

Presentation to Sanitary Engineers at Summer Meeting

June 3, 2013

OSU Blackwell Center

Presented by:

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Outline of Topics for Discussion

I. General Budget Update

- **Recorders Technology Equipment Fund**
- **Tax Law Changes (sales tax expansion, income tax cuts, severance tax increase)**
- **Local Government Fund**
- **Other issues**

II. Nutrient Management Issues

- **Fertilizer Registration**
- **Soil and Water Money**
- **Heidelberg Lab \$**
- **Lake Erie**

III. Utility Relocation

- **Ohio Transportation Budget (HB 51) adds county owned or county operated water and sewer facilities to statutory list of facilities ODOT must reimburse when required to relocate by state highway project (Effective July 1, 2013)**
- **Utility Relocation Reimbursement**
 1. **Whose right of way is it? If it belongs to the county, then the county is eligible for reimbursement. If the right of way belongs**

to the state, reimbursement becomes more complicated.

2. What is the county's property right? If the county owns an easement or a lessor estate, then it is compensable. If the county simply is in the right of way by permit, then the county is not eligible for reimbursement, generally.
3. Municipal ownership of utility lines is distinguished from counties because they maintain state highways within municipal corporations, so regardless of their ownership interest, easement or permit, their relocation costs are compensable.
4. Miscellaneous exceptions
 - A. County lines within a municipal corporation that service customers within that municipal corporation may be compensable when required to move regardless of ownership interest
 - B. Undue hardship – utility too poor to pay for relocation of lines

IV. Ohio Utility Protection Service Legislation

- **HB 458 (Sprague) – Ohio Utility Protection Service Legislation (OUPS) call before you dig legislation – Effective 3-27-13**
- **Maybe an attempt to revisit this legislation**

V. OEPA Solid Waste Legislative Review

- **Solid Waste Management Plan Development Cycle Revisions**
- **Ohio EPA Perspective on Flow Control**
- **June 6 OEPA Meeting to Discuss Solid Waste Fees**

I. General Budget Update



**County
Commissioners
Association of Ohio**

Serving Ohio Counties Since 1880

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May 31, 2013

MEMO

TO: SENATE FINANCE COMMITTEE
FROM: LARRY LONG, EXECUTIVE DIRECTOR
RE: TESTIMONY ON HB 59 SUB-BILL

Thank you for the opportunity to briefly highlight new provisions and changes that the County Commissioners Association of Ohio (CCAO) supports in the Senate's latest version of HB 59. These include the following:

- Removal of the County Recorder's ability to request a new, mandatory special fund for imaging and technology, contract services and "associated expenses". CCAO opposes the creation of new mandatory special funds because they divert revenue from the county general fund and makes it more difficult to balance the overall county budget.
- Elimination of current law requiring the Secretary of State to assure that a minimum number of electronic voting machines is provided by each county. Since these machines are paid for entirely by the county, we believe these decisions should be made by boards of elections and county commissioners jointly.
- Ability for video and teleconferencing opportunities for joint petition ditch projects. This will save commissioners time and money, especially for meeting required to perform routine administrative tasks.
- Incorporation of the initial recommendations of the Ohio Statewide Emergency Services Protocol Network Steering Committee (ESINET Committee) relating to E 9-1-1 phone systems and Next Gen 9-1-1.
- Modifying the process for reducing the size of an alcohol, drug addiction, and mental health services board, while maintaining the appointment ratio in current law for mental health boards and addiction services boards.
- Removal of the provision allowing townships to use certain TIF money to finance current public safety expenses (restores current law). CCAO continues to believe that TIF revenues should be related directly to infrastructure needed to promote economic development and that taxes, user fees, or impact fees are more appropriate means to



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finance operational costs associated with development.

- No changes to the Local Government Fund statutory distribution formula and the process to adopt an alternative formula as has been proposed by Senator Seitz. We understand that Senator Seitz continues to work on this concept in an attempt to lessen both the number of counties impacted and the aggregate dollar impact. CCAO continues to believe that such changes are inappropriate as long as we only continue to discuss the revenue side of the equation without also looking at service responsibilities and mandates of counties, townships, and municipalities.
- Prescribes the basis for cost-allocating property and liability insurance premiums for political subdivisions. This language standardizes the language for the allocation process that currently exists for workers compensation premiums and makes other technical changes to allow for the charges by all political subdivisions and reinforces the principle recently enunciated by the Ohio Supreme Court when it found that property and liability insurance costs may be constitutionally allocated and paid from motor vehicle license and gas tax revenues. The language applies to the purchase of commercial insurance, individual political subdivision self-insurance programs, and joint self-insurance pools, like the one CCAO provides to its members.

Yet, while we appreciate the consideration that has been given in this budget for the preceding issues, the substitute budget does not include the following issues that we ask yet to be considered by the Senate before the bill goes to conference committee, as follows:

- **Local Government Fund**—CCAO again asks for consideration of additional LGF funding for (1) the “hold harmless” provision for many of the small counties (approximately \$10 million for the biennium); and (2) partial restoration of cuts imposed by the prior state budget bill. Working with the County Auditors Association we have proposed that the permanent law percentage of tax receipts going to the LGF should be increased from 1.69% to 2.52%. We believe this would restore the 50% cut experienced last biennium to a level that approximates a proportion cut in the last biennium budget.
- **Increase Funding to County Job and Family Service Departments**—An additional \$10 million per year is requested to help fund the implementation of a new Medicaid eligibility determination system. This additional \$10 million a year of GRF would draw down an additional \$10 million a year of federal funds and is needed to assure counties can convert to the new system during the biennium and recognizes the fact that counties may have to run two side by side systems for a period of time.
- **Health Insurance Authority of the Department of Administrative Services**--Removal of new provision requiring the Department of Administrative Services (DAS) to determine if a political subdivision’s health plan is “considered to be most financially advantageous” if the proposed health plan to be procured by a political subdivision does not include every state-established best practice. CCAO believes local governments should make those decisions, and we understand that DAS does not oppose this amendment.
- **Collection of Sales, Use, and Lodging Taxes by Hotel/Motel Intermediaries**--Restore the language that assures that hotel/motel intermediaries will collect and remit the full amount of state and local permissive sales and use taxes and lodging taxes, which the sub-bill removed.

- **Multi-Year Dog Registration**--Remove the multi-year dog registration provision which the sub-bill added.

In the coming days, the CCAO will continue to review and study the following provisions:

- New authority granted to the Secretary of State to adopt rules establishing customer service standards for the members and the employees of the boards of elections and a method to evaluate compliance.
- Proposed limitation on property tax complaints/challenges from certain governmental entities that before they initiate complaints to the County Board of Revision.

Thank you for your consideration. We will continue to review the substitute bill and share our thoughts throughout the process. I am happy to answer any questions you may have.

