

# Operation & Maintenance Plan Oversight Guidance



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# O&M Plan Oversight Guidance



- O&M Plans and O&M Agreement's generally obligate Volunteers (or other identified parties) to perform ongoing operations and/or ongoing maintenance of a remedy as a condition of their CNS.
- OAC Rule 3745-300-11 – the remedy rule
- The remedy may be an indefinite obligation such as maintenance of a concrete barrier, or a more finite obligation such as an obligation to monitor contaminants in groundwater for a period of time to demonstrate that the property achieves compliance with VAP applicable standards post remedy.

# O&M Plan Oversight Guidance



- Reporting is required by statute and by rule to demonstrate that the obligations under the O&M Plan have been performed –
  - ❖ ORC Section 3746.12(A)(2)(a),
  - ❖ OAC 3745-300-11(A)(4) and
  - ❖ OAC 3745-300-11(E)(4)(a)(iii)

# Reporting...



- The O&M Plan reporting requirements for each site will be specified in the O&M Plan
- Reporting O&M obligations may require documenting effectiveness of a remedy, or verifying that the remedy is still operating to meet an applicable standard.

# O&M Plan Reports



- The O&M Plan Report includes:
  - ❖ a property inspection
  - ❖ financial assurance verification or financial assurance changes
  - ❖ sampling results as applicable

May include remedy modifications or changes as may be necessary, proposed, or contemplated in the O&M Plan and under the O&M Agreement.

# O&M Reporting Periods



- Generally there are two options for annual reporting:

- 1) A calendar year with a report date of March 1 following the end of the reporting period

Example: Calendar year (Jan. 1<sup>st</sup> -Dec. 31<sup>st</sup>) 2013 – O&M Plan Reporting period  
O&M Plan Report is due March 1, 2014

- 2) Or the alternative reporting year with a report date of September 1 following the end of the reporting period

Example: Alternative year (July 1<sup>st</sup> – June 30<sup>th</sup>) – O&M Plan Reporting period  
O&M Plan Report is due September 1, 2014

- All CNS sites have agreed to one of these two schedules, although a few sites have not had their reporting period formally changed in the O&M Plan or O&M Agreement.

# Oversight of O&M Reporting



- Emily Patchen is the ACRE Compliance Coordinator.
  - ❖ Put this number on speed dial: 614-728-5441
- Emily is a great resource for general questions regarding O&M Reports questions for the parties obligated to submit the Reports under the Plan or O&M Agreement, and for CP if working with the party so obligated.
- One of Emily's many responsibilities is to track the submission and review of all VAP O&M Reports.

# O&M Plans and Reports



- The contents of an O&M Plan are governed by OAC 3745-300-11(E)(1) and 11(E)(2).
- Ohio EPA has templates on line for the O&M Agreements, O&M Plans and O&M Reports to facilitate drafting.
- O&M Plans are reviewed by staff and may be reviewed by Legal along with the O&M Agreements.

# Focus of O&M Plan Report Reviews:



The Focus of Ohio EPA's review of the O&M Report is:

- 1) Confirm that O&M Plan obligations are completed.
- 2) As necessary, verify or demonstrate that VAP applicable standards at the CNS property is achieved or maintained.
- 3) Address any omissions in the O&M Report.
- 4) Review changes in the remedy implemented

# Resolution of O&M Plan Report Omissions



- Ohio EPA will use a series of written communications, sent to Volunteers, and/or O&M Agreement signatories or other identified parties that have assumed the O&M Plan obligations to try to resolve any omissions identified in the submitted O&M Report.
- Because Ohio EPA does not view O&M reporting errors or omissions to be “violations”, the Agency’s communications regarding O&M obligations and the reporting requirements will eliminate the word “violation” and include the word “omission” to identify missing information.

# For the CP's...



- ❖ It is the obligation of the Volunteer or other signatory to the O&M Agreement to submit the O&M Report
- ❖ CP's will be copied on our communications as a courtesy heads up on sites that they were the CP of record.
- ❖ Ohio EPA understands that submitting the O&M Report is not the CP's responsibility, and we do not expect a response from the CP

# O&M Plan Report Omissions



What is the most common O&M Report omission?

