



January 31, 2011

Ms. Ellen Lorscheider  
Planning and Programs Branch Head  
1646 Mail Service Center  
Raleigh, NC 27699-1646

**RE: Proposed Changes to Solid Waste Management Rules**

Dear Ms. Lorscheider:

On behalf of the North Carolina Solid Waste Association of North America (NC SWANA), the following represents the NC SWANA Technical Committee's comments to the proposed changes to the NC Solid Waste Management Regulations (NCSWMR) as presented in the North Carolina Register Volume 25, Issue 04, pages 465-482 on August 16, 2010. Please enter these comments into the official record for consideration.

SWANA, a national organization, is dedicated to *"Advancing the practice of environmentally and economically sound management of municipal solid waste in North America"* and serves over 7,600 members nationwide. NC SWANA represents *"public and private solid waste professionals in North Carolina with the objective of developing and enhancing professionals in the field through environmentally sound and productive, innovative, economically competitive, and effective integrated municipal solid waste management systems with necessary and reasonable enforcement."* NC SWANA members design, permit, develop, and operate solid waste/recycling collection, processing, and disposal systems, and their mission includes the critical responsibility of protection of public health and the environment.

We appreciate the Division of Waste Management's willingness to meet with stakeholders, including NC SWANA representatives, to discuss the proposed rule changes. Two working groups including members of NC SWANA and the solid waste community met with Division staff during the comment period to discuss the specific intent of the proposed changes. The meetings were both productive and informative.

For clarity, the rule changes as proposed by the Division have been restated below with commentary provided to clarify the position of the NC SWANA Technical Committee on each issue. Where appropriate, recommendations have been made offering specific changes to the proposed rule modifications published in the NC Register.

**LAND CLEARING AND INERT DEBRIS LANDFILL RULES**

**§.0101 (Definitions) & §.0563 (LCID Landfills)**

The proposed changes would remove "untreated wood" from allowable waste for a LCID Landfill.

- SWANA understands that the proposed changes to these sections have been put on hold by the Division pending further discussion with the regulated community. **The NC SWANA Technical Committee fully supports this decision.**

## LEACHATE RULES

### §.1604(General Reqmts for MSW LF's) & §.1626 (Operational Reqmts for MSWLF's)

Under the proposed changes, any release of leachate from the facility's containment system, including the liner system, collection system, and/or storage system, will constitute a leachate release which will constitute non-compliance with the regulations.

§.1604 (L)(iii): The proposed rule change states:

*"The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of any ~~release, discharge,~~ release or discharge outside the liner, collection system or other containment component, any fire or explosion from the permitted landfill facility. Such reports shall be made to the Division representative at the appropriate regional office of the Department of ~~Environment, Health-Environment and Natural Resources.~~"*

- NC SWANA recommends that the proposed language be expanded to include steps to be taken by the facility to assess, remediate, and document the clean up of a release or discharge should it occur.

#### NC SWANA recommends the following changes to the proposed language:

*"The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of 1) any leachate release or discharge outside the liner, collection system or other containment component (except for de minimis amounts); or 2) any fire or explosion from the permitted landfill facility. Such reports shall be made to the Division representative at the appropriate regional office of the Department of Environment and Natural Resources. Upon reporting a release or discharge outside the liner, collection system or other containment component the following processes shall be initiated as required:*

- (I) Identify the extent of impact;*
  - (II) Prepare and implement a plan to measure, control, and remediate any impact; and*
  - (III) Prepare a report which summarizes the actions and results from the items listed in i and ii above."*
- The proposed change creates the potential for extremely costly fines and penalties and unwarranted remediation requirements to be imposed for minor incidental releases that have no impact outside of the regulated facility or on the groundwater or surface water and which can be easily and effectively remedied through routine operational maintenance and house-cleaning activities.
  - As proposed, the language leaves no flexibility for an inspector or regulator to consider the site-specific and incident-specific details of a minor release, even if the facility acts immediately to effectively prevent or remediate any impact from the release.
  - On a related subject, it became clear through talking with the regulated community during the comment period that there is poor understanding regarding self reporting requirements. The

