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Waste Programs Division – Solid Waste Rule Development Process Stakeholder Workshop on Article 11 – CONTINUED March 13, 2008

NOTES

A stakeholder workshop to obtain input and review possible modifications to Article 11 of the draft Solid Waste Rule was begun on February 20, 2008 and concluded on March 13. The workshops were conducted using the draft rule text dated 9-10-07. The draft rule text can be found at: http://www.azdeq.gov/environ/waste/solid/download/swrule_091007.pdf

The stakeholder comments are noted below. Italicized comments were recorded from comment cards and other written comments submitted by stakeholders. A list of attendees is attached to this document.

Continued Discussion of Draft Rule Changes to Article 11

Martha Seaman reviewed possible draft rule text changes to Article 11. Draft language and changes under consideration are provisional during informal discussions such as these; all rule language is subject to the decisions that need to be made before formally proposing the rule.

Presentation highlights and information from staff members included:

- Changes shown in R18-13-1108 address discrepancies in record retention for monitoring records.
- Section 1109 addresses the comment regarding the use of “format” vs. “method.”
- The language in 1109(B) is consistent with APP requirements.
- In 1109(C), we will look at how APP approaches the requirement to file a certificate of disclosure and ARS § 49-109.
- In 1109(D), we will clarify what is meant by “method” (electronic or paper) and what content this Section should cover, such as an alert exceedence or all data.
- Section 1110 includes “if” to clarify the intention. Existing facilities could have a compliance schedule. New facilities probably would not.
- In Section 1111(F), we added the flexibility for extension of the closure period.
- ADEQ believes that Section 413 (A-D and H) would apply to landfills. Article 11 closure requirements would be in addition to Article 4 requirements.
- In Section 1115, changes were made in response to comments about facilities with APPs.
- We also responded to concerns that “associated with” was too broad in Section 1120.
- A lined surface impoundment is included under 1120(A).

- In 1123, we reconsidered requirements to control birds, frequency of inspection, and liner inspections.
- In 1125, we made language clarifications.
- We are determining a threshold that would require an investigation under 1125(C).
- In 1125(D) we changed 30 calendar days to 60.
- Regarding Section 1127, Biosolids processing facilities, although statutorily designated as solid waste facilities, would be handled under the Water Quality Program and APP. None of the other general provisions would apply except composting. Drying beds at wastewater treatment plants would be handled under the Water Quality Program.
- A facility mixing green waste and biosolids would be subject to composting regulations.
- All land applications of biosolids would be handled under Water.
- We are working with Water Quality on the issue of landfills and mining sites.

Stakeholder comments and questions follow.

Article 11

Section

R18-13-1108

- *A solid waste plan approval that includes an APP should only apply to a new facility.*
- (A) – Clarify whether aquifer protection standards in groundwater monitoring means water quality standards or aquifer protection standards.
- (A) – Usually two monitoring discrepancies are required.
- (B) – Applicant should make these demonstrations, not the department. The department should approve or deny.
- (B) – Include the department’s criteria for making the determination.
- (C, D) – In groundwater monitoring, the measurements used are shown in (C)(2). Don’t see a need for both 1108(C) and 1108(D).

R18-13-1109

- (A) – I am concerned about the scope of disclosure. This goes beyond APP requirements and 40 CFR Part 258.
- (A) – Some items here are covered elsewhere including waste screening conditions and non-manifested waste requirements.
- (A) – Change reference of 409(C)(4) to 408(C)(4).
- (A) – This Section creates a lot of paperwork.
- (B) – Section is problematic in that litter could be reported and would create a lot of paperwork. Suggest these items be isolated as alert levels from more of a regulatory standpoint.
- (B) – In non-APP provisions for a solid waste facility plan, the agency cannot go beyond Part 258.
- (B) – I am concerned about the way this provision is written. For example, if we pick up a recycling container a day late we would have to write a report. These issues would normally be included in the operating record.

R18-13-1110

- (A) – Add when the compliance schedule is required. This is a typical APP provision.
- (A) – Clarify that all changes are not meant to be part of compliance scheduling requirements. To me, a compliance schedule means that there is an enforcement action.
- (A) – Landfills don't generally have a compliance issue.
- (A) – A compliance schedule can sometimes help the applicant get coverage when there is one outstanding item.

