

Proposal

Ohio Solid Waste Management Review

Solid Waste Management District (SWMD) Plan Development Cycle Revisions

DRAFT

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Introduction

Solid waste planning remains a core function of Ohio's 52 Solid Waste Management Districts (SWMDs). Under current law, a SWMD's policy committee is required to prepare and submit a revised draft solid waste management plan to Ohio EPA every three or five years after the current plan was approved. After submitting the draft plan to Ohio EPA for review, the policy committee follows a fairly elaborate process of revising the plan, seeking public input, and seeking local approval of (i.e. ratifying) the plan. Once that process has been completed, the policy committee submits the plan to Ohio EPA for review and approval.

The changes proposed in this document are intended to simplify the process and shorten the amount of time SWMDs spend on plan development.

Ohio EPA is also proposing a significant change in the order of local ratification and Ohio EPA approval to avoid issues associated with disapproved plans. Currently, after Ohio EPA disapproves a SWMD's plan, the policy committee has the ability to revise the disapproved plan and resubmit it to Ohio EPA for approval. In doing this, the policy committee has to seek local approval a second time prior to submitting the revised plan to Ohio EPA. This process can be expensive and time consuming. Ohio EPA's proposal would eliminate these issues, significantly streamlining the process.

Ohio EPA intends to implement these changes to the planning cycle along with a significantly revised version of the District Solid Waste Management Plan Format, currently version 3.0 (Format).

It should also be noted that Ohio EPA is in the process of developing a number of other proposals regarding various aspects of solid waste management and SWMDs. For example, Ohio EPA is currently developing a proposal to revise the statute governing the content of plans. It is possible that further revisions to the proposal in this document will be made as other proposals are developed and finalized.

Code References

Much of the planning cycle is codified in Ohio Revised Code (ORC) sections 3734.54 – 3734.56. This document also refers to ORC section 3734.573(B) in relation to the impacts that generation fees have on ratification requirements. SWMDs are established pursuant to ORC chapter 343 and section 3734.52.

History and Current Plan Development Process

The planning cycle was established in House Bill 592 in 1988 and has not been significantly changed since that time. While the majority of SWMDs are able to complete the process of updating their plans with no complications, there have been instances of SWMDs missing their statutorily required deadlines. When a SWMD misses its deadline to obtain an approved plan update, Ohio EPA is required to authorize the District's plan update. There also have been incidences of Ohio EPA disapproving plan updates due to unresolved deficiencies. Since the inception of the program, Ohio EPA has disapproved 11 plans and written nine plans (including one currently being written) as a result of SWMDs failing to meet statutory deadlines.

Under the current system, a SWMD can operate under one of two update cycles: a plan that covers less than 15 years must be updated after three years, and a plan that covers 15 or more years must be updated after five years. The SWMD's policy committee is responsible for developing the draft plan and must begin preparing the draft plan 15 months before the draft update is due to Ohio EPA (as specified in ORC section 3734.56(A)). Once it completes the draft plan update, the policy committee certifies the draft plan update and submits it to Ohio EPA for review.

Ohio EPA has 45 days to review the plan for accuracy and compliance with the goals established in the state solid waste management plan (State Plan). The plan must also meet all the requirements of the Format. Upon completing the review, Ohio EPA issues a non-binding advisory opinion (NBAO) explaining any concerns and any 'key deficiencies' that, if not corrected, could result in Ohio EPA disapproving the plan (see ORC 3734.55(A)).

Upon receiving the NBAO, the policy committee may make changes to the draft plan update. The policy committee must then provide a public comment period of at least 30 days and hold at least one public hearing. Upon concluding the public comment period and public hearing, the policy committee may make additional changes based on comments received. Once the policy committee has made changes, it certifies the plan as 'final'. Once the plan has been certified, the policy committee has 30 days to distribute the draft plan to all local jurisdictions for ratification. The local jurisdictions have 90 days within which to approve or disapprove the certified plan.

