

# WASTE & MATERIALS MANAGEMENT STUDY GROUP – Notes: August 6, 2020

Location: Skype

Member Attendance:  Albee,  Curry – Kari Rabideau,  Doverspike/SWANA,  Johnson,  Karwoski,  Meyer Smith,  Morgan,  Sexton,  
 Welch/WCSWMA  Sieg/AROW

Guests: Several guests listened using Skype, total of 33 participants including members and DNR

DNR Attendance:  Lamensky,  Semrau,  Strom Hiorns,  Wolbert

Time/ Presenter	Topic	Follow-up/Notes
9:30	<b>Agenda &amp; Notes</b>	<ul style="list-style-type: none"> <li>Notes from 6/5/20 were approved. Finalized notes can be found on the WMM <a href="#">website</a>.</li> <li>No agenda changes</li> </ul>
9:45 Kate Strom Hiorns, Brad Wolbert	<b>DNR Updates</b>	<p>Staffing:</p> <ul style="list-style-type: none"> <li>Hiring freeze still in effect, but exceptions for COVID-related essential positions with DNR secretary’s approval. No budget info to share.</li> <li>Meleesa – municipal leaders wondering about any cuts to Recycling fund, lapses. Brad – not heard anything on that yet</li> </ul> <p>Rulemaking:</p> <ul style="list-style-type: none"> <li>Coal Combustion Residual rule writing ongoing, working with Environmental Protection Agency to ensure “as protective as” – will have public input opportunities this fall</li> <li>Firefighting Foam emergency rule approval request at August 12 NRB meeting – mostly affects how entities that test firefighting foam should store, contain, treat, and dispose of foam, rule expected by September 1, 2020</li> <li>Hazardous waste rule and guidance documents update this summer</li> <li>Electronics recycling rule writing in progress, will have public input opportunities this fall – questions from Group members on language – we are focused on creating electronics recycler licensing requirements and putting guidance in code; we are considering small versus large recycling endeavors; will share language soon, still writing and still need our internal Legal review</li> </ul> <p>Guidance:</p> <ul style="list-style-type: none"> <li>The Air and Waste program are beginning to work on updating or replacing the May 2007 Guidance document titled <i>Wisconsin Landfill Air Emissions – A Cross-Program Regulatory Approach</i>. The Air program is taking the lead, but the two programs will work jointly on the effort. Recent revisions to the federal NESHAP rule have prompted the need for new guidance as the department and landfills work to implement the new federal regulations. The group plans to do outreach to stakeholders to seek input regarding the content of the guidance and is currently discussing what that outreach will look like.</li> <li>Act 369 guidance posting requirements changed after recent Supreme Court decision. Agency</li> </ul>

