



WASTE INDUSTRIES

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January 29, 2011

Ms. Ellen Lorscheider
North Carolina Department of Environment and Natural Resources
Division of Waste Management
Solid Waste Section
1646 Mail Service Center
Raleigh, North Carolina 27699-1646
Sent via email to: ellen.lorscheider@ncdenr.gov

Re: Comments on the Proposed Revisions to the North Carolina Solid Waste Management Rules

Dear Ms. Lorscheider,

On behalf of Waste Industries USA, Inc., I would like to present the following comments on the proposed changes to the Solid Waste Management Rules [15A North Carolina Administrative Code (NCAC) Subchapter 13B] and related fiscal analyses. These comments include general concerns and concerns specific to our municipal solid waste (MSW) facilities in NC.

Sections .1604 and .1626 (proposed changes to the definition of a leachate release)

The proposed Rules define a leachate release as being outside of the liner or leachate collection system at Subtitle D facilities, as opposed to the existing Rules that require leachate to be contained "on site."

Waste Industries objects to the proposed rule changes simply because they are unnecessary for the protection of the environment. Current landfill regulations require significant 300 to 500 foot buffers and an extensive network of groundwater, landfill gas, and storm water monitoring systems that insure timely remediation prior to offsite contamination.

Sections .1632, .1633, .1634, .1635, and .1637 (proposed changes to the water quality monitoring sections)

According to information presented on page 466 of the August 16, 2010, North Carolina (NC) Register, the Division of Waste Management (DWM) has proposed the elimination of statistical analyses from the requirements under the groundwater monitoring sections of the Rules based on the fact that the DWM has adopted state-wide groundwater protection standards. In the Frequently Asked Questions (FAQs) and responses available on the Division's website, the Division stated that "routine statistical analysis

has provided limited benefits, if any, in the detection of a contaminant release and therefore, has provided limited to no benefit to solid waste facilities, the public health or the environment.”

As the DWM is aware, statistical analyses were originally incorporated into the Rules with performance criteria in place to evaluate concentrations of naturally occurring elements and pre-waste data. Upgradient (background) and pre-waste data are used to define natural/pre-existing conditions so that impacts to groundwater quality can be clearly determined. Naturally occurring concentrations of inorganic constituents are commonly above the low groundwater protection standards (which are not site-specific or risk-based) established for some constituents. For example, based on historical data for permitted MSW facilities, naturally occurring concentrations of 8 of the 15 Appendix I metals in samples from upgradient monitoring wells have been noted above current groundwater protection standards. At one of these facilities, naturally occurring pH conditions created by regional a geologic unit likely bias metals concentrations high. It is our opinion that statistical analyses play a vital role in the evaluation of naturally occurring constituents and other impacts unrelated to a release from the waste unit, and that guidance should be in place for their proper methods and usage.

Based on information presented in the FAQs and responses on the DWM’s website, it is our understanding that the DWM wishes to eliminate the requirement for statistical analysis as part of routine monitoring for the detection monitoring program, but keep statistical analysis as an optional data evaluation tool for cases such as routine reporting, establishing background concentrations, and evaluating potential off-site impacts. By the proposed regulation, statistical analyses will still be required in detection monitoring to determine if Appendix I constituents detected at concentrations in excess of the groundwater protection standards are above background, and to establish site-specific groundwater protection standards in assessment monitoring and corrective action. Given the low groundwater protection standards described above, it is our belief that the DWM’s intent to reduce the number of statistical analyses performed will have limited impact, as statistical analyses will still be required in many scenarios.

A technical group meeting was held on December 2, 2010, with representatives of the DWM regarding the proposed changes to the groundwater monitoring section of the North Carolina Solid Waste Management Rules .1632-1635 and .1637. Based on this meeting, the group submitted proposed language on December 16, 2010, to address concerns related to the August 16, 2010, publication. It is our understanding that based on correspondence received from the DWM on January 13, 2011, that the DWM intends to accept the proposed changes presented in the December 16, 2010, correspondence. If all of the proposed changes presented in the December 16, 2010, correspondence are accepted, we offer no further comments at this time.

We appreciate your consideration of the aforementioned comments. If you have questions or need clarification on any of the above comments, please contact me at (919)325-3000.

Sincerely,

WASTE INDUSTRIES USA, INC.



Phil Carter
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