While the requirements to obtain a ratified plan vary by the number of counties in the SWMD and the dollar amount of a generation fee (see ORC sections 3734.55(B) and 3734.573(C) for more details), a policy committee must receive approval of the plan update from the county commissioners, the largest municipality(ies), and jurisdictions representing at least 60 percent of the SWMD's population.

Once the plan is ratified, the policy committee certifies that the plan was ratified properly and submits the plan to Ohio EPA for review and approval. Ohio EPA reviews the plan to ensure that any key deficiencies have been resolved and that the plan update was properly ratified. If Ohio EPA approves the plan update, the SWMD begins operating under the newly approved plan.

If Ohio EPA disapproves the ratified plan, then the policy committee has the ability to revise the plan, re-ratify the plan, and resubmit it to Ohio EPA for approval.

Discussion

Interested parties raised issues associated with the planning cycle several times throughout Phases I and II of the Ohio Solid Waste Management Review. The Organization of Solid Waste Districts of Ohio (OSWDO) and individual SWMDs made several of the recommendations that are discussed in this proposal. There was general agreement that the current process provides ample opportunities for public participation but is unnecessarily cumbersome in some ways.

Ohio EPA is also seeking ways to modify the process in a manner that creates flexibility for SWMDs while keeping solid waste management plans meaningful, accurate, and relevant. To accomplish this, Ohio EPA is proposing changes to the process to streamline it and reduce potential problems associated with disapproved plans.

OSWDO and the County Commissioners Association of Ohio (CCAO) recommended some of the proposed changes in a document those organizations jointly submitted to Ohio EPA. Several of these ideas were discussed during the Ohio EPA/SWMD Workgroup meeting that was held on August 2, 2012. At a similar meeting on November 1, 2012, Ohio EPA presented a rough proposal which was then discussed. The proposal discussed in this document closely mirrors that earlier proposal but does contain some additional proposed changes.

Proposed Changes

1. Have all SWMDs write plans with 10-year planning periods;
2. Eliminate the statutory start date (currently 15 months before draft is due to Ohio EPA);
3. Move the final approval deadline to 14 months after draft plan due date (from the current 18 months);
4. Expand the period for Ohio EPA's review of the draft plan period to 60 days (from 45);
5. Have Ohio EPA issue a contingent approval *before* local ratification (currently happens after ratification);

6. Clarify public noticing requirements during public comment period (only one notice required);
7. Establish the final approval deadline at 5.5 years from last approval (currently ranges between 4.5 years and 6.5 years);
8. Allow a “for cause” extension of deadlines of up to 60 days, with written approval from Ohio EPA’s Director (currently no option exists for an extension); and
9. Allow a SWMD’s policy committee to make non-substantive changes to its plan in the third year of the planning period. The policy committee could make these changes without going through local ratification and with a greatly simplified Ohio EPA approval process.

Various visual aids comparing the old system to the proposed cycle are included at the end of this proposal.

Explanation and Justification

10-year planning periods

Currently, SWMDs can operate under solid waste management plans that cover less than 15 years (typically 10 years) or plans that cover longer periods of time (typically 15 years). It is universally agreed that it is impossible to accurately project population, waste generation, revenues, expenses, etc. beyond 10 years. In fact, when SWMDs make projections for these data beyond five years, they do so with a significant amount of uncertainty. Therefore, Ohio EPA sees no point in having SWMDs develop plans for more than a 10-year planning period. As a result, Ohio EPA is proposing that all SWMDs write 10-year solid waste management plans.

Removing the statutory start date

The ORC currently requires the SWMD’s policy committee to begin preparing its plan update 15 months prior to the date the draft update is due to Ohio EPA. Ohio EPA sends letters reminding policy committees of this date and their responsibilities. However, Ohio EPA does not believe that this formal statutory start date is necessary. Furthermore, Ohio EPA has no practical way to monitor whether a policy committee actually begins drafting its plan update by that deadline.