		<p>internally determining guidance public input process. Beneficial Use and HW guidance is main focus now to complement their code updates.</p> <p>General Program:</p> <ul style="list-style-type: none"> <li>• Review of submittals not lengthier due to COVID, greatest effect on getting out on inspections and doing field work; focus on what we can do on desktop and getting to outdoor inspections first</li> <li>• No update on Legislative Audit Bureau program evaluation of state recycling program; no contact from LAB, unsure on report release</li> <li>• New agency website launched last week</li> <li>• Now working with SCS Consultants on Waste Characterization Study, statewide sort starts in September, final report expected by March 31, 2021</li> </ul> <p>PFAS:</p> <ul style="list-style-type: none"> <li>• AFFF BMPs, FAQs, and rule info on webpage</li> <li>• WisPAC meetings ongoing, PFAS Action Plan expected to be out October 15. Draft issue papers out for public comment soon. August 13 is next WisPAC meeting. Lynn mentioned focused subgroup feedback (such as MRFs, etc) desired. Meleesa mentioned Sea Grant study about setting standards and background concentrations, including rain water, and treatment options.</li> </ul> <p><a href="https://www.seagrant.wisc.edu/news/sea-grant-research-addresses-the-growing-crisis-of-pfas-exposure-finds-pfas-in-rainwater/">https://www.seagrant.wisc.edu/news/sea-grant-research-addresses-the-growing-crisis-of-pfas-exposure-finds-pfas-in-rainwater/</a></p> <p><a href="https://www.theguardian.com/environment/2019/dec/17/rainwater-pfas-us-potentially-toxic-levels-study">https://www.theguardian.com/environment/2019/dec/17/rainwater-pfas-us-potentially-toxic-levels-study</a></p>
<p>10:00 Amber Meyer Smith</p>	<p><b>WI Climate Change Task Force</b></p>	<p><a href="https://climatechange.wi.gov/Pages/Home.aspx">https://climatechange.wi.gov/Pages/Home.aspx</a></p> <p>Government Climate Alliance, related to Paris Climate Accords. Focused on methods to reduce greenhouse gas emissions in WI.</p> <p>Executive Order 38 – goal of carbon-free electricity by 2050 in WI.</p> <p>Clean Energy Plan in development by Department of Administration Office of Clean Energy</p> <p>Executive Order 52 – created the task force, 30+ members, to deliver recommendations to the governor on adopting policies related to climate change. October 31 goal for findings report out. 1000+ participants in statewide virtual public hearings recently. Mindful of environmental justice issues at the same time.</p> <p>Task force subcommittees actively meeting: Energy Housing &amp; Infrastructure; Land Use &amp; Conservation; and Healthy Communities and Strong Economy.</p> <p>Waste issues not discussed a lot with these groups, but not because of importance, but because of impacts on GHG. Diversion of food from landfills discussed? Not at Energy subcommittee, but might be in public comments.</p> <p>What types of energy sources focused on? Biogas/biodigesters? They fit in the discussion, but not prioritized yet.</p> <p>Carbon savings from work at home for government staff? A consideration. Looking beyond govt.</p>

<p>10:15 All</p>	<p><b>Study Group FY21 Priority Topics</b></p>	<p>Looked at the priorities list attached to agenda  Kate reminded group of the Alternative Final Cover subgroup plans from December and February  Kate asked for the group to pick top couple topics to focus on and help us in developing code change ideas for future effort. What is a tangible project for the Group?  Tom – yes, jump back in to the Alt Cover subject; Betsy Powers with SCS interested in helping  Lynn – yes, make Alt Covers a priority, let’s see it through  Karin – on behalf of Recovery and Diversion subcommittee, will look at glass recycling and other issues but waiting on the LAB Audit on recycling to then focus discussions and get back to work to bring issues back to the Study Group  John – top one is follow up on Alt Cover effort recommendations, and also long term care closure regs and fees (bill proposed in past, so lawmakers may be interested)  Amber – second Karin’s comments. Will have a lot to look at after audit info comes out, a lot of attention likely. Keep that at forefront  Alan – at next meeting, go through all the subjects in limbo and determine how to bring to conclusion  Bart – focus on alt cover and finalize C&amp;D info today  Kari/Tim – agrees to keep moving forward, push items forward from what has been done so far (alt caps)  Meleesa – go through priorities list on spreadsheet and put timeline together (2021, 2022, etc)</p> <p>→What do we want for finished products? Desired rule or statute change – why doing it?</p> <p>Kate mentioned that the Alt Covers and recycling audit and subcommittee efforts are good to focus on for these next 6 months, along with getting input on the CCR and electronics rule and LF gas guidance in these next 6 months, would be a great start. Then to determine after 6 months any new subjects to focus on.</p> <p><b>Action items:</b></p> <ol style="list-style-type: none"> <li>1. Reform committee on Alt Covers – notes from December 2019 meeting copied below; Meleesa will talk with Chad about this</li> <li>2. Recycling/Recovery subgroup: review topics in Study Group survey and then audit to focus efforts, Karin will schedule meeting</li> </ol> <p>From December 2019:  Alternative Landfill Cap Subgroup</p> <ul style="list-style-type: none"> <li>• See document of recommendations and DNR response from March 2018 meeting</li> <li>• Listed recommendations as short-term actionable, banked/hold, or not feasible: (green, yellow, red)</li> <li>- <u>Rec 1</u> – WDNR prepare and issue a guidance document for proposing and implementing an alternative final cover (AFC) design. actionable, green; look at examples in other states, set priorities along with the DNR. →Identify Group or subgroup members to initiate discussions on this topic. Doverspike will contact initial members and others if needed, DNR will designate staff for discussions.</li> <li>- <u>Rec 2</u> – Work with EPA on modifications: yellow → Group members will put in policy bank after template is developed</li> <li>- <u>Rec 3</u> – DNR designate a committee to id and recommend changes to specific portions of the state and federal code (for specific streamlining elements mentioned in document): yellow →contingent upon</li> </ul>