**II. Nutrient Management Issues – Karl
Gebhardt Testimony before Senate Finance
General Government Subcommittee**



Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR

JAMES ZEHRINGER, DIRECTOR

**Senate Finance General Government Subcommittee
Panel Discussion on Fresh Water Algal Blooms in Lake Erie and Inland Lakes
Provided by Ohio Department of Natural Resources Deputy Director Karl Gebhardt
May 14, 2013**

Good morning Chairman Peterson, Vice Chairman Schaffer, Ranking Member Schiavoni and Members of the Senate Finance General Government Subcommittee. Thank you for this opportunity to share with you some of the progress that the Ohio Department of Natural Resources (ODNR) has achieved in the Lake Erie basin, Grand Lake St Marys and other areas in Ohio.

I am Karl Gebhardt, Deputy Director at ODNR also serving as Chief for the Division of Soil & Water Resources. The Division's primary responsibility is to work directly with farmers, other landowners and through our partners at Ohio's county Soil and Water Conservation Districts on a variety of natural resource related issues. Over the past year and into the foreseeable future, agricultural nutrient management will be the number one priority for the Division. Except in the case of a watershed in distress, our approach is to work with farmers on a voluntary basis. We encourage the use of the currently available best management practices that will achieve the most benefit while maintaining a financially viable farming operation.

First, allow me to update you on Grand Lake St. Marys, the state's only designated Watershed in Distress. As part of this designation, livestock farms which met certain criteria, were ordered to complete a Comprehensive Nutrient Management Plan. 158 farms met those criteria. I am pleased to announce that 156 farms have complied with that requirement. I issued five Chief's Orders; we may have to refer one farmer to court and one to the Ohio Department of Agriculture for permitting. I'm pleased to sit here today and tell you, the vast majority of farmers in the watershed are committed to addressing water quality issues at Grand Lake. We will continue to work with those producers to implement the nutrient management plans and other conservation practices.

With regards to Lake Erie, in 2011 Governor Kasich ordered the formation of the Director's Agricultural Nutrient and Water Quality Working Group. The Directors of the Ohio Department of Agriculture, the Ohio Environmental Protection Agency and the Ohio Department of Natural Resources convened a group of more than 100 stakeholders with an interest in agriculture, environment, and business to determine what needed to be done to aggressively address the concern about harmful algal blooms and the possible link to agricultural nutrients.

The group's recommendations were presented to the Governor in March of 2012. They were based in large part on the 4R's; the application and management of nutrients at the Right Time, from the Right Source, at the Right Rate and at the Right Place. The Division of Soil and Water is now working with farmers to put those principles on the ground. Then-State Representative Randy Gardner worked with the Governor's office and the legislature to secure \$3 million in the 2012 Mid-Biennium Budget Review to implement agricultural nutrient practices in the Lake Erie basin. This resulted in the formation of the Healthy Lake Erie Fund, administered by the Clean Lakes Initiative. From July 2012 through April 2013, the Division targeted five counties in the Western Lake Erie Basin where the implementation of these practices would have the most significant impact. My technical team coordinated with the local Soil and Water Conservation Districts in those counties and in a voluntary manner worked with farmers to accomplish the following results over a nine month period:

- 28,040 acres have either been planted with cover crops or farmers have implemented variable rate technology (VRT) for nutrient application. VRT is applying the nutrients where and when they are needed and at the appropriate rate.
- 441 controlled drainage devices representing another 13,230 acres will be installed, including one at this very moment in Defiance County. These devices control the water flow through drainage tile and the possible associated movement of nutrients.
- A total of 41,270 acres will be under new conservation practices in the Maumee Watershed. These farms and farmers will also serve as excellent demonstrations and examples for other producers to follow.

In talking with the farmers that are participating in the Clean Lakes Initiative, they told us it has worked because the program was simple and flexible, but still achieved measurable and meaningful results. The total expenditure was \$2.45 million, including some technical assistance dollars that went to the local soil & water districts.

These practices are not the only answers to water quality problems in Lake Erie, but the Clean Lakes Initiative shows what can be accomplished when resources are focused on a problem; a good team of technical people are involved; the programs are simple and flexible; and farmers understand they can realize economic and environmental benefits.

But, two ongoing questions being asked are: *Are we making a difference? Will the needle move in a positive direction as a result of the conservation and agricultural nutrient management programs being implemented in the watershed?*

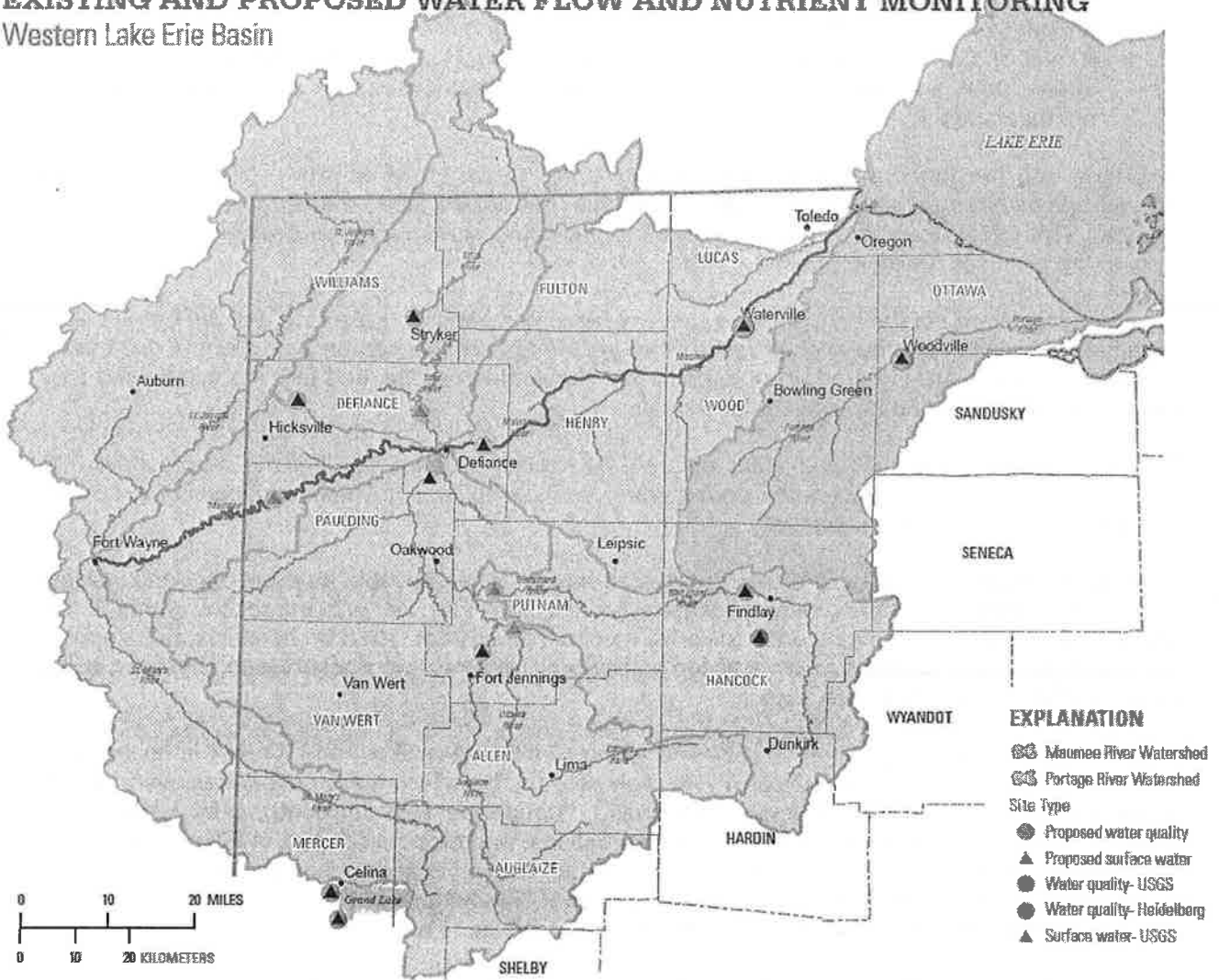
For nearly 20 years, Heidelberg Water Quality Lab has provided valuable baseline data and insights into when and where nutrients enter the waterways and Lake Erie. But with the recent events, it has become apparent that an even more extensive monitoring program would be beneficial to determine the role agricultural nutrients play in water quality, and whether the conservation practices being implemented are making a difference.

