



Ratification of Solid Waste Management District Solid Waste Management Plan

Applicable Laws

- Ohio Revised Code (ORC) Section 3734.55 and 56

When is ratification required?

In solid waste management planning, there are two instances when ratification must occur:

- When developing a solid waste management district (SWMD) solid waste management plan (plan). That is the topic of this fact sheet.
- When establishing, amending, or repealing a solid waste disposal or generation fee (fee or fee schedule). (See guidance/fact sheet 0594 – Ratification of Solid Waste Management District Disposal and Generation Fees).

The policy committee of a SWMD and the board of trustees of a solid waste management authority are responsible for ratifying the solid waste management plan.

House Bill 592 (HB 592), signed into law on June 24, 1988, dramatically revised Ohio's outdated solid waste regulatory program. The law also established a solid waste management planning program to be implemented at both the state and local government levels. The bill emphasized the need to reduce Ohio's reliance on landfills for the disposal of waste by increasing solid waste reuse, recycling and minimization efforts. This guidance is one in a series explaining the provisions of HB 592 that make up Ohio's solid waste management planning program.

[For simplicity, for the rest of this guidance, policy committee is used to refer to policy committee and board of trustees.]

Plan Ratification Overview

For plans, ratification is the process prescribed by law that a SWMD's policy committee must follow to allow its constituents to review and approve the plan. The policy committee initiates ratification after Ohio EPA has reviewed the policy committee's draft plan and the policy committee has made all necessary changes to address Ohio EPA's comments.

- 1) The basic steps in the plan ratification process are as follows:
- 2) public notice;
- 3) public hearing;
- 4) modification, if necessary, of draft plan based on public comments;
- 5) adoption/rejection by the policy committee; and
- 6) approval by the board and by legislative authorities of municipal corporations (municipalities) and townships.

[Unless otherwise indicated, this document uses legislative authorities to collectively refer to those representing both municipalities and townships.]

Public Notice

The policy committee must make the draft plan available for public comment. The policy committee must publish a public notice in at least one newspaper of general circulation throughout the entire SWMD. The public notice must:

- describe the draft plan;
- specify the location where a copy of the draft plan can be reviewed; and,
- establish a 30-day comment period for interested parties to submit comments regarding the draft plan to the policy committee.

The policy committee must make the draft plan available for review by:

- adjacent SWMDs;

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- the board;
- all legislative authorities within the jurisdiction of the SWMD; and,
- the public.

The policy committee is also required to send written notice of the draft plan to:

- adjacent SWMDs;
- the director of Ohio EPA;
- the 50 industrial, commercial or institutional facilities that generate the largest quantities of solid waste within the SWMD; and

the local trade associations representing the industrial, commercial or institutional facilities generating the largest quantities of solid waste in the SWMD.

- All written notices must include:
- the date, time and location of the public hearing;
- the dates when the comment period begins and ends;

a description of the draft plan that includes a discussion of any new fees or changes to existing fee schedules that will be levied with the plan; and

a statement regarding whether the policy committee will be authorized to establish or will be precluded from establishing facility designations in accordance with ORC Section 3734.53.

Public Hearing

Within 15 days after the public comment period ends, the policy committee must hold at least one public hearing concerning the draft plan.

The policy committee must publish a notice that the public hearing is going to be held. This notice must:

- be published at least 15 days before the scheduled date of the hearing; and,
- appear in at least one newspaper of general circulation throughout the entire SWMD.

The notice that the public hearing is going to be held must provide the following information:

- the time the hearing will be held;
- the location where the hearing will be held; and,
- the location where a copy of the draft plan can be reviewed.

Draft Plan Modification

After the public hearing, the policy committee may modify the draft plan as appropriate to address comments received from the public.

Adoption of the Draft Plan by the Policy Committee

Once all changes have been made to the draft plan, the policy committee must vote to adopt or reject the draft plan. The majority vote determines the outcome.