group efforts for recommendation 1

- Rec 4 – Modify NR 500 codes to provide the ability to approve AFC designs based on performance results of those constructed under the RDD program: Discussion - RDD program can now be run for 21 years, EPA has done advanced notice of potential rule making related to bioreactors and results of RDD, just in data gathering phase now. No AFC covers for any landfill RDD program yet, only liquids addition. **Yellow** → wait for more info on federal rule
- Recs 5 and 6 – WDNR allow for a longer delay in final cover system construction and allow alternative closure phasing, sacrificial covering, and reclaiming airspace from settlement prior to final cover construction: **green - Rec 6 is highest priority**; there is flexibility in current rules, but more needs to be defined with discussion – 2-years for delayed cap is typical, but site specific issues could add years. Need to define the criteria that would be included to delay cover for organic stability reasons. Group wants these considerations more formalized/standardized, but need to discuss if feasible. → goal to have guidance document(s) on what has been approved what would likely be approved; group from Rec 1 to discuss

From February 2020:

Chad sent out recommendations and DNR responses to subgroup members January 23 – only one response back since. Betsy Powers said path recommended at last Study Group meeting was good.

- Recommendations 6, 5, 1 are highest priority (see December notes) that focus on guidance development and group discussions to help develop
- Would like engineer input, those who are designing landfills and working in many states
- Chad will send out to Susan/SWANA members, alt landfill cap subgroup again for feedback and next steps, volunteers

#### **C&D Subgroup Recommendations – Bart Sexton**

(see document with recommendations and DNR comments, **attached below**)

Some WA Program comments did not concur with the subgroup recommendations.

→ Bart suggested that DNR input get done earlier in the process, before the final recommendations submitted.

Bart said an apples and oranges comparison when looking at recommendation 2 related to VOCs. Looked more closely at C&D because of some GW elevated indicator parameters at these sites. Understand concerns, but if this material put in MSW, main issue is leachate from those landfills.

C&D sites being scrutinized more than their overall impacts

John – MN to WI comparison apples to oranges. But still need to look at these sites with scrutiny. Not as regulated as MSW and prudent to review from environmental standpoint. Are we getting discharges and is there a need for more design standards. Permitting for C&D landfill – no needs analysis? There should be.

Meleesa – needs analysis for C&D landfills should be in place

**Action:**

Bart - Recommend moving forward with putting the first three recommendations in the policy bank

Contaminants of concern, based on Minnesota finding: As, Mn, B

Kate and Brad emphasized that these recommendations will feed into our future actions. Even if the recommendations aren't agreed to in this document, it's not a final decision. There will be time for future decisions and activities. This is valuable information. It's not a "disagree" stance, but we want to take broader look at things if we in future go to rule making or other changes.

(See December 2019 meeting notes with direction on when documents will go in the Policy Bank.)

Karin and Alan said we should include comments on documents to the policy bank that may provide an alternative opinion.

→ Motion by Bart and Lynn to move C&D Subgroup Bad Actor and OFR recommendations to Policy Bank and not include the other two

Unanimous approval by 7 members in attendance (Tim, Chad, Amber not present at this time of the meeting) Group will follow up with the 3 members by phone to ask for their vote. → One vote by Tim after the meeting meets group's policy bank policy to add these recommendations

For future comments from DNR on policy documents, requested that names of those commenters be included. But was pointed out that the comments are from the Waste Program and ensure that is the case always, not just from one or two people. → DNR will not include individual names

**From Bart post-meeting:**

For the minutes, my source for the Minnesota data was MN PCA October 2019 publication "Groundwater Impacts of Unlined Construction and Demolition Debris Landfilling"