With the remaining appropriation of \$550,000 in the Healthy Lake Erie Fund, ODNR in cooperation with US Geological Survey and Ohio EPA is proposing the installation of an expanded water quality monitoring program for the Maumee Watershed. (Reference Map Included). With Heidelberg's ongoing monitoring, the proposed monitoring installations, and proposed "Edge of Field" research by The Ohio State University, the relationship between agricultural nutrient management and the water quality in the Maumee River and Lake Erie can be better documented and managed. We can ensure Ohio tax dollars are being spent wisely to improve water quality. That is a benefit for everyone.

In closing, the Department of Natural Resources and Department of Agriculture will also be working with the House and Senate on new legislation that will implement other recommendations from the Director's Agricultural Nutrient and Water Quality Working Group. Over the past three months, both departments have and will continue to work with the farm organizations, commodity groups, agribusiness, and environmental interests in an effort to pass legislation that will promote effective yet non-burdensome initiatives to help address nutrient issues for agriculture. Together, we will provide the non-agricultural community with the confidence that water quality in Lake Erie or anywhere in Ohio is being taken seriously by all of us that are entrusted with the stewardship of Ohio's natural resources and viability of Ohio's agriculture.

Thank you again for this opportunity. I look forward to our discussion.

EXISTING AND PROPOSED WATER FLOW AND NUTRIENT MONITORING Western Lake Erie Basin



III. Utility Relocation Issues



**OHIO DEPARTMENT OF TRANSPORTATION
OFFICE OF REAL ESTATE**

DATE: July 16, 2007

TO: Users of the Real Estate Manual

FROM: Ray Lorello, Manager, Utilities Section

RE: Changes and Updates to the Real Estate Manual

The only current and accurate source of ODOT's Real Estate Manual is on the Office of Real Estate's website. This site is located at: <http://www.dot.state.oh.us/real>. Desired information can be accessed by scrolling down the left column and selecting "Manuals and Booklets." Specific information can be selected by clicking on the desired section.

The Real Estate Manual is a "living document" as procedures will evolve and change. Individuals or firms providing various services to the Office of Real Estate (e.g. negotiations, titles, appraisal, appraisal review, relocation, relocation review, closing, property management, railroad coordination and utility relocation) must perform these services in compliance with current published policies and procedures. Individuals utilizing a hard copy version of the manual, without accessing the website for updates, risk providing non-compliant services to the Office of Real Estate. Therefore, all users must be aware of the changes as various sections of the manual are updated.

ODOT will provide notice of manual changes on the Design Reference Resource Center (DRRC) web page. Users of the manual can access this page and subscribe to be made aware of manual changes via e-mail notification. Then, when changes to the manual occur, ODOT will provide direct notice to the subscriber. This page can be accessed at <http://www.dot.state.oh.us/DRRC>. Scroll down to "Real Estate Policies and Procedures Manual" and select the desired section for updates, or enter your e-mail address to subscribe for changes. It is the user's responsibility to maintain their most current e-mail address on the DRRC notification system. The DRRC web site is updated four times a year.

The Office of Real Estate may also provide additional guidance to its procedures by Inter-Office Communications (IOC's). These communications will be made a part of the Real Estate Manual and will be found in the Addenda of each section of the manual. Individuals having questions pertaining specifically to the 8200 section may contact me at 614-466-2279.

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

8202 DEFINITIONS

AUTHORIZATION - An approval to the utility to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal, State or Local funds to participate in the costs incurred on that phase of work.

BETTERMENT - Any upgrade of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

COST OF RELOCATION - The entire amount paid by or on behalf of the utility properly attributable to the relocation. Deducted from that amount would be any increase in value of the new facility (betterment) and any salvage derived from the old facility.

COST OF REMOVAL - The amount expended to remove utility property; including the cost to demolish, dismantle, remove, transport, or otherwise dispose of the utility property and the costs associated with the clean up of the job site to an acceptable condition.

FORCE ACCOUNT WORK - Relocation work performed by utility company personnel or contractors retained by the utility.

INDIRECT OR OVERHEAD COSTS - Those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature are allocated to the applicable job or work order and other related functions. Allocation is made on a uniform basis which is reasonable, equitable and in accordance with generally accepted cost accounting practices.

PDP - Project Development Process

PRIVATE UTILITY - A utility whose ownership and operation is under the control and direction of private sector officials.

PUBLIC UTILITY - A utility whose ownership and operation is under the control and direction of an elected public body. (i.e. City Council, County Commission, etc.)

PUBLICLY HELD UTILITY - A utility whose ownership and operation is under the control and direction of private sector officials and public stock holders. (i.e. Columbia Gas, AEP, etc.)

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

RELOCATION - The adjustment of utility facilities required by the highway project; including engineering services, right of way acquisition, temporary work, removal, placement, reinstallation, rearrangement, change to existing facilities and necessary safety or protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of utility service.

SALVAGE VALUE - The amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts if retained for reuse.

USE AND OCCUPANCY AGREEMENT - The document by which the highway authority regulates and/or gives approval of the use and occupancy of highway right of way by utility facilities or private lines. At ODOT, the highway use permit.

UTILITY - "Utility" shall mean and include a privately, publicly, or publicly held cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire and police signal system or street lighting system, which directly or indirectly serves the public. The term "utility" shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purpose of this part, the term includes those utility-type facilities which are owned or leased by a governmental agency for its own use, or otherwise dedicated solely to government use. The term utility includes those facilities used solely by the utility which are a part of its operating plant. - Service lines privately owned and devoted exclusively to supplying the various commodities to the owner, and not directly or indirectly servicing the public, are not considered to be a utility.