concept of self reporting is generally supported, but there is an expectation that a self reported incident should be afforded (or at least considered to be afforded) additional consideration for deference by the Division as compared to a release or discharge that is not self reported. The DENR-wide policy entitled "Enforcement Penalty for Self-Reported Violations" (effective date September 1, 1995, revised July 10, 2000) was developed to encourage self reporting. We strongly agree with the first purpose statement of the policy which states: "*Environmental protection is enhanced if deficiencies are identified and corrected as soon as possible. The regulated community is often in the best position to rapidly identify deficiencies, promptly correct them, and with suitable advice and approval, to develop and implement a corrective action plan to ensure that the "root cause" has been addressed and the public health and environment are protected.*" Very few stakeholders were familiar with the policy, and a number of people commented that even after being made aware of the policy they could not find it (or other policies for that matter) on the DENR web site. Since the Division's recent and significant overhaul of its internet site, web search has become the regulated community's primary tool for researching rules, permit documents, and regulatory correspondence. A number of people have asked that NC SWANA request that the Division post policy memoranda as well as rules and permits.

Even fewer stakeholders were clear on the distinction that the self reporting policy includes a condition for penalty waiver that, in essence, excludes the self reporting entity from being protected from penalties if they are otherwise required by other "law, regulation, or permit" to report the deficiency. Section .1604(L)(iii) constitutes that requirement, rendering the policy on self reporting useless to the regulated community on the issues of releases or discharges from landfill facilities. Stakeholders have cited this issue as a potential disincentive to self report a release or discharge. When coupled with the proposed more stringent definition of what constitutes the regulatory compliance boundary for a release or discharge (.1626(8)(d) below), the disincentive is even greater. The NC SWANA Technical Committee believes that since the overarching goal of all rules are protection of public health and the environment, the potential to reduce the regulated community's motivation to self report releases or discharges should be carefully evaluated.

**§.1626 (8)(d) :** The proposed rule change states:

*"Leachate shall be contained ~~on-site or~~ within a lined disposal cell or within a leachate collection and storage system. All leachate shall be properly treated prior to discharge. An NPDES permit may be required prior to the discharge of leachate to surface waters."*

- While all operators strive to avoid releases, even a properly constructed and managed facility may have releases at times particularly associated with side slope leachate breakouts. Rain events which generate large quantities of rain over small periods of time can create leachate seeps in spite of the use of good design and best-management practices. We are concerned that such releases would be enforced as a violation of the rule.
- The proposed rule change should make provisions for small releases that are captured and remediated quickly by operators, similar to spill response measures under other regulatory jurisdictions.

- We would encourage the use of alternative compliance strategies such as the use of an Administrative Order on Consent in order to present options for leachate release enforcement and management other than the automatic issuance of a Notice of Violation (NOV). The rules should also allow consideration of extenuating circumstances by DENR staff when considering enforcement action. Without such changes, the threat of an automatic NOV may, as stated above, discourage some operators from self-reporting releases.
- Modern day landfill facilities employ the use of significant buffer areas to protect against, contain, and afford opportunity to remediate environmental releases. The rules for protection of groundwater include the use of buffers and the definition of a relevant point of compliance (.1631(2)(a)) up to 250 feet from the edge of the landfill containment (liner) system. For control of explosive gases (.1626(4)(a)), a detection monitoring system is constructed and compliance is enforced at the property boundary. Surface water quality at landfill sites is monitored at locations often hundreds of feet from the edge of the liner system. We recommend that the same principal be applied to leachate releases.

**NC SWANA recommends the following changes to the proposed language:**

*“Leachate shall be contained within the relevant point of compliance as defined in 15A NCAC 13B.1631(2)(a). All leachate shall be properly treated prior to discharge. An NPDES permit may be required prior to the discharge of leachate to surface waters.”*

**§.1626 (12)(e):**

This portion of the rule did not have proposed changes; however, the proposed changes to 13B.1626 (8)(d) would be inconsistent with implementation of rules in other Divisions of DENR where releases, spills, etc., require a contingency plan (i.e. SP3, SPCC, etc.). The preparation of a contingency plan for leachate releases is needed to minimize the impacts and hasten the remediation of impacts from such releases, which would increase protection of the environment.