**Minnesota**

335 'unlined, construction & demo debris only facilities'

C&D facilities range in size from 5,000 to 250,000+ cubic yards

Most of these C&D facilities have been open 30+ years (older sites have had issues in WI)

Only 67 C&D facilities have groundwater monitoring

Only 49 C&D facilities have 'adequate' groundwater monitoring

Minnesota definitely has issues to address regarding demolition landfills

In comparison:

**Wisconsin Small Construction Demolition Landfills <50,000 yd<sup>3</sup>;**

<50 open & closed; currently ~15 open (Bart estimates)

Typically ~10 year life

Adequate groundwater monitoring in place at all facilities

		<p>Minnesota vs Wisconsin unlined demolition landfills are an ‘apples to oranges’ comparison. I did not look at Ohio data or demolition site regulations.</p> <p>Groundwater contaminants of concern identified in the Minnesota study are As, B &amp; Mn.</p> <p>As &amp; Mn could be (likely are) naturally occurring elements that are mobilized by conditions influenced by landfills and/or fluxing water tables. For example, a landfill could form a recharge shadow which would reduce the amount of oxygenated water percolation; reducing ORP potential and mobilizing Mn. Likewise, the mobility of As in groundwater is highly influenced by ORP. ORP will also be impacted by rise and fall of the water table.</p> <p>Is groundwater around sanitary landfills monitored for As and Mn?</p>
11:15	<b>Next meeting plans</b>	<ul style="list-style-type: none"> <li>• Next meeting: October 1, 2020</li> <li>• Send agenda topics to Meleesa and Chad</li> </ul>
<p><b>From C&amp;D Subgroup; February 2020</b></p> <p><b>Bad Actor Clause for Operators of one-time, small and intermediate construction and demolition waste landfills</b></p> <p>Type of Proposal: Legislative</p> <p><b>BACKGROUND</b></p> <p>One-time, small and intermediate construction and demolition landfills are landfills that are only allowed to accept wastes generated from building construction and demolition. Examples of such materials include wood, siding, windows, dry-wall, roofing, brick, masonry and concrete. The sites are also limited in the volume of materials they can accept: one time sites can be permitted to a maximum of 10,000 cubic yards of wastes; small construction and demolition landfills can be permitted to a maximum of 50,000 cubic yards of wastes and intermediate construction and demolition landfills can accept a maximum of 250,000 cubic yards of wastes.</p> <p>One of the stepped enforcement tools available to WDNR for use with sanitary landfill operators prohibits any Department review or approval of proposals if the facility has an open Notice of Noncompliance (NON) or Notice of Violation (NOV). This is commonly known as a Bad Actor Clause. All construction and demolition landfills are regulated under Administrative Code NR 503. As such these facilities are not licensed and do not fall under the same statutory or administrative rule requirements as sanitary landfills.</p> <p><b>PROPOSAL</b></p> <p>Adopt a Bad Actor Clause provision under NR 503 for owners/operators of one-time, small and intermediate construction demolition landfills analogous to NR 506.18 Enforcement rules for Sanitary Landfills.</p> <p><b>COMMENTS</b></p>		

**DNR Comments**

DNR concurs with the proposal; however, the proposal should clarify whether the recommendation is to modify NR 503 or go through the legislative process to change statute. Section 289.34, Wis. Stats., (Bad Actor Clause) does not apply to construction and demolition waste landfills because they are not required to go through the siting process under s. 289.21 to 289.32, Wis. Stats. If legislative or rule changes are made, DNR recommends using similar language to 289.34(2), Wis. Stats., or consulting with DNR regarding proposed language.

**MEASURE PASSED UNANIMOUSLY BY WMMSG ON December 7, 2018**

- 1 BAD ACTOR CLAUSE: Include a bad actor clause, similar to ss. for sanitary landfills, for one time demolition landfills under NR 503.08, small (<50,000 cubic yard) demolition landfills under NR 503.09 and intermediate demolition landfills under NR 503.10.