Approval by Board(s) of County Commissioners and Legislative Authorities

Within 30 days after adopting the draft plan, the policy committee must deliver copies to:

- the board of county commissioners of each county in the SWMD; and,
- all legislative authorities within the jurisdiction of the SWMD.

Within 90 days after receiving a copy of the draft plan, each board and each legislative authority must:

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- issue an ordinance or resolution either approving or disapproving the draft plan; and,
- deliver a copy of the resolution or ordinance to the policy committee.

Votes are tabulated by the policy committee as follows:

- resolutions or ordinances received by the policy committee within the 90-day period and that approve the draft plan are considered as yes votes;
- resolutions or ordinances received by the policy committee within the 90-day period and that disapprove the draft plan are considered as no votes.

The criteria for determining whether a draft plan is ratified depend upon the number of counties in the SWMD as follows.

- For SWMDs composed of single counties, the plan must be approved by:
 - the board of county commissioners;
 - the legislative authority representing the municipality with the largest population in the SWMD; and
 - legislative authorities representing a combined population of at least 60 percent of the SWMD's total population (the population of the municipality with the largest population can count toward achieving this 60 percent).
- For SWMDs composed of two or three counties, the plan must be approved by:
 - the boards of county commissioners for all counties;
 - the legislative authority representing the municipality with the largest population from each county (one for each county); and,
 - legislative authorities representing a combined population of at least 60 percent of the SWMD's total population (the populations from the municipalities from the previous bullet point can count toward achieving the 60 percent).
- For SWMDs composed of four or more counties, the plan must be approved by:
 - a majority of the boards of county commissioners;
 - a majority of the legislative authorities representing the municipalities with the largest populations in their respective counties, one from each county within the SWMD. [For example, a SWMD with five counties, would need the legislative authorities from at least three of the largest municipalities to approve the plan]; and
 - legislative authorities representing a combined population of at least 60 percent of the SWMD's total population (the populations from the municipalities from the previous bullet point can count toward achieving the 60 percent).

The policy committee declares the draft plan to be ratified when all the criteria listed previously (under the appropriate scenario) are met.

For More Information

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For more information about the planning process and solid waste management in your area, contact your local SWMD. To determine which SWMD you live in, use the Map of Ohio's Solid Waste Management Districts that is available on the Solid Waste Management Planning page on DMWM's website.

To contact your SWMD, call or email the person listed on the Ohio Solid Waste Management Districts: Coordinators and Directors that is available on the Solid Waste Management Planning page of DMWM's website. You can also contact DMWM to get information about your SWMD.

Q1 How long does it take to complete the plan ratification process?

Ratification is just one step in the overall process of developing and adopting a solid waste management plan (plan). Therefore, the amount of time needed to complete the ratification process is only one factor that needs to be considered when scheduling activities associated with plan development and adoption.

Ohio Revised Code (ORC) Section 3734.55(D) gives the policy committee 18 months from the date the draft plan update is due to Ohio EPA to obtain a plan that is approved by Ohio EPA. Since Ohio EPA has 45 days to review the draft plan and 90 days to review the ratified draft plan, the policy committee has 13.5 months to obtain a ratified plan.

The major steps in the ratification process alone can require up to four months (the public comment period (30 days) and adoption by board(s) of county commissioners and legislative authorities of municipalities and townships (90 days)). This four-month time frame does not account for the time the policy committee takes to hold the public hearing, to revise the plan based on public comments, to vote on adoption or rejection of the plan, and to deliver copies of the draft plan to the boards of county commissioners and legislative authorities. Depending on how much time each of these other steps require, the ratification process can take much longer than four months.

Q2 When should a policy committee begin preparation of the plan update?

ORC Section 3734.56(A) requires the policy committee begin preparing a draft plan update no later than 15 months prior to the date the draft plan must be submitted to Ohio EPA for review. [The policy committee may opt to begin preparing the plan update more than 15 months prior to the date it is due to be submitted to Ohio EPA, but the policy committee must begin at least 15 months prior to the due date.]

