

3036

**SUMMARY OF COMMENT RESPONSES EWMF
ARARS**

03/17/92

**9
ENCLOSURE**

SUMMARY OF COMMENT RESPONSES

EWMF ARARs
T. Tank

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Date Report Due	<u>N/A</u>	

OEPA General Comments

1. Commenting Organization: OEPA Commentor:
Pg. # Section # Paragraph # Sent./Line #
Original Comment # 1

Comment: An initial review of the technical requirements of OAC 3745-27-07 (B) suggests that DOE will not be able to meet the specific requirements for siting a solid waste disposal facility in the area proposed in the EWMF Sampling and Analysis Plan. If DOE wishes to pursue siting a solid waste disposal facility in the area proposed, a waiver/exemption will most likely be needed. Under appropriate conditions CERCLA in 121(d)(4) provides mechanisms for USEPA to select a remedy that does not attain ARARs. These "ARARs waivers" may be used to select the EWMF as a part of the remedy even if it does not meet all ARARs. Additionally, Ohio's laws regarding the siting of the EWMF, or any other Ohio law ARARs the EWMF cannot attain, would need to be exempted or varied by the Director of the Ohio Environmental Protection Agency before the EWMF is implemented. DOE must consider both waivers and exemptions if they intend to proceed with planning and analyzing the EWMF as a part of any remedy at FEMP.

Response: The technical siting requirements for a solid waste landfill will be considered if the material to be received at the Engineered Waste Management Facility meets the definition of "solid waste" as set forth in OAC3745, or the material is sufficiently similar to "solid waste" as defined in same.

Based on CERCLA/SARA Section 121 (d), DOE intends to request guidance from the U.S. EPA, pursuant to the terms of the Amended Consent Agreement, as to the applicability of the aforementioned OAC.

Action: DOE will request guidance from U.S. EPA.

2. Commenting Organization: OEPA Commentor:
Pg. # Section # Paragraph # Sent./Line #
Original Comment #

Comment: DOE must continue to use the most current MCLs and update such submittals accordingly. The MCLs listed in this document need to be updated and checked for accuracy (i.e., 2,4-D MCL is listed as 0.1 mg/l in this document, but is 0.07 mg/l in the October 1991 "Drinking Water Regulations and health Advisories" published by USEPA Office of Water; additional corrections need to be made).

Response: Comment noted.

Action: Maximum Contaminant Levels (MCLs) and Maximum Contaminant Level Goals (MCLGs) are potential ARARs for the EWMF. These levels have been updated in accordance with the most current version of the "Drinking Water Regulations and Health Advisories" published by the US EPA Office of Water in November, 1991 and listed as Attachment 1 in the revised ARARs. Furthermore, updated Drinking Water Health Advisories (HAs), Reference Doses (RfDs) and Slope Factors (SFs) are provided as "To Be Considered" (TBCs) values in Attachment 1. The sources for these values include the "Drinking Water Regulations and Health Advisories" (EPA, Office of Water; November, 1991), the Integrated Risk Information System (maintained by the US EPA Environmental Criteria Assessment Office; January, 1992) and the "Health Effects Assessment Summary Tables" (US EPA Office of Emergency and Remedial Response; January, 1991). It is emphasized that the values in this table are subject to changes in the federal regulations and guidance over the course of the RI/FS Program.

OEPA Specific Comments

3. Commenting Organization: OEPA Commentor:
Pg. # Section # Paragraph # Sent./Line #
Original Comment # 1

Comment: Additional ARARs which need to be added include:

- a) 50 CFR 200, 402 - Endangered Species Act; see Ohio EPA comments (12/19/91) on the EWMF SAP.
- b) ORC 1518, OAC 1501:18-1-01, ORC 1513.25 - Ohio Endangered Species Act for plant and animals.
- c) Did DOE consider 10 CFR 60, 10 CFR 61 or 40 CFR 193 as ARARs? These regulations may provide requirements that qualify as ARARs.

- Response:
- a) The citations have been included as a potential location ARAR.
 - b) The citations have been included as a potential location ARAR.
 - c) DOE considered 10CFR60, "Disposal of High-Level Radioactive Waste in Geologic Repositories," and concluded that the requirement is not applicable. Furthermore, DOE concluded that 10CFR60 does not meet the requirements for the regulation to be relevant and appropriate. Therefore 10CFR60 is not included in the list of potential ARARs for the EWMF.