**Include groundwater monitoring for Volatile Organic Chemicals (VOCs) at all one-time, small and intermediate construction and demolition waste landfills**

Type of Proposal: WDNR Guidance, Revision of Administrative Code NR 503

**BACKGROUND**

One-time, small and intermediate construction and demolition landfills are landfills that are only allowed to accept wastes generated from building construction and demolition. Examples of such materials include wood, siding, windows, dry-wall, roofing, brick, masonry and concrete.

The sites are also limited in the volume of materials they can accept: one time sites can be permitted to a maximum of 10,000 cubic yards of wastes; small construction and demolition landfills can be permitted to a maximum of 50,000 cubic yards of wastes and intermediate construction and demolition landfills can accept a maximum of 250,000 cubic yards of wastes.

All construction and demolition landfills are regulated under Administrative Code NR 503.

One time disposal sites are unlined landfills that are regulated under NR 503.08. NR 503.08(4) ENVIRONMENTAL MONITORING does not include volatile organic chemicals (VOCs) as a required parameter of groundwater or leachate monitoring. The department has discretion on whether or not to require environmental monitoring at these facilities.

Small construction and demolition landfills are unlined landfills that are regulated under NR 503.09. Table 1 of NR 503.09(6) ENVIRONMENTAL MONITORING includes Chemical Oxygen Demand (COD), but does not include VOCs under the required list of groundwater detection parameters.

Intermediate construction and demolition landfills are lined landfills that are regulated under NR 503.10. Table 1 of NR 503.10(7) ENVIRONMENTAL MONITORING includes COD, but does not include VOCs under the required list of groundwater detection parameters.

WDNR facility plan of operation approvals for construction and demolition landfills may require VOC testing. Common practice has been that annual VOC testing is required as a part of detection monitoring at construction and demolition landfills.

COD testing produces a mercury containing hazardous waste. COD testing is a generic indicator of groundwater contamination, but does not indicate the actual chemicals causing the impacts.

**PROPOSAL**

Encourage and support WDNR to always include VOC testing as a part of a facility groundwater detection monitoring program. Include VOC testing as an annual detection parameter in NR 503.09(6) Table 1 and NR 503.10(7) Table 3.

**COMMENTS****DNR Comments**

The DNR concurs with this recommendation; however, the DNR recommends a more comprehensive review of the current groundwater and leachate monitoring requirements for C&D waste landfills prior to developing guidance and in conjunction with NR 503 revisions. The current detection groundwater monitoring list is based primarily on indicator parameters. Recent studies in Ohio and Minnesota have more comprehensively evaluated contaminants associated with C&D waste landfills and have confirmed that VOCs alone may not indicate ground water impacts. Other emerging

contaminants may also need to be considered once groundwater quality standards are developed.

**MEASURE PASSED UNANIMOUSLY BY WMMSG ON December 7, 2018**

- 2 VOC MONITORING IN GROUNDWATER: Recommend that the Department make annual VOC monitoring in lieu of semi-annual COD monitoring a requirement for all new sites. Currently the Department has discretion on whether or not to include VOC monitoring. The vast majority of sites do monitor annually for VOCs. During the next NR 503 revision, recommend that Table 1 is amended by removing semi-annual COD monitoring and including annual VOC monitoring.

**Require Owner Financial Responsibility (OFR) at all small construction and demolition waste landfills**

Type of Proposal: WDNR Guidance, Revision of Administrative Code NR 503

**BACKGROUND**

Small construction and demolition waste landfills are only allowed to accept wastes generated from building construction and demolition. Examples of such materials include wood, siding, windows, dry-wall, roofing, brick, masonry and concrete.

The sites are regulated under Administrative Code NR 503.09 and limited to a maximum waste volume of 50,000 cubic yards.

NR 503.09(10) FINANCIAL RESPONSIBILITY FOR CLOSURE AND LONG TERM CARE states that, "The department *may* require that the owner or operator of a landfill approved in accordance with the section (NR 503.09) provide proof of financial responsibility to ensure compliance for closure and long term care of the landfill using methods listed in s. NR 520.06."

Common practice has been that the department has required owner financial responsibility (OFR) as per s. NR 520.06 for small construction and demolition landfills.

