

ground water



State of Ohio Environmental Protection Agency

Northwest District Office

347 North Dunbridge Road
Bowling Green, OH 43402-9398

TELE: (419) 352-8461 FAX: (419) 352-8468
www.epa.state.oh.us

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

April 9, 2007

Mr. Kenneth Humphrey
Environmental Director
Envirosafe Services of Ohio, Inc.
876 Otter Creek Road
Oregon, Ohio 43616-1200

**Subject: Notice of Violation/Return to Compliance for January 4, 2007 NOV
OHD 045 243 706 / 03-48-0092, RCRA TSDF, Hazardous Waste
Lucas County**

Dear Mr. Humphrey:

On January 4, 2007, Ohio EPA issued a notice of violation (NOV) of Ohio Administrative Code (OAC) Rule 3745-54-98(G)(4) to Envirosafe Services of Ohio, Inc. (Envirosafe). As a result, Envirosafe requested a meeting to discuss the NOV and resolve an on-going Envirosafe concern over when it is appropriate to use estimated concentrations for decision making in the Integrated Ground Water Monitoring Program (IGWMP). Below is a discussion of the NOV and the current status of the violation.

Violations

1. On January 4, 2007, Ohio EPA notified Envirosafe that the facility was in violation of OAC Rule 3745-54-98(G)(4) for not submitting, by May 30, 2006, a permit modification to add barium and tetrachloroethene to the elevated constituent list for monitoring well SW-2S:

On February 12, 2007, via telephone (Lynn Ackerson, Ohio EPA and Steve De Lussa, Envirosafe) and in a meeting on February 13, 2007, Ohio EPA informed Envirosafe that since monitoring well SW-2S is an affected well, the applicable requirements are the compliance monitoring program requirements of OAC Rule 3745-54-99 instead of detection monitoring program requirements of OAC Rule 3745-54-98. Therefore, the proper citation was OAC Rule 3745-54-99(G) and (J) and permit conditions K.6(e)(iv)(d) and K.8. Therefore, the violation of OAC Rule 3745-54-98(G) is rescinded. However, as noted in comment 2 below, tetrachloroethene was not identified as an elevated constituent. Therefore, Envirosafe was in violation of OAC Rule 3745-54-99(J) and Permit Condition K.8 for failing to add barium to the elevated constituent list for monitoring well SW-2S as outlined below.

OAC Rule 3745-54-99(J) and Permit Condition K.8: EnviroSAFE was in violation of OAC Rule 3745-54-99(J) and Permit Condition K.8, which require EnviroSAFE to submit a permit modification request, within ninety days, to make appropriate changes when the owner or operator determines that the compliance monitoring program no longer satisfies the regulatory requirements. EnviroSAFE's February 28, 2006 Final Report of Groundwater Quality reported elevated levels of barium in monitoring well SW-2S. In accordance with OAC Rule 3745-54-99(G) and Permit Condition K.6(e)(iv)(d), when new elevated constituents are identified the elevated constituents must be added to the compliance monitoring list. In accordance with OAC Rule 3745-54-99(J) and Permit Condition K.8, when it is determined that a permit modification is necessary it must be submitted within 90 days. The due date for the compliance monitoring permit modification request to add barium to the elevated constituent list for monitoring well SW-2S was May 30, 2006 (May 29th was a holiday, 90 days from February 28, 2006).

EnviroSAFE submitted a permit modification request dated September 15, 2006 to add barium to the elevated constituent list at monitoring well SW-2S. On November 10, 2006, Ohio EPA approved the modification to add barium to the elevated constituent list at monitoring well SW-2S. Therefore, ESOI has abated this violation.