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

8203 EARLY INVOLVEMENT

Utility involvement in the early phases of the project development process is critical. Only through early cooperation between ODOT and utilities will the proper mitigation or consideration of utility issues be addressed. Within the ODOT Project Development Process, projects are categorized as minimal, minor or major. It is recommended that utility involvement begin at or prior to the Preliminary Engineering phase of the project development process for all project categories. Depending on field analysis, utilities could be involved as early as the Red Flag Summary (Step 1 - Minimal & Minor and Step 2 - Major). Otherwise, utilities should be actively involved in the Project Development Process during the Preliminary Engineering phase (Step 1 - Minimal, Step 3 - Minor or Step 5 - Major). Furthermore, the Preliminary Engineering phase is the point in the process when design changes can be made to minimize or eliminate utility involvement on a project, with minimal or no cost to the project. Also at this time, utility costs should be identified and right of way needs must be addressed; taking into consideration construction requirements, utility relocation and safety factors. This review can also identify unanticipated time consuming relocations or issues which may impact construction scheduling (Refer to Attachment 8209.02 Checklist - Field Review of Utilities).

8203.01 Subsurface Utility Engineering - SUE

Section 153.64 ORC requires that all existing underground utilities must be shown on highway construction plans where excavation or ground penetration will occur. Either the utility must provide location information to the designer or the utility can mark its facilities in the field for retrieval by the designer. To assist in obtaining accurate utility information, it is recommended that Subsurface Utility Engineering (SUE) be used to supplement the normal processes of one call systems and traditional engineering practices. SUE can be defined as the engineering processes that accurately and comprehensively identify, characterize and map underground utility facilities. It includes the three major activities of designating, locating and data management. These activities, when combined with traditional records research, coordination with utility owners and site surveys, provide high quality utility information for use at appropriate times during project development and design. This information can be used to improve decision making processes, reduce utility damage during construction and minimize change orders and contractor claims. To properly use the information obtained from this process, SUE must be used during both the PE and Stage 1 design phases of the project development process. In accordance with the current ASCE *Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data*, this information is expressed through four quality levels.

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

1. Quality Level D - Information derived from existing records or oral recollections.
2. Quality Level C - Information obtained by surveying and plotting visible above-ground utility features and by using professional judgement in correlating this information to quality level D information.
3. Quality Level B - Information obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities. Quality level B data should be reproducible by surface geophysics at any point of their depiction. This information is surveyed to applicable tolerances defined by the project and reduced onto plan documents.
4. Quality Level A - Precise horizontal and vertical location of utilities obtained by the actual exposure (or verification of previously exposed and surveyed utilities) and subsequent measurement of subsurface utilities, usually at a specific point. Minimally intrusive excavation equipment is typically used to minimize the potential for utility damage. A precise horizontal and vertical location, as well as other utility attributes, is shown on plan documents. Accuracy is typically set to 15mm and to applicable horizontal survey and mapping accuracy as defined or expected by the project owner.

8203.02 Liaison

A. Importance

An effective liaison program pursued during all stages of highway or utility improvement projects can reduce costs to both the State and the utility, provide more serviceable highway and utility facilities and minimize inconvenience to the general public. The highway program affects nearly every utility operating in the State of Ohio and in many cases causes major adjustments to existing plant, as well as future expansion plans. Utilities must be regarded as a full partner in the ODOT highway program and be accorded cooperation and consideration.

B. Application

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

To accomplish its objectives, a liaison program must be based on sound realistic procedures which can be consistently followed by all agencies involved. On highway improvement projects involving utilities, the Department must take the initiative in promoting liaison with an emphasis on personal contacts, detailed exchange of information and maintaining close relationships with the utilities during all stages of the project.

The District Utilities Office shall maintain close personal contact with the utilities and assure that all pertinent information and plans are furnished as soon as available. Central Office Utilities shall contact the Districts and utilities periodically and assist in coordinating these liaison programs.

The District Utilities Office shall furnish utilities with periodic copies of the Department's proposed construction program showing the location, type of projects and contemplated sale dates or project status. This information will assist the utilities in coordinating construction and budgeting. In addition, the Department should encourage the utilities to discuss their construction programs with ODOT; with a view toward eliminating or minimizing conflicts with future highway improvements. A sound liaison program aggressively pursued during the early stages of a highway project will eliminate many problems prior to construction. It is essential that all representatives of the Department recognize and accept responsibility in this program.

8204 UTILITY REIMBURSEMENT ELIGIBILITY

8204.01 Policy

The State's policy for participation in utility relocation costs is authorized by 5501.51 ORC and explained in this section. Reimbursement of utility relocation costs by the Federal Highway Administration is authorized by 23 USC 123 and 23 CRF 645. In this regard, it must be clearly understood that the Federal Highway Administration does not pay utilities for relocation work performed, but will reimburse the individual states based on the legal obligation of the state to pay the utility.

8204.02 Privately Owned Utilities

Private or publicly held utilities are eligible for reimbursement when the existing facilities are affected by the project and located on property where the utility has a compensable property right as follows:

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

On property owned by the utility

On private right of way with a valid easement

On private right of way with valid prescriptive rights (affidavit required)

On public road right of way with a valid easement which predates the rights held by the State

Reimbursement eligibility must be substantiated by the State having on file a copy of the pertinent document (easement or affidavit) or by verifying the applicable recording data (deed book, volume and page) which supports the reimbursement claim by the utility. Reimbursement eligibility does not extend to or include additions to or betterments of the existing utility facilities. If none of the above criteria is met, the utility would not be eligible for reimbursement of the costs associated with the relocation work.

8204.03 Public Utilities/Publicly Held Utilities

Reimbursement eligibility of publicly owned water line, sanitary sewer, electric, steam or other utility facility is established when the existing facilities are affected by the project and located on property where the utility has a compensable property right as follows:

On property owned by the utility

On private right of way with a valid easement

On public road right of way under the jurisdiction of the utility

On public road right of way outside the jurisdiction of the utility where the utility has a compensable agreement with the governmental agency having jurisdiction

Furthermore, there are specific project commitments which must be made by the governmental agency in order for participation in utility relocation costs to apply.

- Through proper cooperative legislation, the governmental agency consents to the project and agrees to make all existing right of way, within its jurisdiction and necessary for the project, available. (Refer to the ODOT Project Development process for timing and requirements for preliminary legislation).
- The governmental agency agrees to arrange for the relocation of other utilities occupying existing highway or street right of way without cost to the State.

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

- Altered utility installations shall be made in accordance with Department policy on the accommodation of utilities, except where prior approval by the Department is obtained for a modification to the policy.
- Altered utility facilities will be adequately maintained, without cost to the State, by the governmental agency upon completion of the work.
- The governmental agency agrees to save the State harmless from any and all claims or damages arising from or growing out of any utility alteration involved in the project.