**NC SWANA recommends the following revision to this section of the rule:**

*“A contingency plan for leachate releases and extreme operational conditions.”*

**FISCAL ANALYSIS ON LEACHATE RELEASE**

There was significant discussion by the working group regarding the causes and occurrence of leachate seeps and outbreaks at landfills.

The fiscal analysis prepared by DENR related to the proposed rule changes to .1604 and .1626 states that the proposed rule changes will have no fiscal impact because “...a facility if managed and constructed properly should not have any “releases”. We feel this is an oversimplification of the issue. If no latitude is afforded operators regarding leachate seeps such that NOV’s (and potentially punitive fines) are levied every time they occur, operators may need to adjust the current industry-standard operating practices to ensure that there is zero potential for a leachate release. While this is certainly positive from an environmental perspective, the resulting changes in design and operational practices could potentially be very costly, including the addition of a drainage channel inside the anchor trench to handle all surface

water from un-capped areas as leachate. This change would drastically increase leachate management cost as well as reduce available airspace in the disposal unit.

**NC SWANA requests that the Division perform a more thorough review of the fiscal impacts of the proposed language prior to moving forward with promulgation.**

## **GROUNDWATER RULES**

### **§.1632-.1635 & .1637 (GW Monitoring at MSW LF's)**

The proposed changes would remove statistical analyses as the initial method for analyzing groundwater sampling results to determine whether or not a release has occurred from a MSW landfill. Statements made by the DENR representative indicated that the intent of the proposed changes was not to eliminate the use of statistics to determine whether or not an apparent GWPS exceedance was significant, but to eliminate the requirement of doing statistics as screening criteria for every constituent for every event.

On December 2, 2010, stakeholders including NC SWANA representatives participated in a meeting with the Division concerning the proposed groundwater rule changes, particularly those relating to the use of statistics in groundwater monitoring. Following are recommendations resulting from that meeting and communication with others in the regulated community.

#### **§.1632(e):**

This portion of the rule did not have proposed changes; however, the group recommended that this paragraph be revised to clarify that the Division would approve background levels for a site established using statistical analyses that are described in sections (f) through (j). The proposed text removal is to clarify that the use of intrawell statistics to determine background levels that would be well-specific and not a function of upgradient or background wells is an acceptable option. Upgradient or background wells are part of the interwell statistical method. By referencing sections (f) through (j), the text accounts for both intrawell and interwell statistics to derive background values. Reference to Rule .1631(a)(1) is added because it discusses establishing background utilizing wells that have not been affected by the landfill unit.

#### **NC SWANA recommends the following changes to this section of the rule:**

*“The owner or operator shall establish Division approved background groundwater quality in accordance with Rule .1631(a)(1) and Rule .1632(f) through (j) in hydraulically upgradient or background wells for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit.”*

#### **§.1632(f) though (j):**

The proposed changes would remove these sections from the rule. The group discussed this change in the meeting and requested that these sections be retained as revised below so that there is clear guidance on which statistical methods are acceptable.

**NC SWANA recommends the following changes to the existing language for the following portions of sections .1632(f) through (j):**

**§.1632(g):**

The proposed revision is to clarify that that statistics are optional to evaluate groundwater monitoring data but required for determining background.

*~~“The owner or operator~~ Should the owner/operator choose to perform statistical analysis of groundwater quality data, whether for purposes of establishing background concentrations or to determine if there is an exceedance of the groundwater protection standard as defined in Paragraph (g) and (h) of Rule.1634, the owner or operator shall select one of the following statistical methods to be used in evaluating ground water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.”*

**§.1632(i):**

The proposed text is to reinforce that statistical analyses are optional (e.g., in determining an exceedance at the point of compliance).

*“The owner or operator ~~shall~~ may determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground water monitoring program that applies to the MSWLF unit.*

*(1) ~~If~~ in determining whether or not a statistically significant increase has occurred, the owner or operator shall compare the ground water quality of each parameter or constituent at each monitoring well designated to monitor the quality of ground water passing the relative point of compliance to the background value of that constituent, according to the statistical procedures and performance standards specified in this Rule.”*

*(2) NC SWANA concurs with the Division’s proposed deletion of this section.*

**§.1632(j):**

The proposed text is to reinforce that statistical analyses are optional (e.g., in determining an exceedance at the point of compliance).

