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SUBJECT: Solid Waste Management Districts Unable to Meet Goals Established in the *1995 State Solid Waste Management Plan*

DOCUMENT NUMBER: DSIWM-27-90-0635

REFERENCES:

Ohio Revised Code	Ohio Administrative Code
Section 3734.53(A)	Rule 3745-27-90

CROSS REFERENCES: *1995 State Solid Waste Management Plan*
District Solid Waste Management Plan Format, version 3.0

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I. PURPOSE:

The purpose of this document is to define criteria and procedures to be used by solid waste management districts (SWMDs) that are unable to show compliance with either Goal #1 or Goal #2 as established in the *1995 State Solid Waste Management Plan* (*1995 State Plan*) in their triennial plan update. The *1995 State Plan* contains language that explains, in general terms, the necessary demonstration required in a solid waste management plan if a SWMD cannot meet either of the goals. Due to an oversight, this language did not get incorporated into the Ohio Administrative Code (OAC) or version 3.0 of the *District Solid Waste Management Plan Format* (*Format*).

II. APPLICABILITY:

This document is directly applicable to SWMDs who are in the process of preparing a solid waste management plan update and SWMDs who will be preparing a solid waste management plan update under the *1995 State Plan*. This policy is intended to be utilized by SWMDs when preparing draft solid waste management plans.

III. DEFINITIONS:

Goal #1 of the *1995 State Plan* — "Program standards for SWMDs: ensure the availability of reduction, recycling, and minimization alternatives for municipal solid waste." SWMDs must demonstrate that the waste reduction, recycling, or minimization programs or activities in existence or scheduled to be implemented will be available by the year 2000 for a minimum of seven of the eleven materials identified in the 1995 State Plan as being highly amenable to recovery from municipal solid waste (MSW). SWMDs are required to ensure that a minimum of ninety percent of the population of each residential sector service area in the district has access to recycling opportunities. Thus, this goal is often referred to as the “access goal” or the “90 percent access goal”.

Goal #2 of the *1995 State Plan* — "Reduce and/or recycle at least 50 percent of the total generation of solid waste statewide by the year 2000.

- Objective #1 - 25 percent residential/commercial solid waste objective for SWMDs

Reduce, reuse, recycle, or minimize 25 percent of the generation of residential/commercial solid wastes by the year 2000.

- Objective #2 - 50 percent industrial goal for SWMDs
  Reduce or recycle 50 percent of the generation of industrial solid wastes by the year 2000.

IV. BACKGROUND:

In order to provide SWMDs with flexibility regarding how to achieve recycling within their jurisdictions, the *1995 State Plan* gives SWMDs the option of choosing how to structure their programs for achieving recycling by providing two recycling goals (Goals #1 and #2 of the *1995 State Plan*). (For an explanation of Goals 1 and 2 of the *1995 State Plan*, please see Section III (Definitions) of this document). Although SWMDs are encouraged to achieve both goals, the SWMDS are only required to meet one of the two goals. Each SWMD is required to specify, in its solid waste management plan update, which goal it is pursuing and develop strategies to meet that goal. Regardless of which goal is chosen, the SWMD is required to demonstrate that it will comply with the chosen goal by the year 2000.

The Division of Solid and Infectious Waste (DSIWM) has received requests from several SWMDs that are in the process of preparing solid waste plan updates to extend the date for meeting Goal #1 or Goal #2 beyond the year 2000. The reason is that the some SWMDs have only one year, sometimes less, to implement the programs that will allow the districts to meet the goals of the *1995 State Plan*. Further complicating the situation is the staggered schedule for plan submittal. The result is that some SWMDs have a longer time frame within which to implement programs and meet the goals in the *1995 State Plan* than other SWMDs. The SWMDs that end up submitting plan updates later in the cycle have, in some cases, insufficient time to implement the necessary programs. Additionally, some SWMDs will actually receive approval of their plan update after the year 2000, thereby making it impossible for them to comply with the *1995 State Plan*.

Table 1, copied from the *1995 State Plan*, presents four possible scenarios to describe a SWMD's efforts towards demonstrating compliance with Goal #1 and Goal #2 in its solid waste plan update. In Scenarios 1, 2, and 3, the SWMD's plan update demonstrates compliance with at least one of these goals, resulting in plan approval by Ohio EPA (assuming the plan meets all other necessary requirements). Scenario 4 could result in plan disapproval since compliance with neither goal has been demonstrated in the SWMD's plan update. However, Scenario 4 also states that plan approval is possible if the SWMD provides an explanation as to why these goals cannot be met and proposes aggressive remedies and a schedule for meeting the goals.