If these provisions and eligibility requirements are met, the Department will participate in the costs of alterations of the utility facilities to the same extent as it participates in the other costs of the project. Reimbursement eligibility does not extend to or include additions to or betterments of the existing utility facilities.

The Department will not participate in relocation costs when the existing utility facility is located by permit within public road right of way outside of the municipality. In conjunction, reimbursement of the relocation cost of publicly owned utilities, affected by the highway project and located on private right of way, is governed by the same criteria which applies to privately owned utilities.

8204.04 Partial Utility Reimbursement

- A. Utilities can be reimbursed on an equitable proportional basis for costs associated with relocation work when only a segment of the existing affected facility is eligible for reimbursement. The part of the existing affected facility located on property where the utility has a compensable property right is eligible for reimbursement, but the part of the existing affected facility located on property where the utility does not have a compensable property right will not be eligible for reimbursement.
- B. Percentages of participation are based on the existing facility which is affected by the highway project between the tie-in points of the relocated facility. The percentages are calculated as a ratio of eligible or ineligible facility to the total affected facility. Then, the percentage of project participation will be applied to the total cost of the estimated utility relocation work. Calculations are based on affected poles that are removed, replaced or relocated for aerial facilities and affected lineal feet

PROCEDURE FOR UTILITY RELOCATIONS, ADJUSTMENTS AND REIMBURSEMENTS

for underground facilities. All percentage calculations should be rounded off to the nearest whole number and be supported by an appropriate pole count sheet or underground calculation breakdown.

- C. Unless both existing affected facilities are eligible for 100% reimbursement, do not combine unlike facilities in the calculation of the percentages of participation (aerial and underground or transmission and distribution). The disparity in costs associated with dissimilar facilities can have an adverse impact on either the utility or ODOT regarding the appropriate allocation of costs within the estimate.

8205 WORK INCLUDED IN CONSTRUCTION PLANS AND BRIDGE ATTACHMENTS

8205.01 Process

A. Justification

Utility work may be included in the highway construction plans when justified by reasons of economy, expediency, inability of the utility to perform the work or where construction convenience or cost would be improved by the elimination of a separate contract for the utility work. Regarding bridge attachments, consideration must also be given to the congested locations of bridges in urban areas, bedrock or environmentally sensitive areas to be crossed, engineering difficulties facing the utility and the costs associated with alternate relocations.

B. Approvals

In all cases, the request for utility work to be incorporated into the highway construction plans must be approved by both Production and Utilities personnel in the District. If the utility is to be installed on a bridge, the request must also be approved by the appropriate ODOT bridge office.

C. Procedure

1. Utility Installations on Highway Bridges

Sec. 5501.51. (A) The state shall reimburse a utility for the cost of relocation of utility facilities necessitated by the construction of a highway project only in the event that the utility can evidence a vested interest in the nature of a fee interest, an easement interest, or a lesser estate in the real property it occupies in the event that the utility possesses a vested interest in such property. The utility shall present evidence satisfactory to the state substantiating the cost of relocation. The director may audit all financial records which the director determines necessary to verify such actual costs.

(B) The director of transportation may establish and enforce such rules and procedures as the director may determine to be necessary to assure consistency governing any and all aspects of the cost of utility relocations. The director may adopt such amendments to such rules as are necessary and within the guidelines of this section.

(C) As used in this section:

(1) "Cost of relocation" includes the actual cost paid by a utility directly attributable to relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(2) "Utility" includes ~~publicly~~ all of the following:

(a) Publicly, privately, and cooperatively owned utilities that are subject to the authority of the public utilities commission of Ohio: ~~"Utility" also includes a;~~

(b) A cable operator as defined in the "Cable Communications Policy Act of 1984," 98 Stat. 2780, 47 U.S.C. 522, as amended by the "Telecommunications Act of 1996," 110 Stat. 56, 47 U.S.C. 151, and includes the provision of other information or telecommunications services, or both, ~~and an;~~

(c) An electric cooperative and a municipal electric utility, both as defined in section 4928.01 of the Revised Code;

(d) County-owned or county-operated water and sewer facilities.

IV. Ohio Utility Protection Service Legislation (HB 458)



Ohio Legislative Service Commission

Final Analysis

Kathleen A. Luikart

Sub. H.B. 458

129th General Assembly
(As Passed by the General Assembly)

- Reps.** Sprague, Stautberg, Williams, Ashford, Cera, C. Hagan, Hall, Landis, O'Brien, Pillich, R. Adams, Anielski, Antonio, Beck, Boose, Bubp, Buchy, Budish, Carney, Celebrezze, Combs, Conditt, Damschroder, Derickson, DeVitis, Foley, Garland, Grossman, Hackett, Johnson, Kozlowski, Letson, Maag, Mallory, Martin, McClain, Milkovich, Murray, Ruhl, Stinziano, Thompson, Wachtmann, Winburn, Yuko, Batchelder
- Sens.** Sawyer, Hite, Coley, LaRose, Bacon, Balderson, Burke, Eklund, Gentile, Hughes, Jones, Kearney, Lehner, Niehaus, Peterson, Schaffer, Schiavoni, Seitz, Skindell, Smith, Turner, Wagoner

Effective date: March 27, 2013

ACT SUMMARY

General protection service law

- Requires each utility that is fully participating in a protection service to also participate in its affiliated positive response system.
- Requires an excavator, contractor, or utility that uses a protection service to obtain training in the protection of underground utility facilities, but specifies that the individual is deemed to have obtained training if the individual is a member of a protection service or association that provides training.
- Requires, beginning on July 1, 2013, each protection service to reasonably modify its one-call notification system to permit the reasonable identification of the location of a proposed excavation site in a manner in which the protection service may then notify any potentially affected limited basis participants.
- Eliminates a requirement that a protection service must notify the excavator of the names of each limited basis participant with underground utility facilities in the municipal corporation or township and county of the proposed excavation site.

- Eliminates the requirement that the excavator must contact the limited basis participants regarding the proposed excavation.
- Requires, except in certain circumstances, excavators to define and premark the approximate location of a proposed excavation site before notifying a protection service about the proposed excavation and makes modifications to notification requirements.
- Requires that underground utility facilities be marked in accordance with the Ohio universal marking standards on file with the Ohio Utilities Protection Service, and appears to specify that the standards control if they are in conflict with the color code marking scheme specified in ongoing law.
- Establishes requirements for excavators utilizing trenchless excavation methods and modifies and establishes requirements for excavators utilizing traditional excavation technologies.

Public improvements protection service law

- Appears to apply the general protection service law to public improvements by public authorities to some extent by:
 - Changing the general protection service law to include public authorities as persons subject to that law; and
 - Removing a provision in the general protection service law exempting its application to public improvements.
- Modifies the public improvements protection service law regarding the following:
 - Timing and form of notification that contractors and subcontractors must give, prior to beginning construction, to protection service and underground utility facility owners that are not protection service members;
 - Timing of excavation site marking by the owner of the underground utility facility;
 - Application to designers of the law's provisions regarding notification to protection services and underground utility facility owners, plans and specifications, notice of winning contractors, relocation of facilities, certain rights not affected, protection against responsibility, and contract terms.