Evaluation of Owner or Operator's Response to Previously Cited Violations

- EnviroSAFE's response:** At the February 13, 2007 meeting, EnviroSAFE stated that tetrachloroethene was detected at estimated levels less than the Practical Quantitation Limit (PQL) and in accordance with the requirements of OAC Rule 3745-54-99(G) tetrachloroethene is not an elevated constituent at monitoring well SW-2S. The language in OAC Rule 3745-54-99(G), "pursuant to procedures in paragraph (F) of Rule 3745-54-98," means that in the terms used by the EnviroSAFE permit, constituents are not identified as elevated and added to the elevated constituent list unless there is statistically significant evidence of contamination (i.e., the *constituent is detected at levels statistically above background concentrations*). In accordance with statistical guidance the PQL is used as the level for statistical evidence of contamination when background for a constituent consists of all non-detects. Permit conditions in Module K consistently follow the requirements of OAC Rules 3745-54-91 through 101. Therefore, it follows that the word "present" in permit condition K.6(e)(iii) should also mean detected at levels equal to or greater than the PQL. Since tetrachloroethene was not detected at statistically significant levels above background, EnviroSAFE is not in violation of OAC Rule 3745-54-99(G) and (J) and permit conditions K.6(e)(iv)(d) and K.8 for not adding tetrachloroethene to the elevated constituent list and semiannual monitoring list for monitoring well SW-2S.

Ohio EPA comment: OAC Rule 3745-54-99(G) requires annual sampling of Appendix 98 constituents to determine if additional constituents are present pursuant to the procedures in paragraph (F) of OAC Rule 3745-54-98. Paragraph (F) does not identify a constituent as a contaminant unless there is statistically significant evidence that its concentration is above background levels. Therefore, constituents are not required to be added to the elevated constituent list unless the concentration is statistically elevated above background during Appendix to OAC Rule 3745-54-98 sampling in compliance monitoring. Therefore, non-naturally occurring constituents would not be added to the elevated constituent list unless the concentration is equal to or greater than the PQL, not the Method Detection Limit (MDL) as previously interpreted by Ohio EPA. Tetrachloroethene has not been detected in monitoring well SW-2S at levels equal to or greater than the PQL. Therefore, EnviroSAFE was not required to submit a permit modification to add tetrachloroethene to the elevated constituent list for monitoring well SW-2S. The original incorrect citation was rescinded in comment number 1 above.

Recommendations

3. Ohio EPA concurs that a permit modification should be submitted to clarify the meaning of the words "present" and "detected" in permit conditions K.6(e)(iii) and K.6(h) and corresponding permit application text. The following example change is recommended:

From: "All non-naturally occurring constituents reported to be present during the Appendix to OAC Rule 3745-54-98 sampling ..."

To: "All non-naturally occurring constituents reported to be present **at or above the practical quantitation limit (PQL)** during the Appendix to OAC Rule 3745-54-98 sampling ..."

4. The Alternate Concentration Limit (ACL) Model text should also be revised to clarify that whenever the ACL Model is run, all non-naturally occurring constituents present in the ground water above the MDL are to be accounted for in the determination of cumulative risk. The following change is recommended to the application text on page E.11-14.

From: It should be noted that whenever the ACL Model is run, (i.e., Compliance Monitoring has been implemented in one or more wells) all detected non-naturally occurring constituents (regardless of concentration) are used in the determination of cumulative risk."

To: "Whenever the ACL model is run, (i.e., Compliance Monitoring has been implemented in one or more wells) all non-naturally occurring constituents present (detected at or above the Method Detection Limit) in the ground water, regardless of concentration, are to be accounted for in the determination of cumulative risk."

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It is not necessary to respond to this letter. Please contact me at (419)373-4113 if you have any questions. Any written correspondence should be sent to me at Ohio EPA, Northwest District Office, Division of Hazardous Waste Management, 347 North Dunbridge Road, Bowling Green, Ohio 43402.

Sincerely,



Lynn Ackerson
Environmental Specialist
Division of Hazardous Waste Management

/cs

pc: Oregon Document Depository – Site Monitoring
Cindy Lohrbach, DHWM, NWDO
~~DHWM, NWDO File = ESO: Ground-Water File~~

ec: Lynn Ackerson, DHWM, NWDO
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<p>NOTICE: Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.</p>