The key date for determining when this 15-month period begins is the date the current plan was approved. The draft plan update must be submitted on the date either three or five years after the date it was approved by Ohio EPA (the draft plan due date).

If the current plan covers less than a 15-year planning period (most commonly 10 years), then the due date is three years from the date the current plan was approved. If the current plan covers a planning period that is 15 years or more, then the due date is five years from the approval date. Thus, the policy committee should begin the process for adopting a plan update at least 15 months prior to the three- or five-year anniversary of the date the current plan was approved. [For example, the policy committee with a plan that was approved by Ohio EPA on July 1, 2009 would need to begin the process to update the plan on April 1, 2011 (for a 10-year plan) or April 1, 2013 (for a 15-year plan).]

Please keep in mind that the policy committee can, and in some cases, should, begin plan preparation more than 15 months prior to the three- or five-year anniversary of the date the current plan was approved. The 15 months prescribed by ORC Section 3734.55(D) is a minimum. Many of the activities that need to be performed when preparing a plan update can take a significant amount of time, particularly surveying.

If the SWMD is large or is primarily urban, gathering the necessary information and data can consume a great deal of time. In addition to gathering data, the policy committee must ensure that there is enough time to analyze the data, write the plan, edit and revise the plan, make the necessary copies of the plan, deliver the plan to the necessary parties, etc.

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For large SWMDs, and for SWMDs where there is the likelihood of controversy occurring, it may be a good idea for the policy committee to begin plan preparation more than 15 months prior to the three- or five-year anniversary of the date the current plan was approved.

Q3 Can the policy committee re-attempt to ratify a plan if the plan fails to be ratified during the first attempt?

ORC Chapter 3734 does not address attempting ratification more than once. Because the statute is silent on the issue, there is no limit on the number of times that a policy committee can attempt to ratify a plan, provided the policy committee can meet the deadlines established in the statute.

As was explained in the answer to Q1, ORC Section 3734.55(D) gives the policy committee 18 months from the date the draft plan update is due to Ohio EPA to obtain a plan that is approved by Ohio EPA. Since Ohio EPA legally has 45 days to review the draft plan and 90 days to review the ratified plan update, this leaves the policy committee with 13.5 months to obtain a ratified plan.

If the policy committee still has enough time remaining in the 18-month period to complete the ratification process and deliver the ratified draft plan to the Ohio EPA, then ratification can be attempted again.

Therefore, in theory, a policy committee could attempt to ratify a plan more than once. A policy committee that fails to obtain ratification of their plan the first time around can take steps to make the plan acceptable to the objecting parties.

Once changes are made to the plan, however, Ohio EPA suggests that the policy committee re-perform the entire ratification process, beginning with the public notice/public comment period. [The statute does not address the policy committee's obligations related to multiple attempts at ratification. Absent any specific language in the statute, a strict interpretation would call for completion of all the steps. To avoid future accusations that the policy committee did not fulfill their ratification obligations, Ohio EPA recommends that the policy committee complete all the steps in subsequent ratification attempts.]

While, in theory, multiple attempts at ratification can occur, the reality is that by the time the policy committees for most SWMDs have plans ready to undergo ratification, there is only enough time remaining in the 15-month period to complete one round of ratification.

Q4 What happens if the policy committee is unable to obtain ratification from the necessary boards of county commissioners and/or legislative authorities within the SWMD and eighteen months has passed since the draft plan update was due to Ohio EPA?

When the policy committee of a SWMD is unable to obtain ratification of the plan update and the 18-month period has passed, then ORC Section 3734.55(D) requires the director of Ohio EPA to prepare a plan for the SWMD. Once the plan is completed, the statute further requires the director of Ohio EPA to order the SWMD to implement the plan.