DOE considered 10CFR61, "Licensing Requirements for Land Disposal of Radioactive Waste," and concluded that the requirement is not applicable. DOE concluded that portions of 10CFR61 met the requirement for the regulation to be relevant and appropriate. These specific subparts of the regulation are included in the list of potential ARARs. Please see Comment 15 which notes the inclusion of 10CFR61.

DOE did not consider 40CFR193, "Environmental Protection Standards for Low Level Radioactive Waste," since this regulation has not been promulgated (see Federal Register, Volume 56 pp. 54045 - 54046). The U.S. EPA and U.S. NRC are finalizing a Memorandum of Understanding (MOU) on issues relating to the future of the subject of 40CFR193. The MOU is not expected until approximately March 16, 1992. Activities associated with promulgating 40CFR193 will follow the MOU and may not occur for sometime.

Action: Text has been revised as noted in response.

4. Commenting Organization: OEPA Commentor:
Pg. # 3 Section # Paragraph # Sent./Line #
Original Comment # 2

Comment: MCL Inorganic chemicals: The list of MCLs fails to include all potential contaminants of concern at the site, which have MCLs or proposed MCLs available. For additional inorganic contaminants of concern (i.e., antimony, beryllium, etc.) see the RI/FS Risk Assessment Work Plan Addendum (10/91) Table 4-2 and recent Treatability Study Work Plan submittals.

Response: The inorganic chemicals from Table 4-2 from the Risk Assessment Work Plan Addendum (10/91) are now included in the list of potential ARARs and TBCs in Attachment 1. The Treatability Studies were also reviewed to determine whether additional chemicals should be added. Although polonium-210 was identified in the treatability studies, short-lived daughter products were assumed to be present but were not listed in Table 4-2.

It is emphasized that Table 4-2, as well as Attachment 1, represent radionuclides, inorganic chemicals, and organic chemicals that have been detected or inferred for each

of the Operable Units. It is not possible to present the list of chemicals of potential concern since it will be developed during the site-wide risk assessment. The final list of chemicals of potential concern will most likely be a subset of chemicals from Table 4-2. Therefore, the list of potential ARARs and TBCs may possibly have to be revised accordingly.

Action: Text has been revised as noted in response.

5. Commenting Organization: OEPA Commentor:
Pg. # 4 Section # Paragraph # Sent./Line #
Original Comment # 3

Comment: MCL Organic Chemicals: The list of MCLs fails to include all potential contaminants of concern at the site, which have MCLs or proposed MCLs available. For additional organic contaminants of concern (i.e., chlordane, chrysene, DDT, etc.) see the RI/FS Risk Assessment Work Plan Addendum (10/91) Table 4-2 and recent Treatability Study Work Plan submittals.

Response: The organic chemicals from Table 4-2 from the Risk Assessment Work Plan Addendum (10/91) are now included in the list of potential ARARs and TBCs in Attachment 1. The Treatability Studies were also reviewed to determine whether additional chemicals should be added.

It is emphasized that Table 4-2, as well as Attachment 1, represent radionuclides, inorganic chemicals and organic chemicals that have been detected or inferred for each of the Operable Units. It is not possible to present the list of chemicals of potential concern since it will be developed during the site-wide risk assessment. The final list of chemicals of potential concern will most likely be a subset of chemicals from Table 4-2. Therefore, the final list of potential ARARs and TBCs may possibly have to be revised accordingly.

Action: Text has been revised as noted in response.

6. Commenting Organization: OEPA Commentor:
Pg. # 6 Section # Paragraph # Sent./Line #
Original Comment # 4

Comment: MCLGs: The list of MCLGs fails to include all potential contaminants of concern at the site, which have MCLs or proposed MCLGs available. For additional contaminants of concern (i.e., 1,2 dichloroethylene) see the RI/FS Risk Assessment Work Plan Addendum (10/91) Table 4-2 and recent Treatability Study Work Plan submittals.