R18-13-1111

- (A) – This language is from 40 CFR 265.111 and is not consistent with Subtitle D.
- (A) – It is better to submit and demonstrate.
- (A) – Subtitle D specifies that the regulated person must notify the director of the intent to close. This is inconsistent with the requirements of Section 413.
- (B) – Don't see allowance for one year closure language. This is not consistent with Subtitle D.
- (B) – The use of a 30-day closure period is problematic because there is often an amendment to the closure plan.
- (B) – What is the definition of “starting” the process? The agency has been amenable regarding this issue in the past. May need to define “starting.”
- (C) – Seems quite restrictive and may not be necessary.
- (D) – This is more of a plan approval process issue.
- (D) – I believe this is over-anticipatory as to what can be calculated for 30-50 years out.
- (D)(2) – Section is unnecessary. No one can maintain a schedule for closure. Don't believe this is needed.
- (F) – *R18-13-1111(F) says 6 month – 12 month. 15 is more reasonable.*

R18-13-1112

- 30 years is a one-size-fits-all time period. Some landfills may not need this level of follow up.
- (B) – Criteria are not listed. This concern applies more to Part 257 landfills.

R18-13-1114

- Statute already requires filing of deed restriction. Would this be required here as well?
- Some items here listed are not typically included in current restrictive covenant language, including map of disposal area, brief description of landfill operations, types of waste accepted, and items in 1114(B)(3).
- Language regarding covenant “as provided in this Section” could be a problem.
- *The question has arisen as to whether an owner who already has a recorded restrictive covenant would need to refile a new restrictive covenant. The allowable items of the proposed rule are not included in the current rule 1114(B)(3), and 1114(C)(2,3).*

R18-13-1115

- (B,C) – Change “ADEQ” to “the Department” or “the Director.”

- (C) – What does “to the maximum extent possible” mean?
- (D) – Why is there a need to combine permits within a 5-year period? Each separate permit doesn’t have the 5-year limitation.
- (D) – There will be some non-MSWLFs that would not be subject to the 5-year time frame.
- (D) – *Does this include any facility within an Aquifer Protection Permit (APP) that could meet the definition of a solid waste facility or just landfills/facilities that were permitted by the Solid Waste Section through APP? I can understand, for example, bringing an industrial landfill that was permitted under a stand-alone APP under the new set of rules. However, as written, the proposal appears to cover any "solid waste land disposal facility" that is operating under an APP and require these to get new solid waste permits within 5 years. There are facilities operating with facility-wide APPs that may have activities that could be considered land disposal which permitted as part of the APP. I believe that these should stay within APP and not be required to obtain a separate, and possibly redundant, solid waste permit. APP is already regulating these activities and I believe that further regulation is not warranted.*
- (D) – *Delete Section D from R18-13-1115. Add a new section for 40 CFR 257 facilities similar to Section A of R18-13-1115.*
- (E) – I am concerned about the suspension of groundwater monitoring. Doesn’t specify whether this is a Type I, II, III, or IV change.
- (E) – *Need to eliminate R18-13-1115(E).*
- (E) – *The way I read this, every time we want to do a Type III or Type IV change to our facility plan we will lose our exemption for groundwater monitoring. Here at Cinder Lake Landfill groundwater is approximately 1600 feet below ground surface. We currently monitor soil moisture content beneath the landfill at a compliance point that is approximately 20 feet below the landfill. If we become subject to R 18-13-1115 E through a Type III or Type IV change then we would have to install groundwater monitoring wells down to 1600 feet which would cost somewhere in the neighborhood of \$1 million a piece. And even if we did that our current models show that any contamination coming from our landfill would take approximately 900 years to reach groundwater so our monitoring wells wouldn't tell us anything for 900 years. It makes more sense to comply with our soil pore-water and soil moisture content standards already in place in our current solid waste facility plan. Our current point of compliance will tell us immediately if any issues arise surrounding the possible release of leachate from our landfill and given the 900 year time period it takes for contamination to reach the water table there is no immediate threat to human health or the environment and we would have plenty of time to come up with a plan for corrective action.*

R18-13-1120

- *A lined surface impoundment that is part of a water treatment system should be excluded from this rule.*
- (A) – This Section may still be too broad, i.e. a retention basin may fall into this category. Suggest specifying leachate ponds here.
- (A) – Did you mean to exclude sludge? Liquid waste haulers discharge into separate sludge (septage or grease ponds) and would be affected.