On page 28 of the *1995 State Plan*, the text further discusses Scenario 4 by stating:

> "In order to avoid plan disapproval under Scenario 4, the district's plan would need to demonstrate clearly the impediments to meeting Goals #1 and #2, and develop aggressive remedies within the plan to address the deficiencies."

Due to an oversight, the language cited above was not incorporated into the August 1, 1996 revision of rule 3745-27-90 of the Ohio Administrative Code (OAC) which defines the requirements SWMDs must meet in accordance with state law. However, section 3734.53(A) of the Ohio Revised Code (ORC) states that a SWMD's solid waste management plan "...shall provide for compliance with the objectives of the state solid waste management plan <u>and</u> rules adopted under section 3734.50 of the Revised Code..." [emphasis added]. Because the rules are typically written after the state plan and are intended to mirror the requirements in the state plan, DSIWM believes that the

Table 1. Goal #1 vs. Goal #2 and Plan Approval

Scenario	Goal #1 met?	Goal #2 met?	Plan approval?*
1	yes	yes; district at or above both 25% for MSW and 50% for industrial.	yes
2	yes	no; district sets reasonable targets.	yes
3	no	yes; district at or above both 25% for MSW and 50% for industrial.	yes
4	no	no; district sets targets.	disapproval possible; district must explain why Goals #1 and #2 cannot be met, and propose aggressive remedies.
* Discussion of plan approval in this column assumes that all other requirements for the plan have been satisfied.			

language above should have been included in the OAC Rule 3745-27-90, and that SWMDs should not be denied the ability to invoke the language when necessary. Thus, DSIWM believes that a SWMD which cannot demonstrate compliance with Goals #1 or #2 should be afforded a potential solution by utilizing the language on page 28 of the *1995 State Plan* even though that language isn't in the rules. DSIWM fully intends to correct this discrepancy through the proper rule-making process within the next couple of years. Until that can be accomplished, this policy is intended to provide an interim solution.

VI. PROCEDURE:

After careful consideration of the issues, DSIWM has developed the guidelines below to assist SWMDs in obtaining an approved plan update under the conditions described in Scenario 4 in Table 1. If SWMDs wish to obtain an approved plan update under Scenario 4, then they must include the following information in their plan update under appropriate headings and sub-headings. The information that is requested in the discussion below should be included in the draft version of the plan update. This will give DSIWM the opportunity to review the information and comment on it in the non-binding advisory opinion that is issued for the draft plan.

Plan preparers should include the following heading (presented in bold font) and sub-headings (presented in underlined text) and the information described for each in Section VII of the draft plan update:

Inability to Demonstrate Compliance with goal #1 or Goal #2 of the 1995 State Plan

<u>Current Status</u>

- Information under this sub-heading should include a preliminary assessment of the SWMD's current status (i.e. at the time the request is submitted) towards meeting Goal #1 and Goal #2 as well as an estimate of the district's status at the year 2000. For Goal #1, the SWMD must determine the percentage of the SWMD's population which has access to recycling opportunities, using the methodology described in Section VII. B (Demonstration of Compliance with Goal #1) of the *Format*. The results of this methodology are then presented in Table VII-2 of the *Format.* The SWMD must demonstrate that the estimated access percentage is based upon an examination of all the existing drop-off and curbside recycling activities in the SWMD. For Goal #2, the SWMD must determine what percentage of waste generated in the district is being reduced or recycled using the methodology described in Section VII.C (Calculating Goal #2, the Waste Reduction Rate (WRR) of the *Format*. The results of this methodology are then presented in Tables VII-3, 4, and 5.

Impediments to Meeting Goal #1 and Goal #2 of the *1995 State Plan*

- Narrative under this sub-heading should include a clear and complete description of the impediments for meeting both Goal #1 and Goal #2. The plan should contain a discussion of the impediments to meeting Goal #1, then discuss the impediments to meeting Goal #2. The list of impediments for meeting one of the goals may or may not be the same as the list for the other goal. The list developed for each goal should largely depend upon the steps/programs which would be necessary to demonstrate compliance. Provide as much detail as possible, including an explanation as to why the impediment cannot be overcome.