There are several consequences for the SWMD that result from being ordered to implement a plan prepared by Ohio EPA. ORC Section 3734.55(D) prohibits Ohio EPA from including in the plan provisions to allow rules to be adopted for the SWMD. As a result, the first consequence is that the SWMD cannot adopt rules, as provided for in ORC Section 3734.53(C), upon implementation of the plan.

ORC Section 3734.55(D) further prohibits Ohio EPA from including a statement either precluding or authorizing facility designations, pursuant to ORC Section 343.014. Thus, the second consequence is that the board of county commissioners or board of directors of the SWMD cannot establish facility designations for the transfer and disposal of solid waste generated within the SWMD.

As a third consequence, the board of county commissioners or board of directors of the SWMD must submit quarterly budgets to Ohio EPA for review and approval or disapproval in accordance with ORC Section 3734.574(E).

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As a fourth consequence, ORC Section 3734.551 provides Ohio EPA with the authority to recover costs incurred during preparation of the SWMD's plan. As a result, the board of county commissioners for a single county SWMD or the board of directors of a joint county SWMD is required to reimburse the director for the expenses listed in ORC Section 3734.551(A).

As a final note, Ohio EPA is prohibited from establishing a new, amending an existing, or rescinding a fee schedule and from establishing provisions governing the allocation and distribution of funds for implementation of the plan. Thus, if the SWMD's current revenues are not sufficient to fund implementation of the plan written by Ohio EPA, the SWMD will need to evaluate its budget to determine whether an additional source(s) of revenue needs to be established or expenditures need to be reduced or reallocated.

Q5 If the policy committee receives a resolution or ordinance from a municipality or township after the 90-day period allotted by the statute, can the policy committee consider that resolution or ordinance when determining whether or the plan has been ratified?

Ohio EPA does not recommend doing so. A strict interpretation of the statute is that once the 90-day ratification period has ended, only those resolutions or ordinances that were received during that period can be considered for purposes of determining plan ratification.

Q6 Where should plans be made available to the public?

Although the Ohio Revised Code does not specify where copies of the plan should be made available to the public, Ohio EPA generally recommends using public libraries because they are easily accessible for most people. Additionally, the Ohio Revised Code requires only that the policy committee make a copy of the plan available for review. The statute never specifies how many copies should be made available or at how many locations copies of the plan should be displayed. Therefore, when asked, Ohio EPA generally recommends that the policy committee make the draft plan available for review at several locations in each county in the SWMD, such as at several public libraries throughout each county in the SWMD.

Q7 Does making the plan available to the public via electronic means (such as on the Internet via a webpage) satisfy the policy committee's obligations as required by the statute?

There are still many members of the public who do not have ready access to computers. Policy committees that choose to make the plan available only electronically as opposed to also making hard copies of the plan available could risk being challenged regarding their efforts to make the plan available to the public. While Ohio EPA encourages making documents available electronically to facilitate public access and would expect increased reliance on electronic access to be more appropriate at some time in the future, the Agency recommends continuing to make hard copies of the plan available.

Q8 ORC Section 3734.55(A) requires the policy committee to publish a public notice, send written notices to various entities, and make the plan available for review by certain entities. Furthermore, that section of the statute lists the information that must be provided in both the public notice and the written notices. Please explain who is supposed to receive what and what information is supposed to be included in the public notice and the written notices.

Due to the structure of and language used in the statute, it is difficult to determine what obligations the policy committee must fulfill regarding contacting the entities listed and what information is supposed to be provided in each of the notices that are required by Section 3734.55(A).

The policy committee is required to publish a public notice, make the plan available for review, and send written notices to specific entities. Ohio EPA has recommended and continues to recommend that written notices to be sent to the following entities:

- the board of county commissioners of each county forming the SWMD for which the plan is being written;
- all municipal corporations and townships within the SWMD;

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- the 50 industrial, commercial or institutional facilities that generate the largest quantities of solid waste in the SWMD;
- the director of Ohio EPA; and
- adjacent SWMDs.