(A) – It is common practice to remove 6-12 inches of deck, and this could be interpreted to force these requirements.

(A) – Liquid solidification could be interpreted to fall under 1120.

R18-13-1121

- Could have a non-landfill subject to landfill siting criteria.

R18-13-1122

(B)(2) – There are several geosynthetic layers in Arizona that would meet this standard. The rule should allow for alternate designs.

R18-13-1123

- I am not sure the department should specify monthly or weekly inspections.

R18-13-1124

- Suggest we avoid confusion with point of compliance issues. A leachate pond could be considered separate. This should be clarified in rule.

R18-13-1125

- See the ARS § 49-857 requirements. A landfill must follow these procedures.
- (A)(3) – There is a duplicity issue since many landfills are permitted for special waste. It looks like two closure plans are needed. A special waste facility could be a landfill.
- (B) – Does not include timeframe.
- (D,E) – Subtitle D doesn't require a 60-day timeframe. However, this Section does.

R18-13-1126

- A landfill will never achieve a clean closure.
- (D) – 30-day calendar timeframe is used here, not consistent.

R18-13-1127

- Many waste water treatment plants and composting facilities have sludge drying beds and could be construed as biosolids processing facilities.
- Is a lined impoundment a solid waste facility?
- May want to include definition of biosolids processing here.
- Take care to avoid burdensome regulations on recycling/composting opportunities.
- Surface impoundments may have solid waste, such as in cooling towers.

General Comments

- I encourage the agency to review the conceptual notes submitted today by the Solid Waste Coalition.
- This has been an effective process.
- The opportunity to participate by phone is appreciated.

Next Steps

Peggy Guichard-Waters expressed the agency's appreciation for the time stakeholders contributed to the rule development process. The input provided is valuable and will take staff some time to review and address.

Stakeholders were asked to identify any fatal flaws with the rule package. Comments received included:

- *Need to better define which issues fall under the statutory provision related to exceeding 40 CFR 258 requirements because they are aquifer protection issues.*
- *Avoid overbroadening definitions to be more comprehensive but which leads to unintended consequences.*
- *Not breaking out MSW from non-MSW. Non-MSW do not include household waste and are in the draft rules regulated too heavily. MSW and non-MSW are different and should be regulated separately.*

Outstanding issues discussed included:

- Staff requested any remaining substantive comments on the draft rule by the end of March. Cleanup issues can be sent in at any time.
- The goal of this process is to get a good rule package out to stakeholders. A timeline has not yet been set.
- Jurisdiction issues need to be addressed with the Water Quality Division and the Department of Agriculture.
- Structuring and applicability need to be addressed.
- Recycling will need to be addressed.

Attendees, including those participating via conference call included:

Joe Abate, NSWMA	Douglas Junk, Cornerstone Environmental Group
Harlan Agnew, Pima County Attorney	Jon Kawaguchi, City of Glendale
John T. Barlow, Arizona Strip Landfill Corp.	Margaret LaBianca, Bryan Cave LLP
Dave Bearden, WMI	David Lickteig, Freeport-McMoran, Bagdad
J. S. Biedenbarn, Coconino County	Bryce Mares, Phelps Dodge Miami Inc.
Garth Bowers, Cornerstone Environmental Group	Matt Morales, City of Flagstaff
Don Cassano, Waste Management	Martha G. Mottley, Freeport-McMoran Copper & Gold, Sierrita
Al Cooper, Freeport-McMoran	Kent Norton, Freeport-McMoran
Curtis Cox, Arizona Attorney General's Office	Chuck Ohr, Arizona State Parks
Steve Doss	Krishna Parameswaran, Asarco
David Eaker, Pima County DEQ	Mark Prein, APS
Lana Fretz, Freeport McMoran	Mark L. Schumacher, Freeport-McMoran, Bagdad
Colby Fryar, Pima County	Sheree Sepulveda, City of Chandler
Joe Giudice, City of Phoenix	Stephen Smith, Hydro Geo Chem, Inc.
Chuck Hamstra, City of Phoenix	Lisa Spahr, Eng & Env. Consultants, Inc.
Larry Hawke, Pima Cty. DEQ	Jacqueline Strong, City of Chandler
Thomas Hillmer, APS	David Wallis, Gallagher & Kennedy

Chris West, Allied Waste