- Removes a provision exempting certain telephone companies, owners of pipelines that conduct liquid petroleum products, and cable television companies from registering with a protection service.

Facility marking at project-planning stage under both laws

- Requires, for excavation planning, that certain owners of underground utility facilities and utilities, if requested to do so, either mark underground utility facilities in accordance with the act's requirements or provide digital or paper drawings (or both) that are to-scale and depict the location of the facilities.

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CONTENT AND OPERATION

Protection services and underground utility facilities – definition changes

The act changes the definitions of "protection service" and "underground utility facility" in the general protection service law and the law governing public

improvements protection service to make them more similar, but not exactly the same. The act shortens the term "underground utility protection service" in the law governing public improvements protection service to "protection service" and changes it to match closely the definition in the general protection service law in Chapter 3781. of the Revised Code.

The general protection service law definition of underground utility facilities is expanded because it now "includes" items and no longer "means" those items. The definition is also expanded to include: manufactured and mixed natural gas; synthetic or liquefied natural gas; and propane gas. In addition, the act specifies that a facility under the general protection service law includes all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, worker access holes, and attachments, owned by any person, firm, or company. For the general protection service law, the act specifically excludes from the definition of an underground utility facility a private septic system in a one-family or multi-family dwelling utilized only for that dwelling and not connected to any other system. The only changes in the act's definition of underground utility facilities in the law governing public improvements protection service are to replace "double-family" dwelling with "multi-family" dwelling, and to remove a reference to "electric energy" that appeared in former law next to a reference to "electricity."¹

Changes to general protection service law

Utilities

The act expands the definition of a "utility" for the general protection service law to include any "operator, or an agent of an owner or operator, of an underground utility facility, including any public authority that owns or operates an underground utility." The definition of a "utility" under the former general protection service law is "any owner of an underground utility facility, including any public authority that owns an underground utility facility." Under continuing law, "utility" does not include the owners of the following types of real property with respect to any underground utility facility on that property: (1) the owner of a single-family or two-, three-, or four-unit residential building, (2) the owner of an apartment complex, (3) the owner of a commercial or industrial building or complex of buildings, including factories and shopping centers, and (4) the owner of a farm.²

¹ R.C. 153.64(A) and 3781.25(B).

² R.C. 3781.25(C).

V. Ohio EPA Solid Waste Legislative Review

Proposal

Ohio Solid Waste Management Review

Solid Waste Management District (SWMD) Plan Development Cycle Revisions

DRAFT

Date Issued: March 4, 2013



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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 author 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:

Ohio Solid Waste Management Review | March 4, 2013
Draft Proposal: SWMD Plan Development Cycle Revisions

Ohio EPA/DMWM
Attn.: Ernie Stall
P.O. Box 1049
Columbus, Ohio 43216-1049

Ohio Solid Waste Management Review | March 4, 2013
 Draft Proposal: SWMD Plan Development Cycle Revisions

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

Ohio Solid Waste Management Review | March 4, 2013
 Draft Proposal: SWMD Plan Development Cycle Revisions

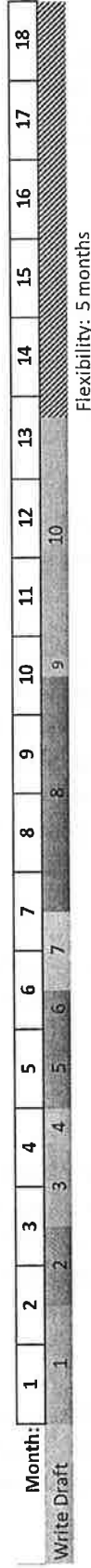
Current Plan Development Cycle		Proposed Plan Development Cycle		Comments
Plan Development Step	Timeframe	Plan Development Step	Timeframe	
Submit Draft Plan		Submit Draft Plan		
EPA Review	45	EPA Review	60	Change from 45 to 60 days
Change Plan	30	Change Plan	30	
Comment Period	30	Comment Period	30	
Public 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

Ohio Solid Waste Management Review | March 4, 2013
 Draft Proposal: SWMD Plan Development Cycle Revisions

Current SWMD Plan Development Cycle

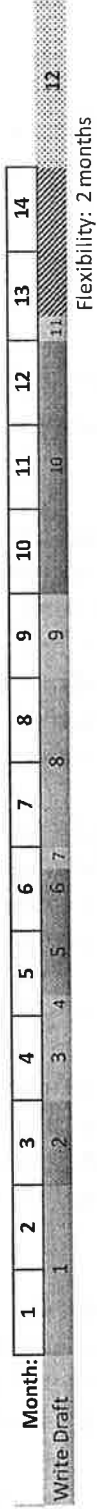
Required start: 15 months before draft due
 Draft Due: 18 months before final approval deadline



- | | |
|---|---|
| 1: Non-Binding Advisory Opinion (45 days) | 6: Policy Committee approves final version (15 days) |
| 2: Policy Committee makes changes (30 days) | 7: Final distribution 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 |



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March 29, 2013

Mr. Ernie Stall
Ohio Environmental Protection Agency
Division of Materials Management
PO Box 1049
Columbus, OH 43216-1049

Dear Mr. Stall:

CCAO, in conjunction with OSWDO, is submitting these comments to the Ohio EPA proposal entitled: *Solid Waste Management District Plan Development Cycle Revisions*.

General Comments

CCAO supports Ohio EPA's stated intention to simplify the planning process and to shorten the amount of time SWMD's spend on plan development by implementing changes to the planning cycle along with changes to the District Solid Waste Management Plan Format. While the Ohio EPA proposal addresses the plan *approval* process, it does not address the plan *development* process. Without reviewing specific intentions to change the format book or ORC 3734.53 and 3734.54, it is difficult to ascertain whether the proposed changes to the planning cycle will indeed shorten or simplify the amount of time spent on planning.

The majority of SWMDs are largely successful, compliant and meet state goals. CCAO cautions against making any changes to the planning program that are meant to address underperforming districts. Ohio EPA must use its authority to remedy those issues directly and not restrict the authority and local control of the compliant districts.

Comments to the Specific Proposed Changes

10-Year Planning Periods

CCAO agrees with replacing the fifteen year planning period with a ten year planning period. In addition to the proposed ten year planning period, CCAO supports streamlining the planning process by requiring each SWMD to prepare a plan every ten years provided the district is meeting goals laid out in the State Plan and its district plan. *See additional planning period comments below.*

Removing the Statutory Start Date

CCAO agrees with removing the statutory start date. Districts are best able to determine the amount of time needed to develop their draft plans. The amount of time needed for plan development will vary for each District depending on its size, complexity and resources available.