Ohio EPA further recommends that both the public notice and the written notices (sent to the entities listed above) include the following information:

- description of the draft plan;
- locations where the draft plan is available for review;
- establishment of a 30-day comment period during which interested parties can submit comments regarding the draft plan to the policy committee (the notices should list the beginning and ending dates for the public comment period as well as where to send comments);
- the date, time and location of the public hearing;
- discussion of any new fees or changes to existing fee schedules that will be levied with the plan; and
- a statement regarding whether the policy committee will be specifically authorized to establish facility designations (as required to be included in the plan according to ORC Section 3734.53).

The policy committee is also required to make the plan available so that the entities listed above and the public can review the plan. See Q6 for a discussion of locations that Ohio EPA recommends as good places for copies of the plan to be available.

Q9 What if the policy committee fails to notify one of the fifty largest generators of solid waste in the solid waste management district or one of the applicable local trade associations?

The policy committee must make a good faith effort to notify the 50 largest generators of solid waste and their local trade associations. If one, or even several, of the applicable entities are missed, the policy committee more than likely will not invalidate the ratification proceedings. However, failure to provide notice to any of the applicable parties could very well invalidate the ratification proceedings.

Q10 Does notifying local chambers of commerce satisfy the requirement to notify local trade associations?

No. While local chambers of commerce are good contacts for identifying the local trade associations, the intent of the statute is that the policy committee sends the notification to the associations and organizations representing the industries that operate in the SWMD.

Therefore, Ohio EPA recommends that the policy committee send the required notification directly to the local trade associations to avoid claims that the policy committee did not fulfill their statutory requirements. In addition, notifying the local chambers of commerce is probably a good idea, but it is not necessary to do so and should be done, therefore, at the discretion of the SWMD.

Q11 How should documents be delivered during the ratification process?

Ohio EPA strongly suggests that the policy committee deliver documents (such as, copies of the draft plan) to the boards of county commissioners, the legislative authorities and the 50 largest generators of industrial waste and their trade associations either by hand or via certified mail. Delivering documents in this manner enables the policy committee to determine the exact beginning and end dates of the 90-day period during which the boards of county commissioners and legislative authorities must adopt/reject the plan. It also ensures that the proper parties receive the plan to vote on it and eliminates any potential question as to whether the policy committee fulfilled its requirements.

Ohio EPA also suggests that the boards of county commissioners and legislative authorities deliver copies of resolutions/ordinances to the policy committee either by hand or via certified mail. This will enable the board of county commissioners/legislative authority to determine the exact date the policy committee received the resolution/ordinance, thereby eliminating questions regarding the timeliness of the delivery. This is particularly important since failure on the part of a board of county commissioners or legislative authority to deliver a

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resolution/ordinance within the 90-day period allotted in effect results in a vote of no being registered for that board of county commissioners/legislative authority.

Q12 The statute requires that the public notice describe the draft plan. What and how much information is sufficient to satisfy this requirement?

Although ORC Chapter 3734 does not specify how the plan is to be described in the public notice, the statute does require that the following information be included:

- a discussion of any new fees or changes to existing fee schedules that will be levied once the plan is approved and
- a statement regarding whether the policy committee will be authorized to establish or will be precluded from establishing facility designations.
- In addition to that information, Ohio EPA suggests that the following information be included as well:
- an explanation regarding the purpose of the plan;
- a brief explanation of what services residents living in the SWMD will receive if the plan is ratified and approved; and
- highlights from the executive summary to the draft plan.

Q13 Can a SWMD solid waste fee be ratified along with the plan?

Yes. However, there are reasons for and against ratifying a fee schedule in conjunction with a plan.