For various reasons, a policy committee may choose to begin preparing its plan update prior to or after the 15-month date. Ohio EPA believes that the policy committee should retain this discretion. Removing this statutory requirement will allow a policy committee to determine the best time to begin preparing its plan update. Ohio EPA will continue to send reminder letters 15 months prior to the date the draft plan is due to the Agency. However, as is explained under the next heading, Ohio EPA is proposing changes to

the plan update cycle that will allow most SWMDs to complete their draft plan updates in 12 months.

Change “plan approval cycle” from the current 18 months to 14 month

As indicated previously, the plan development process involves a number of steps, ultimately resulting in a “final” plan being submitted to Ohio EPA for approval. The statute is currently written in a manner whereby deadlines are calculated relative to when a previous solid waste plan was approved, and, in some cases relative to other deadlines in the process. For example, currently, the policy committee must receive approval of its plan update no later than 18 months after the draft plan is due to Ohio EPA. This essentially sets up an 18 month process to go from the draft stage to final approval.

After analyzing the current planning cycle, Ohio EPA believes that most policy committees can normally complete the 18-month process in about 13 months, five months sooner than currently structured. In addition, Ohio EPA is proposing changes to the process that will allow a policy committee to accomplish the cycle in as few as 12 months. However, Ohio EPA is proposing to incorporate a 60-day “cushion” to give the policy committee time to address unusual circumstances. This cushion would reduce the plan approval and ratification cycle 14 months. These changes will affect the date by which a policy committee needs to submit a draft plan update to Ohio EPA and the final deadline for receiving approval from Ohio EPA. These changes are explained later in this document.

Extending Ohio EPA’s period to review the draft plan and issue the Non-Binding Advisory Opinion (NBAO)

Numerous SWMDs have requested greater feedback and participation from Ohio EPA during the plan development process. As one way to allow for better input from Ohio EPA, The Agency is proposing to extend the timeframe for issuing an NBAO from the existing 45 days to 60 days. Currently, when a policy committee submits a draft solid waste management plan to Ohio EPA for review, Ohio EPA has 45 days to review the data, projections, analyses, programs, budget, etc. in the plan. After the review, Ohio EPA compiles any noted issues into the NBAO and provides the NBAO to the SWMD’s policy committee for its consideration.

With an additional 15 days, Ohio EPA will be able to provide a more thorough review of the draft plan and provide greater assistance to the policy committee before issuing the NBAO. Ohio EPA will be able to provide more effective advice to the policy committee to ensure that the ratified plan update meets the requirements. This will further reduce

the possibility that Ohio EPA will encounter issues when the policy committee submits the ratified plan to be approved by Ohio EPA.

*Ohio EPA contingent approval **prior** to local ratification*

Currently, after Ohio EPA reviews a draft plan and issues an NBAO, a SWMD's policy committee may make revisions based on the Ohio EPA comments. Next, the policy committee provides for a public comment period, holds a public hearing, performs the local ratification process, and submits the ratified plan to Ohio EPA for review and final approval.

Under this system, Ohio EPA's only formal interaction with the plan update prior to ratification is during the Agency's review of the draft. If Ohio EPA identifies a "key deficiency" and the policy committee does not correct the deficiency, then Ohio EPA is forced to disapprove the ratified plan even though local jurisdictions approved the plan.

When Ohio EPA disapproves a plan (for any reason), one of the most common complaints the Agency receives from SWMDs is the need to go back through the local ratification process. For a large SWMD, this process can be time and energy intensive and can entail notable expenses. This proposal would switch the final two steps (ratification and Ohio EPA approval).