County Risk
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Association of Ohio
Service Corporation

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

CCAO is supportive of reducing the plan approval cycle through a more streamlined process. See *additional planning period comments below.*

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

CCAO is not opposed to extending Ohio EPA’s draft plan review period from 45 days to 60 days.

Ohio EPA contingent approval prior to local ratification

The idea of obtaining contingent approval of a draft plan seems to make sense based on the standpoint of eliminating the need to repeat the ratification process if the first plan was disapproved by Ohio EPA. It also seems to help Districts with their ratification process when they tell their local jurisdictions that the plan has been deemed “approvable” by the Agency.

However, a potentially serious problem with this proposal is that it makes conditional approval a mandatory requirement before a SWMD can take its plan out for ratification. If there are “key deficiencies” that cannot be resolved between a district and the agency then the plan approval process stalls and local jurisdictions do not have the ability to vote on the merits of its local plan. Also, there is a strong chance that Ohio EPA’s “conditional approval” concept will deprive affected parties of the right to appeal Ohio EPA’s decision whether to approve a plan because additional events must occur locally before the plan is final and effective.

As a result CCAO is recommending that “conditional approval” be an optional, but not mandatory, part of the process required to take a plan out for ratification. If the agency is not agreeable to that, the CCAO recommends staying with the current process.

If it is the goal of Ohio EPA to reduce the number of disapproved plans then CCAO recommends eliminating the largest city veto provision. This would reduce the number of plans that Ohio EPA has to write because of a city veto. The largest municipalities in the district would continue to have a substantial say on whether a plan is ratified as a function of the cities’ percentage of the district’s total population.

Regarding municipal corporation or township disapproval of a plan, CCAO supports a requirement that any political subdivision that disapproves of a plan be required within 14 days of disapproval to provide an explanation or rationale for their decision to the policy committee. (This might be likened to a veto message.) In this manner, a policy committee could better understand objections and modify a district plan to address perceived concerns. With respect to any changes a policy committee makes to the draft plan to address local jurisdictions’ failure to ratify, CCAO requests that Ohio EPA elaborate on the procedures that districts will be required to follow in order to resubmit the modified plan for ratification.

In order to make the task of achieving plan approval less daunting, CCAO supports amending the plan approval process to state that political subdivisions that fail to vote will not be included in calculation needed for approval.

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

CCAO agrees with the single notice requirement outlined in paragraph 1 on page 8. In the second paragraph, the Ohio EPA is silent as to what happens if substantive changes are made to

the plan based on input provided during the public hearing. Will a District be required to hold a second public hearing? Ohio EPA should clarify this. Ohio EPA should also define what it means by the term “substantive changes” used in this section.

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 years and 4 months from last plan approval.

CCAO supports requiring each SWMD to prepare a full plan update every ten years with a minor update required midway through the planning period provided that the District is meeting the goals of the State Plan and the district’s plan. If a district is not performing then a full plan update would be required according to the Ohio EPA proposal of 4 years and 4 months.

CCAO agrees with Ohio EPA that a more streamlined process is needed. However, CCAO cautions that unless significant changes are made to the Plan Format, most Districts will still need a full 15 months to write their plans. So while minor changes are being made to reduce the number of months needed to move the draft plan through the approval process, Districts could still be in “planning mode” for 2.4 years of every 5.5 year planning cycle. If the planning process is not reduced to be less cumbersome, then the joint Ohio EPA/SWMD goals of spending less time on plan preparation and more time on implementation will have not been achieved.

“For Cause” extension of up to 60 days

CCAO supports the idea of enabling districts to apply for a “for cause” extension but requests that Districts have the ability to apply for an extension of “up to 90 days” to accommodate the time needed to take a plan out for ratification. CCAO recommends that a definition of “for cause” be established so that districts have a consistent interpretation of what would qualify for a “for cause” extension.

Allow for a one time streamlined, non-substantive plan adjustment in the middle of the plan cycle.

CCAO strongly opposes this change. Ohio EPA does not explain why there is a need to replace the concept of “material change” with the terms “substantive change” and “non-substantive change” and it does not adequately define the terms. If one of the objectives of the proposed changes to the planning process is to reduce the cost of planning, and devoting less time to plan development, then it would be counterproductive to institute a formal process for making plan modifications during the middle of the planning cycle. Such a change virtually assures that districts will be in a constant state of updating their plans and incurring the consulting and production costs that go with it.

Furthermore, requiring SWMD’s to obtain Ohio EPA approval for the types of changes that EPA describes as “non-substantive” are now under the purview of the SWMDs. These are the types of decisions that SWMDs make on an ongoing basis to ensure the efficient and effective operation of their programs and do not now need state approval. This proposal removes the day to day decision making authority of districts, requiring them to wait up to 2.5 years to make minor changes to their operations, provided Ohio EPA allows the change.

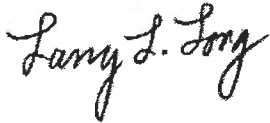
This proposal would create undue and ongoing conflict between districts and Ohio EPA as disagreement of the definitions of “substantive” and “non-substantive” would certainly arise. In addition, inserting an additional formal review and approval process into the planning process

(i.e., Ohio EPA concurrence with an SWMD's proposed non-substantive changes), unnecessarily creates new opportunities for ERAC appeals and other potentially expensive legal challenges by affected parties.

CCAO would like to reinforce that solid waste management planning is a process and plans must remain flexible and adaptable to enable districts to respond to changing local conditions in ways that are creative and effective. Solid waste management plans are not "permits". When HB 592 was created, it was designed to provide local control to counties to make local decisions. Day to day management decisions regarding the implementation of the plan should be left to each individual solid waste district/authority, its board and its policy committee.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Larry L. Long". The signature is written in a cursive, flowing style.

Larry L. Long
Executive Director

Date: April 25, 2013

From: Andrew Booker, Ohio EPA

To: Flow Control Discussion Participants

During the last flow control meeting, it was suggested that it might be helpful for Ohio EPA to provide participants with our thoughts on flow control in order to help frame the discussion during the final meeting(s). I have drafted the following document for that purpose. Some of the information below is simple background information and is well-known by all participants. The final section of the document contains Ohio EPA's current thinking on flow-control based on our historic position on the issue, our experience with flow control over the recent past, and the discussion that has taken place with participants over the last few weeks.

Ohio EPA Perspective on Flow Control

Background

When Ohio EPA began the Ohio Solid Waste Management Review project, we stated that we would be looking comprehensively at the entire system of waste management in Ohio, including difficult issues that have the potential to be controversial. Flow control is without question one of these issues. Ohio's solid waste management districts were granted the ability to exercise flow control with the passage of H.B. 592 in 1988. In fact, the exercise of flow control was the "default" condition created by H.B. 592. Since that time, the statute has been changed to make flow control a discretionary action by SWMDs.

