tables III-4 and III-5. Table III-5 is required to contain information about the drop-off recycling locations that were available in the District during the reference year.
- Section IV.E.1 - This section of the *Format* requires the solid waste management plan to provide a detailed discussion of the existing waste reduction activities in the solid waste management district, assess the strengths and weaknesses of existing programs, and provide the following information for each program and strategy:
 - entity responsible for maintaining the program;
 - service area which benefits;
 - amount and type of material reduced and/or recycled, if applicable; and
 - discuss all assumptions associated with future projection of quantities recovered or reduced.

- Section V.E - This section of the *Format* requires the solid waste management plan to describe each new waste reduction strategy that will be implemented by the solid waste management district and changes to existing strategies that will take place during the planning period. The *Format* provides a structure for organizing this discussion and prescribes the information that is to be provided for each strategy.
- Section VI.C - This section of the *Format* requires the solid waste management plan to provide a table, Table VI-5, that lists the schedules for all programs to be implemented by or on behalf of the solid waste management district.
- Section VII.B. - This section of the *Format* requires the solid waste management plan to provide a demonstration of compliance with Goal #1. This section further prescribes the default population credits that the solid waste management district can receive for recycling opportunities.

**Deficiency: Failure of the Ratified Plan to Satisfactorily
Demonstrate Compliance with Goal #1**

The District's Ratified Plan was prepared with the intention of demonstrating that the District will achieve compliance with Goal #1 of the *1995 State Plan*. To this end, Tables VII-2-1 through VII-2-6 indicate that the District will provide sufficient access to recycling opportunities in each of the six counties by 2012. However, the demonstrations for Guernsey, Morgan, Muskingum, and Noble Counties are deficient, primarily due to inaccurate information in the Ratified Plan regarding the number, type, locations, and materials accepted at the drop-off recycling centers available in the four Counties. The remaining two counties also contain errors that should be corrected to ensure that all of the Tables in Section VII are accurate. The Ratified Plan also fails to demonstrate compliance with the participation standard of Goal #1. The deficiencies listed below have been separated into three areas of detail: designated materials, access credits, and participation standards.

Part I. Designated Material Deficiency

Instructions on pages 56-58 of the *Format* require all drop-offs to collect four designated materials for the residential sector, either individually or in combination with other drop-offs in the service area. The Ratified Plan designates glass, steel, aluminum and plastic for the residential sector. In several instances, the drop-offs identified in Tables VII-2-1

through VII-2-6 do not take the four materials designated in the Plan. For example, in Muskingum County, Confidential Mobile Shredding does not take any of the four designated materials. (However, they do take three other materials that are identified in the *Format*.) Similarly, in Guernsey County, the business SE Diversified does not take any designated material.

This issue is compounded by the fact that the Ratified Plan is inconsistent in what materials are accepted at various drop-off locations. For example, Table III-5 indicates that SE Diversified accepts glass, plastic, bi-metal, aluminum, cardboard, newspaper, and miscellaneous paper. Section IV reports that SE Diversified takes cardboard and newspaper. In Table VI-5, the Ratified Plan indicates that the location accepts glass, plastic, metals, papers, cardboard, and aluminum. When contacted by phone, SE Diversified told Ohio EPA they take only newspaper.

Remedy to Designated Material Deficiency

As indicated in Section VII of the *Format*, all drop-off locations included in Tables VII-2-1 through VII-2-6 of the Ratified Plan must collect the four materials designated in Table VII-1 of the Plan, either individually or in combination with other drop-off locations within the service area. As an alternative that may provide more flexibility to the District in making the demonstration, the District could utilize the access standard provided for in the *2001 State Solid Waste Management Plan*. Under that standard, each drop-off does not need to take all four designated materials as long as they accept any five materials from the list provided in the *2001 State Plan*. Contact Ohio EPA for additional information about this option.

Additionally, the Plan must be accurate and consistent in identifying the materials accepted at each drop-off location utilized to meet the access goal (Goal #1).