Under this scenario, after receiving an NBAO, the policy committee would go through the revision process and public input process as it does now. Instead of sending the plan directly to local jurisdictions for ratification, the policy committee would send the plan to Ohio EPA for approval. Ohio EPA would issue a conditional approval that would become effective once the policy committee achieves local ratification. Upon receiving that conditional approval, the SWMD would then distribute the 'approved' plan for local ratification. Once the policy committee certifies that the plan was ratified (and submits a copy of the certification statement to Ohio EPA), Ohio EPA's approval would become effective.

If Ohio EPA disapproves the draft plan, then the Agency will advise the policy committee regarding how to correct the draft plan. The policy committee would then have the opportunity to revise the plan and resubmit it Ohio EPA for approval.

This change provides several benefits. It ensures that localities will always be voting on a plan update that Ohio EPA has already declared as meeting the state requirements. This change also greatly reduces the cost and effort associated with revising a disapproved plan. Under the new approach, the policy committee will have an opportunity to make further changes to the draft plan and resubmit it to Ohio EPA for approval without having to duplicate the ratification process.

Clarify that only one public notice is required during the public comment period

Currently, the statute is unclear regarding whether the policy committee is required to issue separate public notices for the public comment period and the public hearing or if the policy committee can issue one notice for both the comment period and the hearing. Ohio EPA will clarify the statute to require the policy committee to release only one public notice.

As another issue, there are situations in which a policy committee will make changes to a draft plan that are not in response to comments received during the public comment period. Currently, the statute is not clear regarding whether the policy committee must hold a second public comment period in those situations. Ohio EPA proposes to clarify the statute to require a policy committee to conduct a second public comment period when a policy committee makes substantive changes to the plan that are not the result of comments received during the original comment period.

Require final plan approval no later than 5.5 years from last approval date, and draft plans due to Ohio EPA no later than 4.3 years (4 years 4 months) from last plan approval.

Under the current system, a policy committee has the option of deciding whether to update its plan on a three or five year cycle based on how many years will be in the planning period. If the current approved plan covers a planning period of less than 15 years, then the SWMD's policy committee must submit a draft update to Ohio EPA three years after the approval date. If the current approved plan covers a planning period of 15 or more years, the policy committee must submit the draft update five years after the approval date. Factoring in the 18 month window SWMDs have to receive final approval after submitting the draft, the result is a timeframe of either 4.5 years or 6.5 years between plan approvals.

Ohio EPA believes that a 6.5-year planning cycle does not match the constantly changing environment in the modern day solid waste field. However, Ohio EPA also recognizes that a 4.5 year cycle can result in constant planning (since a new plan is due every 3 years). If the SWMD is constantly planning, it may not have enough time to implement programs and measure results before decisions must be made whether to continue existing programs. By removing the statutory start date and streamlining the process, Ohio EPA believes a 5.5-year planning cycle will provide SWMDs with the flexibility to adapt to changing conditions and still allow for adequate time to implement the current plan before beginning revisions.

Similar to the concept of having all SWMDs write 10-year plans, placing all SWMDs on a 5.5-year planning cycle also simplifies the process, promotes efficiency at the state level, and provides consistency for all stakeholders in the system.

To summarize, under this proposal, all SWMDs would be required to submit a draft plan to Ohio EPA no later than four years and four months (52 months) from the most recent plan approval and receive approval of its plan update no later than five years and six months (66 months) from the date the most recent plan was approved.

As indicated below, a SWMD's policy committee could receive a 60-day extension from either or both the draft plan and final plan due dates for justified cause.

“For Cause” extension of up to 60 days

While deadlines are important to ensure that all entities involved are devoting necessary resources to the process to keep making progress, Ohio EPA understands that a policy committee can encounter legitimate, unforeseen hurdles in a process as open and inclusive as the plan update process. Currently, Ohio EPA is able to issue an extension only when the Agency disapproves a SWMD's plan. Under the current statute, if a SWMD's policy committee misses the final approval deadline (without Ohio EPA first disapproving the plan), Ohio EPA is required to write a solid waste plan for the SWMD and order the SWMD to implement Ohio EPA's plan. Ohio EPA believes that local SWMDs know their communities best. If a SWMD demonstrates a willingness and ability to complete its plan within a limited amount of additional time, Ohio EPA would like the ability to grant such an extension.

