

**SUBJECT: USE OF APPLICABLE OR RELEVANT AND APPROPRIATE
REQUIREMENTS IN THE OHIO EPA REMEDIAL RESPONSE PROGRAM**

PURPOSE:

This document provides guidance that will help DERR's Remedial Response Program consistently implement the use of ARARs for state sites.

BACKGROUND:

ARARs are established in § 121 (d)(2)(A) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), which states the following: "With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if – (i) any standard, requirement, criteria, or limitation under any Federal environmental law...; or (ii) any promulgated standard, requirement, or limitation under a State environmental or siting law that is more stringent than any Federal standard, requirement, criteria, or limitation ... and that has been identified ... in a timely manner, is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened of such hazardous substance or pollutant or contaminant, the remedial action selected ... shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant or appropriate standard, requirement, criteria, or limitation."

This section of CERCLA describes the process and standards to be used for selecting remedial actions at sites subject to CERCLA. ARARs are one component of describing "how clean is clean" at CERCLA sites. Substantive requirements are either directly applicable or borrowed from other regulatory programs (including state statutes) where they make sense. Ohio law does not include a parallel ARAR process, however, the Division of Emergency and Remedial Response's (DERR) administrative orders for the remedial response program require that remedial actions be undertaken in a manner consistent with the National Contingency Plan (NCP), 40 CFR Part 300. Thus, laws and regulations that are applicable or relevant and appropriate to a remedial action can be imposed pursuant to DERR's administrative orders. The attached list includes state statutes and regulations that may be ARARs depending upon the specific circumstances at a DERR site.

The following definitions are found in Sec. 300.5 of the NCP.

Applicable requirements are defined as:

Those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site.

Relevant and appropriate requirements are defined as:

Those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not “applicable” to the hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site.

As discussed in the NCP at 55 FR 8741 (3/8/90), ARARs fall into three categories. They are:

Chemical-Specific: These rules define permissible concentrations of chemicals for various environmental media, such as soil or ground water. They are generally based on health or risk based criteria. Some apply state-wide while others are based on site-specific calculations. Such quantities as the maximum contaminant levels (MCLs) for drinking water would be chemical specific ARARs. Calculated surface water discharge limits would be another ARAR of the chemical-specific type.

Action-Specific: These rules specify how a remedial alternative must be achieved. They are generally technology-based and apply to specific remedial approaches rather than to a site. An example of an action-specific ARAR would be the design specifications for a landfill cap. Construction of a cap may be one of several possible actions that could be selected for a remedial site. However, if indeed a cap was selected as the remedy, it would have to be constructed according to the Agency’s rules for caps at solid waste landfills. If another technique, such as land treatment was the remedy, it would also have to be implemented according to the relevant rules.

Location-Specific: These rules may require or restrict particular actions because of the site location, even if the same actions were acceptable elsewhere. An example is the location of a new solid or hazardous waste disposal cell constructed as a part of a remedial action. Such a cell would not be allowed over a high yield aquifer or adjacent to a water way. Another location-specific set of ARARs are the rules pertaining to jurisdictional wetlands. Those rules might impose the requirement for development of supplemental wetlands to compensate for those destroyed either by the original contamination or through the remedial activities. These same actions outside a wetland would impose no such requirements.

GUIDANCE ON DETERMINING ARARs IN THE REMEDIAL RESPONSE PROGRAM:

ARARs are those substantive requirements that pertain directly to actions or conditions in the environment at the remedial site. A requirement is applicable if the specific provisions of the law or regulation directly address the circumstances at a site. If not applicable, a requirement may be relevant and appropriate if circumstances at the site are sufficiently similar to the problems or situations intended to be addressed by the requirement. Examples of substantive requirements include quantitative health or risk based restrictions on exposure to hazardous substances, technology-based requirements for actions taken to address hazardous substances, and restrictions upon activities in certain locations. Consult the [ARARs List](#) when considering what state statutes and regulations may be an ARAR.

ARARs do not include administrative requirements which are those mechanisms that facilitate the implementation of the substantive requirements of a statute or regulation. Administrative requirements include: approvals; consultations; consultations with other administrative bodies; definitions; methodologies or criteria applicable only to the Agency or Director; and Director's exemption or variance processes.

Related to the issue of ARARs and substantive requirements is the subject of the permit exemption under CERCLA. CERCLA § 121(e) states: "no Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section." There is no such equivalent state permit exemption under the Ohio Revised Code. It has been DERR's policy to require responsible parties to acquire and comply with all necessary permits, including all substantive and administrative requirements.

ARARs can be statutory or regulatory and are not limited to Ohio EPA statutes or rules. For example, Ohio Department of Natural Resources (ODNR) establishes requirements for reclamation of surface mined areas. The practices of soil conservation and drainage control used for surface mines are relevant and appropriate to the large soil borrow areas that provide the soil used to cover landfills in DERR remedial sites. ODNR also has regulations for the construction of dams and levees that may be relevant and appropriate for DERR sites that involve containment of waste along riverbanks.