Part II. Access Credit Deficiency

Due to the inconsistencies in the information in the Ratified Plan regarding the drop-off locations, materials accepted, etc., Ohio EPA attempted to verify the information through telephone calls, site visits, and reviewing the District's website. Through this review Ohio EPA determined that a number of the drop-off sites identified by the District do not meet the standards for creditable drop-offs. For example, a telephone call to Zane Paper Exchange combined with a visit by Ohio EPA staff revealed that this business is no longer accepting recyclables.

Ohio EPA's review was further hampered by inconsistencies in the information in different sections within the Ratified Plan, as well as inconsistencies between the Ratified Plan and information on the District's website. For example, the website does not include a drop-off at Fairview Township in Guernsey County that is identified in the Ratified Plan. Conversely, there are multiple drop-offs listed on the website for Washington County that are not included in the Ratified Plan.

The following provides more detail about the deficiencies in each county:

Guernsey County

- Two of the full-service drop-offs located in Cambridge are actually at the same location (the Armory Parking Lot). The District has counted 5,000 credit for each when they should only collectively count as 5,000 population credit.
- One business (SE Diversified) listed does not accept any designated materials – it takes only newspaper. Therefore this location does not qualify as a creditable drop-off.
- One business (Guernsey Scrap) accepts only 2 of the designated materials. This will remove any access credit for this business.
- While not a deficiency, it is noted that three part-time drop-offs are scheduled to end by 2012. This will eliminate 7,500 of population credit.
- Based on the points above, Guernsey County demonstrates access to only 72.2 percent by 2012.

Morgan County

- The Morgan Township, MBA drop-off location does not meet the requirements of the "participation standard" described on pages 60 and 61 of the *Format*. Specifically, this site is located in the fenced, gated parking lot of a private business. The participation standard requires the District to make available information to residents regarding the availability of all drop-off locations utilized to meet the Access Goal. This location does not appear on the District's web site and Ohio EPA observed no signs at the location that would indicate to residents that the drop-off is available to receive recyclables from anyone other than employees of the business. No other information is provided in the Ratified Plan to indicate how residents are made aware that this site is available for public use. Therefore, this location does not meet the participation standard. This will eliminate 2,500 of population credit.
- While not a deficiency, it is noted that two part-time drop-offs are scheduled to end by 2012. This will eliminate 5,000 of population credit.

- Based on the points above, Morgan County demonstrates access to only **83.1** percent by 2012.

Muskingum County

- The sites listed as the Muskingum County MRF and the Washington Township (EMA) drop-offs are at the same location. This will eliminate 2,500 of population credit.
- The Muskingum County MRF can only receive credit for the population of the township. This will reduce the 5,000 in population credit down to 2,500.
- One business (Zane Paper Exchange) is no longer accepting recyclable material from the public. This will eliminate any access credit for this location.
- Another business (Confidential Mobile Shredding) does not accept any of the four materials that have been designated in Table VII-1 of the plan. It does appear to accept three materials, but none of them are designated. This will eliminate any access credit for this location.
- The two businesses (Muskingum Iron and Polk Iron & Metal) accept only the same two designated materials each. This removes any access credit for these businesses.
- Based on the points above, Muskingum County demonstrates access to only **83.3** percent by 2012.

Noble County

- One drop-off location listed (Noble Correctional Institute) provides recycling access only to the institution and not to the public. This will eliminate 2,500 of the access credit.
- While not a deficiency, it is noted that one part-time drop-off is scheduled to end by 2012. This will eliminate 2,500 of population credit.
- Based on the points above, Noble County demonstrates access to only **83.6** percent by 2012.

Remedy to Access Credit Deficiency

To properly remedy the deficiencies discussed above, the District may need to make changes to which drop-offs are scheduled to end; will have to clarify and/or adjust the materials accepted at certain sites; and will have to ensure that the listed businesses are indeed accepting recyclable materials from residents (and the sites meet the participation standard by providing information to residents on the location of these sites). The following list provides options to fix access deficiencies in each of the problem counties:

Guernsey County

- Option #1: The District can choose to not eliminate the three part-time drop-offs that are scheduled to end by 2012. This will return 7,500 of the access credit and the percentage will be 90.2 for the county.
- Option #2: The District could move one of the mobile drop-offs in the Armory Parking Lot to another distinctly different location in Cambridge and retain one of the part-time drop-offs scheduled to close. This would also arrive at 90.2 percent access for the county.