Choices:

- a. Failure to send a check payable to Emily Patchen; or
- b. Failure to send flowers to Emily with the Report; or
- c. Failure to send the O&M Plan Report at all

# Answer: C



## c. Failure to send to Ohio EPA the required O&M Plan Report

- In order to be sure that all O&M Reports are submitted in accordance with their reporting date, the compliance coordinator will send a letter.
- The letter will confirm the timely receipt of the Report, or if the Report is not submitted, a letter will be sent to remind the Volunteer and/or other O&M signatories that the Report was due on either March 1 or September 1, and must be submitted.

# What happens after timely submission of the O&M Plan Report?



## Choices:

- a. The Report is reviewed by everyone at Ohio EPA, and a vote is taken regarding changing the point of compliance for the CNS property; or
- b. The Report is reviewed to verify that all obligations of the O&M Plan are included in the Report; or
- c. The Report is put in a drawer and never looked at again.

And the answer is: b



- b.** The Report is reviewed to verify that all obligations of the O&M Plan are included in the Report.

# After the initial review of the O&M Plan Report, what happens next?



- a. If nothing further is needed, a letter to the Volunteer and/or other obligated parties is not necessary, so nothing further until next time.
- b. If the Report is incomplete, an Initial Notice of Omission Letter (INO) will be sent to the Volunteers and/or parties obligated by the O&M Agreement with a request for the missing information, or correction or other clarification regarding the information that was submitted in the O&M Report.
- c. All the above.

# What happens next: C - all of the above



## After the O&M Plan Report is reviewed by Ohio EPA:

- 1) If nothing further is needed, a letter to the Volunteers and/or O&M signatories is not necessary, so nothing further until next time.
- 2) If something is missing in the Report or seems inconsistent or in error, an Initial Notice of Omission Letter (INO) will be sent to the Volunteers and/or O&M signatories that identifies outstanding issues and will request a response.
- 3) The CP of record will be copied on this letter as a courtesy.

## What if the O&M Plan Report omission is not resolved?



- A second letter to the Volunteer and/or other O&M parties will be sent that identifies any remaining issues still needing resolution. This letter is referred to as a Second Notice of Omission Letter (SNO).
- The CP of record will be copied on this letter as a courtesy, unless directed differently by the Volunteer or other party responsible for the O&M obligations.

# Summary thus far...



Letter confirming receipt of the Report



Initial Notice of Omission (INO)



Second Notice of Omission (SNO)

\*But remember: no news is good news after the first Report response letter confirming receipt

# O&M Billing



- Please be reminded that Staff time spent reviewing the O&M Plan Report and obtaining the needed information by sending INO's and SNO's is billed under the existing O&M Plan TA account.

# Continued lack of response or omissions



- Insufficient reporting or continued failure to report may result in a request for a meeting with the Volunteer or other party obligated under the O&M Plan or Agreement; or an inspection of the property.
- This communication will be made by an Outreach Request Letter and may be done to clarify to the Volunteer or other O&M parties what is needed or expected under the O&M Report obligations.
- The CP of record will still be copied as a courtesy unless directed differently.

# ORC Section 3746.12(B) Notice



- If it is determined that a CNS Property is no longer in compliance with the applicable standards upon which the Covenant Not to Sue was based, ORC Section 3746.12(B) requires that the Director shall mail notice & the requirements of ORC 3746.12(B)(3) to the person responsible for maintaining compliance with those standards.
- This is a Notice of Noncompliance and Opportunity to Cure letter.

# Opportunity to Cure



- An opportunity to cure means the O&M parties or identified person responsible for compliance will:
  - ❖ Notify Director of intention to return the Property to compliance with the applicable standards that the CNS was based
  - ❖ Propose a schedule to come into compliance with VAP applicable standards – ORC Section 3745.12(B)(3)
  - ❖ Agree to enter into a Compliance Schedule Agreement within 30 days of receipt of the Notice letter

# Opportunity to Cure



- This statutory opportunity to cure notice may come as a result of the O&M VAP Report, property inspection, or compliance audit indicating the property is out of compliance or the data shows an existing failure with VAP applicable standards.

# Further Questions/Issues



Remember, any questions or concerns about O&M obligations and reporting should be directed to the **ACRE Compliance Coordinator and/or the assigned Site Coordinator.**

Also remember, the CP's are included in these communications only as a courtesy and no response is required from you unless through a private obligation.