Response: The chemicals from Table 4-2 from the Risk Assessment Work Plan Addendum (10/91) are now included in the list of potential ARARs and TBCs in Attachment 1. The Treatability Studies were also reviewed to determine whether additional chemicals should be added.

It is emphasized that Table 4-2, as well as Attachment 1, represent radionuclides, organic chemicals, and inorganic chemicals that have been detected or inferred for each of the Operable Units. It is not possible to present the list of chemicals of potential concern since it will be developed during the site-wide risk assessment. The final list of chemicals of potential concern will most likely be a subset of chemicals from Table 4-2. Therefore, the list of potential ARARs and TBCs may possibly have to be revised accordingly.

Action: Text has been revised as noted in response.

7. **Commenting Organization:** OEPA **Commentor:**
Pg. # 6 **Section #** **Paragraph #** **Sent./Line #**
Original Comment # 5

Comment: 10 CFR 20.101-105, why are these relevant and appropriate rather than applicable? Also, please clarify whether or not the individuals in restricted areas will be protected from radiation concentrations above regulatory limitations.

Response: DOE facilities are specifically exempted from the requirements for 10CFR20 (as well as other parts of Title 10) according to the Atomic Energy Act of 1954 (68 Stat. 919), as amended, and the Energy Reorganization Act of 1974. DOE evaluated 10CFR20.101-105 and concluded that the regulation met the requirements for inclusion as relevant and appropriate, in accordance with 40CFR300, "National Oil and Hazardous Substances Pollution Contingency Plan" (March 8, 1990).

Implementation of the ARARs listed specifically, but not limited to, DOE Order 5400.5 and DOE Order 5820.2A, will provide protection of individuals to levels of radiation exposure and radionuclide concentrations that are below regulatory limits.

Action: No action.

8. **Commenting Organization:** OEPA **Commentor:**
Pg. # 10 **Section #** **Paragraph #** **Sent./Line #**
Original Comment # 6

Comment: 40 CFR 264, Subpart F, "Rationale for Improvements", as an example, this requirements should not just be a basis for design, it also is a performance criteria for the EWMF that must be met. The same statement appears throughout the document.

Response: Comment noted.

Action: The Rationale for Implementation has been revised to read "This regulatory requirement is listed as an ARAR for the purpose of being utilized as an operations protection standard and to predict design-based performance criteria for the EWMF." This text has been revised as indicated throughout the table as appropriate.

9. **Commenting Organization:** OEPA **Commentor:**
Pg. # 12 Section # Paragraph # Sent./Line #
Original Comment # 7

Comment: **Rationale for Implementation:** The statement "40 CFR 300 requires that in absence of an ARAR for contaminants, guidance ..." should be corrected to read "40 CFR 300 requires that when ARARs are not available or are not sufficiently protective because of the presence or multiple contaminants at a site or multiple pathways of exposure, guidance...".

Response: Comment noted.

Action: The statement on page 12 will be revised as requested.

10. **Commenting Organization:** OEPA **Commentor:**
Pg. # 15 Section # Paragraph # Sent./Line #
Original Comment # 8

Comment: **40 CFR 2645.18 and OAC 3745-54-18, comment under Rationale for Implementation should be clarified. Not only should these requirements be used when locating the EWMF, then the EWMF must meet the criteria or DOE must develop basis upon which USEPA can waive requirements and OEPA can exempt them.**

Response: Comment noted.

Action: The text has been revised to read "The criteria for the location and design of the EWMF will in part be based upon the presence of the 100-year floodplain."

11. **Commenting Organization:** OEPA **Commentor:**
Pg. # 16 Section # Paragraph # Sent./Line #
Original Comment # 9

Comment: **Executive Order 11988 is not a TBC. The Executive Order is promulgated in Appendix A to 40 CFR part 6. Also, DOE should analyze the following to determine if the requirements are ARARs; 40 CFR 264.18 (6), 60 USC 661 et seq. and 40 CFR 6.302.**

Response: Comment noted with exceptions.

Action: Executive Order 11988 has been promulgated as 40CFR6.302 (b). The text has been revised to cite this regulation as an ARAR. Clarification of citation 40CFR264.18 (6) is requested. Section (6) does not exist; however, 40CFR264.18 is listed as an ARAR on page 15 of Revision 3 and page 14 of Revision 4. Clarification of citation 60USC661 is requested. Section 661 of 60USC has not been located.