Morgan County

- The District can choose to not eliminate one of the two part-time drop-offs that are scheduled to end by 2012. This will restore 2,500 of the access credit and will result in 99.5 percent access for the county.

Muskingum County

- The District will need to move the drop-off located at the Muskingum County EMA office to another location that is distinctly different than any other drop-off location if it wants to receive access credit for the location. If outside of Zanesville city limits, this will add 2,500 in access credit. Additionally, the District included a business (Muskingum Starlight) in the Draft Plan, but did not include it in the Ratified Plan. If this business accepts the four designated materials, then this site could also be included in the demonstration, and the county would receive 91.7 percent access credit.

Noble County

- If the District does not eliminate the one full-service rural drop-off that is scheduled to end, the county will receive 100.3 percent access credit.

Monroe and Washington County

While these counties do provide access to more than 90 percent of the population, the District should correct some errors in the Access Tables. For Monroe County, a conversation with the District coordinator and evaluation of the website revealed that the District claims two part-time drop-offs for the same location because it is serviced twice a month. Table VII-2-2 should list this same location only once.

In Washington County, the District listed a recycling center (ReBay Recyclers) as receiving 5,000 in access credit while this location is outside of the incorporated limits of Marietta, therefore should receive 2,500 in population credit. Additionally, a drop-off

location at a rest area is erroneously given credit for a combination of township populations. The District should correct these errors to properly report recycling access in Table VII-2-6.

Part III. Participation Standard Deficiency

As stated previously, the *Format* requires the District to demonstrate meeting a participation standard through adequate educational efforts and through providing financial incentives (or evaluating the feasibility implementing education programs to promote these types of programs). Instructions on pages 60 and 61 of the *Format* detail what information needs to be provided in a solid waste management plan in order for the District to satisfy the participation standard for Goal #1. The District's narrative in Section VII does not address the participation standard.

There isn't enough information in the program descriptions in Sections IV and V to determine if the District's existing education and outreach programs are sufficient to meet the participation standard. Also, the Ratified Plan contains no descriptions of new programs or changes to existing programs that will result in providing necessary education and outreach. For instance, the description for how the District meets Goal 4 in Section V on page 4 mentions that "The District has also developed a website for the six county area. The purpose of the website is to keep the residents updated on the District's activities and upcoming events, as well as the activities of the District's programs." However, as described below, the web site does not contain the information required to meet the participation standard.

In order to meet the education portion of the participation standard, the *Format* specifies that the solid waste management district must explain how information will be provided to residents and the information provided must include "...instructions for using recycling opportunities, including preparation of materials, schedule for the availability of sites/curbside pickup, and the location of drop-off sites". Ohio EPA reviewed the District's website to see if the website could satisfy the participation requirements. While the website does list many of the drop-offs that are in the Ratified Plan, it does not provide enough information to satisfy the requirements detailed in the *Format*. For example, the website does not provide information about days or hours that the part-time drop-offs are available, the materials that are accepted at each drop-off, or specific location information, such as addresses. In addition, as was mentioned in earlier comments, there are discrepancies between the drop-offs listed on the website and those in the Ratified Plan.

The Ratified Plan does not make any mention of financial incentives nor does it provide any analysis of the feasibility for the District to develop programs incorporating financial incentives or to provide education on financial incentives.

Remedy to Participation Standard Deficiency

For the revised Ratified Plan, the District must describe how it will satisfy the participation portion of Goal #1. This description must specifically explain how the District will inform residents of the drop-offs, as indicated on page 61 of the *Format*. If the District already has a program that provides residents with all of the information specified in the *Format*, then include a full description of that program in Section IV and refer to that description in Section VII. If the District does not have a satisfactory program, then the District must develop a strategy for providing the necessary information. As long as that program is fully described in Section V, then the text in Section VII can refer to that description. If the District intends to provide the necessary information via its website, then the District must explain in Section V how the website will be updated to include missing information.