The first reason for ratification in conjunction with a plan is the minimization of expenses associated with ratification. Combining the ratification of a fee schedule along with the ratification of the plan eliminates the need to publish separate public notices for the fee schedule and the draft plan. Depending on the size of the solid waste management district and the number of newspapers in which the public notice must be published, this can be a significant cost savings.

Another reason in favor of dual ratification is that constituents voting on the proposed fee schedule will be able to determine, by reading the plan, what they are getting in return for the fees that they are ratifying.

There are several reasons which might lead the policy committee of a solid waste management district to ratify a fee schedule separate from the plan.

The first of these reasons is the difference in the amount of time it takes to ratify a plan compared to the amount of time it takes to ratify a fee schedule. In general, it takes much longer to ratify a plan than it does a fee schedule (please see the answer to Q1 above). A solid waste management district that is facing financial difficulties and that wants to levy a fee quickly more than likely will opt to ratify the fee separate from the plan.

A second reason supporting separate ratification processes is controversy regarding the plan itself. If the policy committee of a solid waste management district is unable to obtain ratification of the plan, then the fee fails to be ratified as well. Therefore, if the policy committee anticipates that the plan may fail ratification due to issues related to the plan, but the proposed fee schedule can pass ratification, then the policy committee should consider separate ratification processes. If the proposed fee schedule is the issue leading to ratification failure, then the policy committee may want to consider separate ratification processes to obtain plan ratification.

Yet another reason in favor of separate ratification processes is the potential for the policy committee to receive disapproval of the plan from Ohio EPA. If Ohio EPA disapproves a district's ratified plan, even though both the fee and the plan have been ratified, then the proposed fee cannot be collected. For this reason, the policy committee may want to consider ratifying the proposed fee schedule separate from the plan.

Please be aware that the public notice requirements differ somewhat for ratifying plans from those that apply to ratifying fees. When ratifying a fee in conjunction with a plan, the policy committee will need to ensure that it has met the applicable requirements for both processes.

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Q14 How should the policy committee conduct the public hearing?

The statute does not address how the public hearing is to be conducted. When conducting public hearings, Ohio EPA generally adheres to and recommends that others consider the following guidelines:

- Location: Use a public building such as a public school building, or some other governmental building. It is best to select a facility that is centrally located within the SWMD and is easily accessible.
- Meeting Materials: Distribute an agenda and provide sign-in sheets for hearing attendees' names and addresses. These sheets will serve as an attendance record as well as a mailing list for any materials sent to attendees following the hearing.
- Stenographer: Although not required by statute, make provisions for the creation of an official transcript of the hearing proceedings. Ohio EPA generally recommends hiring a court reporter/stenographer to provide this service.
- Equipment: If the policy committee intends to use a presentation, then the policy committee will want to ensure that a laptop computer, a projector, and a screen are available at the facility. If not, then the policy committee will need to provide this equipment. In addition, Ohio EPA recommends that the policy committee have two tables, one for registration/sign-in, and one for presenters/panel members to sit behind. Other equipment that may be needed includes a sound system (if hearing is going to be held in an auditorium or if policy committee expects there to be many people in attendance) and a podium.
- Agenda: Include the names, affiliations, professional titles and telephone numbers of meeting participants and a brief discussion of the meeting format. A moderator or other panel member should introduce all speakers/panel members and outline the meeting format. The meeting agenda should provide time for the following events:
 - someone from the policy committee should provide a brief overview of the plan ratification process, the function of the plan and the contents of the proposed plan;
 - the policy committee/panel should respond to questions and comments from the audience prior to beginning the official hearing; and
 - allow members of the audience to submit written and/or oral comments on or objections to the proposed fee schedule. It is a good idea to limit the amount of time any one individual can speak (for example, five minutes per individual). This is the portion of the hearing for which the official transcript should be prepared. (Note: the policy committee/panel should refrain from responding to testimony during this portion of the hearing. Interaction between the policy committee/panel and the audience should occur in the question and answer portion of the agenda.)