Ohio EPA's proposal is to give a SWMD's policy committee the ability to request extensions to both the draft plan due date and the final plan approval deadline of up to 60 days for cause. Ohio EPA would have the discretion to either approve or disapprove an extension request.

Allow for a one-time, streamlined, “Non-substantive Plan Adjustment” in the middle of the plan cycle

Ohio EPA strongly believes that the solid waste plan development process provides great value in terms of creating a structure and timeframe for analysis, public input, and decision-making for SWMDs. However, there is a balance between having plans that are well researched, meaningful and relevant and retaining flexibility for the SWMD given uncertainties and changing circumstances. In Ohio EPA's experience, it is possible for a policy committee to write a solid waste management plan that remains relevant, accurate, and meaningful for about three years. However, it becomes

increasingly difficult to do so for a period of four or five years without diluting and generalizing the plan to the point where it is no longer meaningful.

At the same time, SWMDs have expressed their desire to spend less time on developing plans, more time on implementing plans, and to have more flexibility. In general, Ohio EPA agrees with this. Therefore, Ohio EPA intends for this proposal to accomplish multiple goals.

Under the new approach, for an eighteen-month window beginning two and a half years from plan approval and ending four years after plan approval, a policy committee could draft non-substantive changes to the programs and budget contained in the approved plan, provide the public the ability to comment on the proposed changes (and make revisions based on public comment), and then submit these changes to Ohio EPA for concurrence. Examples of non-substantive changes would include adjustments to recycling infrastructure (i.e. drop-off locations), frequency of special collection events, minor budgetary adjustments, and adding, adjusting, or eliminating non-critical programs. Changes to fee levels, eliminating or adding core programs, etc. would still require a full plan amendment.

After finalizing the proposed changes, the policy committee would submit them to Ohio EPA for review. Within 30 days, Ohio EPA would either issue a letter of concurrence or disapprove the proposed changes. Ohio EPA would be authorized to disapprove these proposed changes if the Agency deems the changes to be substantive in nature. In addition, local interested parties could submit comments to Ohio EPA if those parties believed that the changes constituted substantive changes.

If the changes are disapproved, then the policy committee would have one opportunity to revise the changes and resubmit them to Ohio EPA for approval. The process would allow a policy committee to make minor changes to programs and budget items without going through an elaborate local ratification or Ohio EPA review process.

If the policy committee wants to make the proposed, substantive changes that were disapproved by Ohio EPA, then the policy committee could initiate a full plan revision at any time during the planning period (as is currently possible under the existing statute).

Questions and Comments

Ohio EPA will accept comments on this draft proposal until 5:00pm on **Monday, April 1, 2013**. Questions should be directed to Ernie Stall at (614) 728-5356 or ernest.stall@epa.state.oh.us. Interested parties can submit written comments either electronically at ernest.stall@epa.state.oh.us or as hard copy at the following mailing address:

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Ohio EPA/DMWM
Attn.: Ernie Stall
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The following is a simple description of the general process, providing a comparison between the current process and the proposed changes:

Current Plan Development Cycle	Proposed Plan Development Cycle
Adopt Draft Plan	Same
Submit to OEPA for Review/Receive NBAO	Same
Public Comment Period/Hearing	Same
Ratification	Submit to Ohio EPA for Approval
Submit to Ohio EPA for Approval	Ohio EPA Contingent Approval or Disapproval*
Ohio EPA Approval/Disapproval*	Ratification
	Notify Ohio EPA of successful ratification
*If Disapproved:	*If Disapproved:
Revise Plan and Re-Ratify	Revise Plan and Submit to Ohio EPA for Contingent Approval
Submit to Ohio EPA for Approval	Ratification
	Notify Ohio EPA of successful ratification
Absolute Deadline for Plan Approval from Ohio EPA	60-day extension possible “for cause” from plan approval deadline