*~~“Within 14 days of completing the statistical analysis for the analytical data from ground water samples,~~ Within a reasonable period of time not to exceed 120 days from the date of sampling or as specified in the facility permit, the owner or operator shall submit to the Division a report that includes all of the information from the sampling event; including field observations relating to the condition of the monitoring wells, field data, laboratory data, statistical analyses (if utilized), sampling methodologies, quality assurance and quality control data, information on ground water flow direction, calculations of ground water flow rate, for each well where any constituents ~~that~~ exceed ground water standards as defined in 13B.1634.g-h ~~or show a statistically significant increase over background levels,~~ and any other pertinent information related to the sampling event.”*

**§.1634 (old f):**

NC SWANA concurs with the Division's proposed deletion of this section.

**§.1634 (f)(2):**

The proposed text change relates to the approval of an Alternative Source Demonstration (ASD) and deletes the requirement that Appendix II constituents be at or below background before returning to detection monitoring.

**NC SWANA recommends the following changes to the proposed language:**

*"...If a successful demonstration is made and approval is given by the Division, the owner or operator may discontinue assessment monitoring and return to detection monitoring. ~~if the Appendix II constituents are at or below background.~~"*

**§.1634 (g):**

The proposed text clarifies how a background concentration that is above the MCL or water quality standard is utilized within the groundwater monitoring program.

**NC SWANA recommends the following changes to the proposed language:**

*"The owner or operator shall obtain a determination from the Division on establishing a groundwater protection standard for each Appendix II constituent detected in ground-water. The ground-water protection standard shall be the most protective of ~~the following subparts (1) through (4), or subpart (5) if the Division approved background water quality standard is higher than concentrations listed in subparts (1) through (3).~~"*

**§.1634 (g)(4):**

This portion of the rule did not have proposed changes; however, the proposed reference to the statistics section to addresses the fact that statistical analysis is required to establish background values.

**NC SWANA recommends the following changes to the existing language:**

*"For constituents for which MCLs or water quality standards have not been promulgated, the background concentration for the constituent established from wells in accordance with Rule .1631(a)(1) ~~and Rule .1632~~ of this section..."*

**§.1634 (g)(5):**

The proposed addition below addresses the fact that statistical analysis is required to establish background values. The proposed deletion below also clears up confusion referencing MCL's and water quality standards.

**NC SWANA recommends the following changes to the proposed language:**

*“For constituents for which the Division approved background level established in accordance with Rule .1631(a)(1) and Rule .1632 is higher than the ~~MCL or water quality standard~~ most protective concentration in Rule .1632(g)(1) through Rule .1632(g)(4) or health based levels identified under Paragraph (h) of this Rule, the background concentration.”*

**§.1635 (a):**

The proposed text addresses the difficulty associated with meeting the Division-proposed 90 day timeframe at all sites because of the multitude of issues that can arise to delay the Assessment of Corrective Measures (ACM) process.

**NC SWANA recommends the following changes to the proposed language:**

*“Within 90 days of the finding that any of the constituents listed in Appendix II exceeded the groundwater protection standards, the owner or operator shall initiate assessment of corrective action measures. Such an assessment must be completed within ~~90 days~~ 120 days of the finding or an alternative schedule approved by the Division.”*

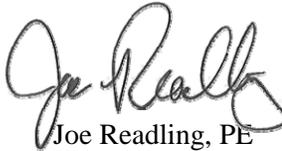
NC SWANA appreciates the opportunity to provide input on the Division’s proposed changes to the solid waste management regulations. If the suggested revisions of the proposed changes to the NCSWMR are promulgated, we believe the changes would be an improvement to the regulations as well as providing clearer operational guidance for landfill operators. Thank you for consideration of these comments.

Respectfully,

**North Carolina Chapter of SWANA**



Michele Sakwa  
Chapter President



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