



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.

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.

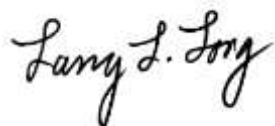
This proposal would create undue and ongoing conflict between districts and Ohio EPA as disagreement of the definitions of “substantive” and “non-substantive” would certainly arise. In addition, inserting an additional formal review and approval process into the planning process

(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 style with a large, prominent "L" at the beginning.

Larry L. Long
Executive Director