Aggressive Remedies for Meeting Goal #1 or Goal #2 by Year 2000

- The SWMD's plan must show that the SWMD is taking aggressive steps to move toward compliance with one or both of the *1995 State Plan* goals in a timely fashion. Narrative under this sub-heading should identify the aggressive steps which will be taken since compliance will not be demonstrated with Goal #1 or Goal #2. DSIWM expects that the SWMD will be, at a minimum, implementing new strategies, making changes to existing strategies, and/or escalating the implementation of planned future strategies in an effort to provide aggressive remedies. These new strategies and/or changes to existing strategies should be fully described, as required by the *Format*, along with all other strategies and programs being implemented by the SWMD, in Section V of the draft plan update. If such descriptions have been included in Section V of the plan, then detailed descriptions of the strategies do not need to be included under this sub-heading. Under that scenario, including, under this sub-heading, a list that identifies which of the strategies from Section V the SWMD is using as "aggressive remedies" should be sufficient. Ohio EPA should be able to clearly distinguish the new strategies and changes to existing strategies that are being proposed as aggressive remedies from those which are being proposed to support the SWMD's ongoing operation. [Please note that all strategies listed under this sub-heading as "aggressive remedies" must also be included in Table VI-5 (Implementation Schedule for Facilities, Strategies, Programs, and Activities: Dates and Description) of the draft plan update, as required by the *Format*.]

Ohio EPA fully expects a SWMD submitting a plan update under the conditions of Scenario 4 to come into compliance with one or both of these goals prior to the next scheduled plan update.

VII. QUESTIONS AND ANSWERS:

Possible questions which may arise related to this policy and associated answers to these questions are given below.

A. If my SWMD is unable to meet Goal #1 or Goal #2 by the year 2000, how many years after the year 2000 would Ohio EPA consider to be acceptable for compliance with one or both goals?

Ohio EPA believes that a SWMD should be able to implement programs which would allow the SWMD to obtain compliance with Goal #1 or Goal #2 no longer than two or three years after the beginning of the planning period for the plan update. For example, if the first year of the planning period is 1999, Ohio EPA would expect the SWMD to be able to demonstrate compliance with one or both of the goals no later than in the year 2001. If the first year of the planning period is 2000, Ohio EPA would expect the SWMD to be able to demonstrate compliance with one or both of the goals no later than the end of the year 2002.

B. What would be included (or acceptable) in a list of typical impediments?

Ohio EPA expects that SWMDs may experience one or more of the following impediments when unable to demonstrate compliance with Goal #1 or Goal #2:

- not enough time to implement programs needed for meeting goal;
- more time needed to collect additional revenues for program implementation;
- more staff needed for program implementation;
- programs need to be phased in for most efficient implementation.
- the plan update will not be approved until during or after year 2000

C. What if a SWMD cannot demonstrate compliance with Goal #1 or Goal #2 prior to the next scheduled plan update?

The *1995 State Plan* established Goal #1 and Goal #2 and allows a SWMD to demonstrate compliance with either goal. This option was provided for SWMDs that experienced difficulty in meeting the 25 percent waste reduction/recycling goal under the *1989 State Plan*. In addition, the standards for demonstrating compliance with Goal #1 were established with the thought that all SWMDs could meet Goal #1 with a reasonable level of effort, or choose to meet Goal #2. Ohio EPA and the Solid Waste Advisory Council recognize that some SWMDs may experience some difficulty in meeting one or both goals, but the language cited in this document from page 28 of the *1995 State Plan* was not intended to exempt a SWMD from ever meeting one of the goals. Ohio EPA does not envision approving a plan update which cannot demonstrate compliance with Goal #1 or Goal #2 prior to the next scheduled plan update.

VIII. POINT OF CONTACT:

If you have any questions regarding this document, would like additional information regarding this topic, or have questions about other related topics, please contact the supervisor of the Planning Unit in the Division of Solid and Infectious Waste Management at (614) 728-5355.

You can also get more information regarding the Division of Solid and Infectious Waste Management by visiting our web site at http://www.epa.state.oh.us/dsiwm/dsiwmain.html.

VIII. DISCLAIMER:

This policy is intended to be used for guidance purposes only. Completion of the activities and procedures outlined in this policy shall not be construed to release an owner or operator from any requirement or obligation for complying with ORC Chapter 3734., the OAC rules adopted thereunder, or any authorizing document(s) or orders issued thereunder, nor shall it prevent Ohio EPA from pursuing enforcement actions to require an owner's or operator's compliance with ORC Chapter 3734., the OAC rules or any authorizing document(s) or orders issued thereunder.