**PROPOSAL**

Encourage and support WDNR to always require OFR as per NR 520.06 for small and intermediate construction and demolition landfills. In the next revision of NR 503, require OFR under NR 503.09(10).

**COMMENTS**

**DNR Comments**

The DNR currently requires OFR at all new small C&D waste landfills through DNR approvals. The DNR concurs with the recommendation that the next revision of NR 503 require OFR at small C&D waste landfills.

**MEASURE PASSED UNANIMOUSLY BY WMMSG ON December 7, 2018**

- 3 OWNER FINANCIAL ASSURANCES (OFR): Recommend that the Department make OFR a requirement at all new sites. Currently the Department has discretion on whether or not to require OFR, but most active sites do have this. Include OFR as a code requirement under next revision of NR 503.

**Expansion of small and intermediate construction and demolition waste landfills**

Type of Proposal: Legislative, Revision of Administrative Code NR 503.

**BACKGROUND**

Small and intermediate construction and demolition landfills are landfills that are only allowed to accept wastes generated from building construction and demolition. Examples of such materials include wood, siding, windows, dry-wall, roofing, brick, masonry and concrete.

The sites are also limited in the volume of materials they can accept: small construction and demolition landfills can be permitted to a maximum of 50,000 cubic yards of wastes and intermediate construction and demolition landfills can accept a maximum of 250,000 cubic yards of wastes.

Small construction and demolition landfills are unlined landfills that are regulated under NR 503.09. NR 503.09(8) EXPANSIONS requires a ¼ mile off-set between small construction and demolition landfills. No variances or exemptions are allowed.



Intermediate construction and demolition landfills are lined landfills that are regulated under NR 503.10. NR 503.10(8) EXPANSIONS requires a ¼ mile off-set between small construction and demolition landfills. No variances or exemptions are allowed.

The primary reason to require off-sets is to be able to determine a contaminant source should groundwater impacts be found in the future. In most cases, a lesser off-set distance with properly design groundwater monitoring system will allow for determination of contaminant source from more than one construction and demolition landfill.

#### **PROPOSAL**

Allow variances to be requested under NR 503.09(8) regarding the 1,320 feet site separation on a case by case basis and the reduction of this requirement under NR 503.10(8) to a minimum 300 feet. Support Legislative action to expedite these changes as a revision of NR 503.

#### **COMMENTS**

##### **DNR Comments**

The use of the language “in no case” within the NR 503 regulations pertaining to the setback requirement is considered significant because there are few other places in code with similar prohibitions. This was intentionally included during rule development and there are additional reasons for the separation distance beyond what was noted above. These include:

- Ensuring that landfill facilities that accept waste greater than 250,000 cubic yards go through the landfill siting process under ch. 289, Wis. Stats. Two or more intermediate size C&D waste landfills adjacent to each other would not meet the intent of the original regulation, which allows small and intermediate size C&D waste landfills to be developed outside of the siting process, because of the waste types and limited volumes.
- Ensuring that small C&D waste landfills do not avoid the more stringent environmental controls required of an intermediate sized C&D waste landfill by constructing multiple landfills adjacent to each other.
- Ensuring that small C&D waste landfill do not expand into an intermediate size C&D waste landfill without constructing the first landfill with the additional engineering, design and monitoring features required of intermediate size C&D waste landfills, such as a clay liner, leachate collection and sampling, and gas monitoring.

DNR does not concur with the recommendation because the intent of the original regulation is still valid. Furthermore, DNR does not agree that 300-foot would be sufficient to satisfy the intent of the regulation. If this recommendation were to move forward, the department recommends regulation or statute follow the existing exemption process rather than creating a new process.

#### **MEASURE PASSED UNANIMOUSLY BY WMMSG ON December 7, 2018**

- 4 MODIFICATION OF SITE EXPANSION RULES: Allow variances to be requested under NR 503.09(8) regarding the 1,320 feet site separation on a case by case basis and the reduction of this requirement under NR 503.10(8) to a minimum 300 feet. Support Legislative action to expedite these changes particularly for the intermediate sites where there is no apparent reason for the requirement. Recommend that these changes be included in the next revision of NR 503.