12. Commenting Organization: OEPA Commentor:
Pg. # 17 Section # Paragraph # Sent./Line #
Original Comment # 10

Comment: Executive Order 11990 is also an ARAR because it is promulgated, see my comment (d) above.

Response: Comment noted.

Action: Executive Order 11990 has been promulgated as 40CFR6.302 (a). The text has been revised to cite this regulation as an ARAR.

13. Commenting Organization: OEPA Commentor:
Pg. # 18 Section # Paragraph # Sent./Line #
Original Comment # 11

Comment: These, again are not TBCs.

Response: Comment noted.

Action: The text has been revised to cite this regulation as an ARAR.

14. Commenting Organization: OEPA Commentor:
Pg. # 20 Section # Paragraph # Sent./Line #
Original Comment # 12

Comment: 40 CFR 241 202, ORC 6111.45 and 3745-27 (et. seq.) Please note that 3745-27 is inappropriately cited. Also, the comment under "Rationale for Implementation", add to the list that the EWMF must be sited in accordance with state and federal requirements.

Response: Comment noted.

Action: OAC3745-27 has been removed from the citation. Also the "Rationale for Implementation" has been revised as requested.

15. Commenting Organization: OEPA Commentor:
Pg. # 20 Section # Paragraph # Sent./Line #
Original Comment # 13
- Comment:** **Rationale for Implementation: Correct the sentence to read, "... the facility must be sited, designed and operated in accordance with state ...".**
- Response:** Comment noted.
- Action:** The text has been revised as indicated.
16. Commenting Organization: OEPA Commentor:
Pg. # 22 Section # Paragraph # Sent./Line #
Original Comment # 14
- Comment:** **40 CFR 241.209, Ohio's requirements for cover are more stringent than Federal requirements and therefore are the ARAR to be met for cover. See, CERCLA 121(d)(2)(A)(ii) and OAC 3745-27-10.**
- Response:** Comment noted.
- Action:** Citation 40CFR241.209 has been replaced by the correct Ohio citation, OAC3745-27-11 (G). The text has been revised to read "The cover shall be applied in accordance with the closure requirements of OAC3745-27-11".
17. Commenting Organization: OEPA Commentor:
Pg. # 63 Section # Paragraph # Sent./Line #
Original Comment # 15
- Comment:** **10 CFR 61, Subpart D: A brief description of the requirements cited here would be helpful to the reader.**
- Response:** As with all ARARs presented in the table, a brief summary of requirements is given so that the table can be of manageable length. The summary of requirements of Subpart D corresponds to the general headings of the sections of Subpart D. The specific requirements of 10CFR61, Subpart D cannot be adequately presented in the table, short of copying the entire Subpart. If this were done, other equally important ARARs would need to be expanded - even copied in total, thereby making the table of ARARs unmanageable to the user. The reader is referred to the full text of 10CFR61, Subpart D.
- Action:** No action.

U.S. EPA Comments

18. Commenting Organization: U.S. EPA Commentor:
Pg. # Section # Paragraph # Sent./Line #
Original Comment # 1

Comment: The list of ARARs is quite extensive and appears to be an exhaustive list for the construction of a storage or disposal facility. As such there is concern over U.S. DOE's ability to meet some of the ARARs. Specifically, the requirements for siting a solid waste disposal facility may be difficult to attain given the aquifer in the area.

Response: Comment noted.

Action: No action.

19. Commenting Organization: U.S. EPA Commentor:
Pg. # Section # Paragraph # Sent./Line #
Original Comment # 2

Comment: Did U.S. DOE consider 40CFR193 or 40CFR191 as ARARs?

Response: DOE did not consider 40CFR193, "Environmental Protection Standards for Low Level Radioactive Waste," since this regulation has not been promulgated (see Federal Register, Volume 56 pp. 54045-54046). For additional information see Comment Response #3C.

40CFR191, Subpart B, will be incorporated as a TBC in the revised ARARs list. However, final incorporation of all or part of this citation will depend on the results of a discussion presently being held between DOE and U.S. EPA.

Action: Revisit the issue when discussion is complete.