A more detailed chart with timeframes and comments is on the next page

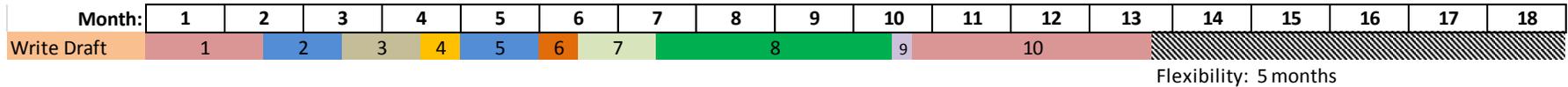
Current Plan Development Cycle		Proposed Plan Development Cycle		Comments
Plan Development Step	Timeframe	Plan Development Step	Timeframe	
Submit Draft Plan		Submit Draft Plan		
EPA Review	45	EPA Review	60	Change from 45 to 60 days
Change Plan	30	Change Plan	30	
Comment Period	30	Comment Period	30	
Public Hearing	15	Public Hearing	7	No actual change here other than clarification that you can have hearing immediately at end of comment period, w/ one public notice covering everything
Make Changes	30	Make Changes	30	
Adopt Plan	15	Adopt Plan	15	
Deliver to Local Jurisdictions for Ratification	30	Submit Final to Ohio EPA	7	
Ratification	90	Ohio EPA Review	60	Change from 90 to 60 days
Submit Final to Ohio EPA	7	Deliver to Local Jurisdictions for Ratification	30	
Ohio EPA Review	90	Ratification	90	
		Deliver to Ohio EPA	7	
Total Time	382		366	

**Red indicates non-statutory timeframes (estimates), and black indicates statutory timeframes

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Current SWMD Plan Development Cycle

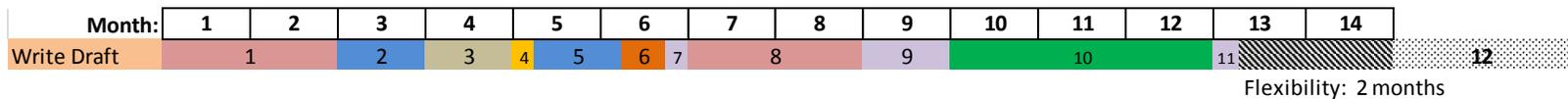
Required start: 15 months before draft due
 Draft Due: 18 months before final approval deadline



- | | |
|---|---|
| 1: Non-Binding Advisory Opinion (45 days) | 6: Policy Committee approves final version (15 days) |
| 2: Policy Committee makes changes (30 days) | 7: Final distributed to communities (30 days) |
| 3: Public Comment Period (30 days) | 8: Ratification (90 days) |
| 4: Public Meeting (15 days) | 9: Certification by Policy Committee/Transmittal to Ohio EPA (7 days) |
| 5: Policy Committee makes changes (30 days) | 10: Ohio EPA Approval (90 days) |

Proposed SWMD Plan Development Cycle

Required Start: None
 Draft due 14 months before final deadline



- | | |
|--|---|
| 1: Non-Binding Advisory Opinion (60 days) | 7: Transmittal to Ohio EPA (7 days) |
| 2: Policy Committee makes changes (30 days) | 8: Ohio EPA Approval (60 days) |
| 3: Public Comment Period (30 days) | 9: Transmittal to local communities (30 days) |
| 4: Public Meeting (7 days) | 10: Local Ratification (90 days) |
| 5: Policy Committee makes changes (30 days) | 11: Certification by Policy Committee, Inform Ohio EPA (7 days) |
| 6: Policy Committee approves final version (15 days) | 12: Possible 60-day extension |