At this time, some type of flow control is exercised by approximately 21 SWMDs. Of these, about 8 exercise what could be termed "fee designation" flow control, whereby they designate multiple facilities, but require each facility to enter into a contract for the collection and remittance of a fee to the SWMD as a condition of being designated. Under this approach, the focus is not on dictating where waste can go, but rather assuring that wherever it goes a fee is paid. (Three additional SWMDs have some type of less common fee collection mechanism that utilizes designation.)

About 10 SWMDs exercise what could be termed "traditional flow control", whereby they require waste to go to one or a small number of solid waste facilities. Typically, this approach is used when a SWMD (or county) owns a solid waste facility and traditionally has been utilized in order to secure and pay off public debt. However, the exercise of flow control is not exclusively used at publicly-owned facilities, and it is not necessary to have debt in order to exercise it.

Flow control is controversial because the private waste industry objects to the restriction on the flow of waste. Often, they would rather deliver waste to a facility that they own as opposed to delivering it to the publicly-owned facility. The controversy over flow control is in no way unique to Ohio, as flow control is exercised in numerous states and jurisdictions throughout the country, and it has been

litigated repeatedly in Ohio as well as in other jurisdictions. Cases involving low flow control have also been heard on more than one occasion before the U.S. Supreme Court.

Participation in the Flow Control Discussions

Ohio EPA greatly appreciates the participation and input that has been provided by both the private waste industry and the SWMDs on this issue. We believe that the discussion has been very beneficial to understanding the issue from all perspectives and generating ideas for future direction. We also hope that it has been a productive and healthy dialogue between the interested parties, independent of the legislative review project.

Ohio EPA's Perspective on Flow Control

The first item was stated at the outset of the meetings but is worth repeating here.

- Ohio EPA will not put forward any legislative proposal that would result in stranded public debt.

Based on the discussion at the meetings, there appears to be wide consensus (although not necessarily unanimous support) for the following.

- The ability of SWMDs to exercise "fee designation" flow control should not be restricted, as it is more of a fee collection exercise than one of flow control. This practice should be clarified and simplified in statute, and possibly refined in some manner, but the general approach makes sense as a practice and generally evens the playing field for Ohio solid waste facilities. It is essentially an extension of the SWMD's ability to levy and collect generation fees. The focus on this issue from this point forward should be on clarification and refinement, not on the general concept.

Regarding traditional flow control, Ohio EPA's current thinking on the issue, based on our historic position, our experience with flow control in the recent past, and the discussion that has taken place with participants over the last few weeks, is as follows.

- H.B. 592 gave SWMDs responsibilities related to comprehensive solid waste planning and management in Ohio, and did so in a way that vested them with a significant amount of autonomy regarding how best to achieve those purposes. The vesting of responsibility in SWMDs continues to have value to Ohio. Waste management is often an "out of sight, out of mind" issue, and often involves a large number of diverse entities involved in the process. As such, there has historically been no entity that is responsible for a long-term, comprehensive focus on waste management issues. While the role and responsibilities of SWMDs will likely be altered in some manner as part of Ohio EPA's overall legislative proposal, they will continue to serve as an integral part of the overall solid waste system, will continue to have responsibilities for the long term planning and management of the solid waste stream, and will continue to have a significant amount of autonomy regarding how to achieve their objectives. As such, Ohio

EPA supports the concept that flow control can sometimes be an appropriate exercise of SWMD authority to further several purposesⁱⁱ, including:

- The payment of public debt;
- The consolidation of waste in a manner that is economically beneficial to the communities generating the waste;
- The provision of waste management services to areas that are traditionally underserved, and;
- The achievement of certain other solid waste management objectives.

Accordingly, Ohio EPA is not advocating for the elimination of flow control in Ohio. However, we do think that the system can be improved to reduce the potential for negative impacts from the exercise of this authority.

- SWMDs that choose to exercise flow control should do so very judiciously, in a very well thought-out and purposeful manner, being cognizant of the fact that the exercise of this authority can potentially have a negative economic impact on the private waste industry. It should never be entered into lightly, and other possible approaches should be explored thoroughly prior to exercising this authority.
- SWMDs that choose to exercise flow control should have a clearly articulated objective for doing so and a clear plan for paying off debt (if debt exists). If a SWMD exercises flow control, it should be clear and easy for any waste hauler or business to understand the flow control requirements.
- The private waste industry has the potential to be directly impacted by flow control decisions, and as such has a legitimate right for direct input into the decision-making process regarding flow control.
- Flow control should continue to be exercised in a manner that is open, transparent, and encourages input from all types of interested parties.
- SWMDs that choose to exercise this authority should explicitly identify and analyze the impact of their decisions on existing privately-owned facilities. This is particularly true for any new or expanded use of flow control
- The exercise of flow control should not be a static decision. A SWMD that exercises flow control should regularly assess whether it continues to be the best approach to achieve their objectives, taking into consideration changes to the waste industry, technology, availability of service providers, etc.

- Over time, there is every expectation that the private waste industry in Ohio will continue to grow and expand the services offered. In addition, we anticipate that the trend away from small landfills servicing a limited area towards larger regional facilities will continue as it has for the last decade. As a result, the exercise of traditional flow control by SWMDs should become less and less necessary.
- The existence of a diverse, competitive, innovative private sector waste industry is good for Ohio, and good for SWMDs. Ohio EPA, SWMDs, and the private sector waste industry should continue to engage in an open dialogue on ways in which we can all work together to achieve common objectives.

ⁱ Ohio EPA has stated publicly that in the long-run it should be the objective of SWMDs to “put themselves out of business” by the promotion of environmentally beneficial waste management practices that are institutionalized and self-funded. Ohio EPA’s vision for waste management in Ohio is one in which individuals, businesses, governments, and other institutions are implementing best waste management practices as a normal course of behavior, in a way that they do not need the technical or financial support of SWMDs or Ohio EPA. As such, Ohio EPA is also striving to put itself “out of business” when it comes to solid waste planning and related waste management activities. Ohio also recognizes that in order to achieve this objective, the private sector waste industry will need to play a critical role in providing a wide variety of waste management services throughout Ohio.

ⁱⁱ The special role of local (or regional) governments in the management of solid waste and the exercise of flow control to do so has been recognized by the U.S. Supreme Court. In the 2007 opinion issued by the Court in UNITED HAULERS ASSOCIATION, INC., ET AL., PETITIONERS v. ONEIDA-HERKIMER SOLID WASTE MANAGEMENT AUTHORITY ET AL., the Court stated “. . . States and municipalities are not private businesses—far from it. Unlike private enterprise, government is vested with the responsibility of protecting the health, safety, and welfare of its citizens.” Further, the Court recognized “The Counties’ ordinances [implementing flow control] are exercises of the police power in an effort to address waste disposal, a typical and traditional concern of local government.” Finally, the opinion stated “Congress itself has recognized local government’s vital role in waste management, making clear that ‘collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies.’ Resource Conservation and Recovery Act of 1976, 90 Stat. 2797, 42 U. S. C. §6901(a)(4).”

