



January 12, 2022 Groundwater & Waste Management Committee

*Amendments to Rules in 15A NCAC 13B
for C&D and MSW Landfill Facilities*

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Overview

The Division of Waste Management (Division) is requesting approval from the GWWMC to proceed to the Environmental Management Commission (EMC) for public notice and hearing for amendments to the following rules in 15A NCAC 13B and the Regulatory Impact Analysis:

Construction and Demolition (C&D) Landfill Facility Rules (Attachment A):

- Rule .0533 General Application Requirements and Processing
- Rule .0535 Application Requirements
- Rule .0543 Closure and Post-Closure Requirements
- Rules .0544 and .0545 for Groundwater Monitoring, Assessment, and Corrective Action

Municipal Solid Waste (MSW) Landfill Facility Rules (Attachment B):

- Rule .1603 General Application Requirements and Processing
- Rule .1617 Application Requirements
- Rule .1627 Closure and Post-Closure Requirements
- Rules .1631 - .1637 for Groundwater Monitoring, Assessment, and Corrective Action

Background

- The rules proposed for amendment establish requirements for permit application and for groundwater monitoring, assessment, and corrective action for C&D and MSW landfill facilities.
- These rules were readopted by the EMC in July 2020 and approved by the Rules Review Commission (RRC) in October 2020.
- The RRC received over 10 letters of objection on a subset of rules in the readopted rule package, and those rules were sent for legislative review.
- The Division requested that the Rules Division of the Office of Administrative Hearing (OAH) delay the effective dates of all rules in the readopted rule package (15A NCAC 13B .0531-.0547 and Section .1600) to be the same as the rules sent for legislative review.

Background

- Senate Bill 60 was filed at the General Assembly in February 2021. This bill was intended to disapprove Rules .0535, .0545, .1603, .1617, and .1631 (a smaller subset of the rules that had received letters of objection).
- The Division worked with the stakeholders to draft a revised bill that did not disapprove any rules, but instead made the readopted rules effective when the Session Law became effective.
- The revised bill, agreed upon by the Division and the stakeholders, also required that the rules be implemented with the changes described in Section 1.(c) of the law, and that the rules listed in the law be amended to be substantively identical to the Session Law's implementation section.

Background

- SB60 was ratified as S.L. 2021-153, effective September 16, 2021. A copy of the Session Law is included in the Regulatory Impact Analysis in Attachment C.
- Per the Session Law, all of the readopted rules in 15A NCAC 13B .0531-.0547 and Section .1600 for C&D and MSW landfills were added to the administrative code effective September 16, 2021.
- S.L. 2021-153 states that the amendments are not subject to review by the RRC; and shall become effective as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2), meaning these rule amendments are automatically subject to legislative review.

Summary of Rule Changes

- The Division has been implementing Section 1.(c) of the Session Law since it became effective.
- The Division is proposing to make the required amendments to these rules which are substantively identical to the Session Law implementation.
- The Division is also proposing additional amendments to make minor technical corrections throughout these rules for typographical errors discovered after the clean versions of the readopted rules were prepared by OAH to be added to the code.

Summary of Rule Changes

Rules .0533, .0535, .0543, .1603, .1617, and .1627 for Permit Application Requirements

- These rules are proposed for amendment to reduce the application requirements for changes in ownership or corporate structure and for the issuance of a closure permit so that the regulated community is not required to resubmit any documents that had previously been submitted to the Division for which no changes are necessary.
- The Division will issue Permits for Closure and Post-Closure Care at the time of closure by incorporating the plans necessary for closure that had been incorporated into the most recent Permit to Operate issued to the facility (which at a minimum would include the closure and post-closure care plan and any environmental monitoring plans).
- It will be the responsibility of the owner or operator to submit to the Division any changes they need or would like to make to the plans for their facility, in the same manner that they would have under a Permit to Operate, since the facility will be required to continue to comply with the incorporated plans after closure.

Summary of Rule Changes

Rules .0544, .0545, and .1631 - .1637 for Groundwater Monitoring, Assessment, and Corrective Action Requirements

- These rules are proposed for amendment to remove the references to Interim Maximum Allowable Concentrations (IMACs) in 15A NCAC 02L that had been added to the rules during the readoption process.
- The addition of the IMAC references during readoption was only intended for clarification; and would not have changed the way the Division enforced the requirements of 15A NCAC 02L, if the change had become effective.
- Therefore, the removal of these references will not change the Division's enforcement of 15A NCAC 02L, and the Division will continue to enforce 02L requirements as they did prior to readoption.

Summary of Impacts

The Regulatory Impact Analysis, approved by OSBM on November 16, 2021, indicated that no fiscal note was necessary because the proposed amendments will have little to no impacts on the regulated community, local government, or state government, and will have no substantial economic impact based on the following:

- the changes reflected in the substantive rule amendments were implemented directly by S.L. 2021-153 Section 1.(c);
- the Division has been complying with the changes implemented by S.L. 2021-153 since the law was effective on September 16, 2021;
- the Session Law implementation remains effective until these rules are amended; and
- the amendments are either substantively identical to the implementation in Section 1.(c) of the Session Law; or are minor technical corrections.

Summary of Impacts

- The Regulatory Impact Analysis provides a brief overview of the expected impacts of the Session Law implementation, for information purposes only.
- Any impacts from the changes to the application requirements or removal of IMAC references are impacts from the implementation of the Session Law; and are not a result of the proposed amendments.

Proposed Rulemaking Schedule

Action / Responsibility	Date
GWWMC - Approval of Rule Text and RIA to go to the EMC	January 12, 2022
EMC - Approval of Rule and RIA for Public Comment	March 10, 2022
Public Comment Period	April 18, 2022 – June 17, 2022
Earliest Date for Public Hearing	May 3, 2022
EMC - Approval of Hearing Officer's Report and RIA, Adopt Rules	July 14, 2022
Submittal to OAH (S.L. 2021-153 exempts rule from RRC review)	Late July 2022
Proposed effective date	Pending Legislative Review

Requested Action

The Division is requesting approval to proceed to the Environmental Management Commission for public notice and hearing on amendments to 15A NCAC 13B rules for C&D and MSW Landfill Facilities as included in Attachments A & B, and the Regulatory Impact Analysis.

QUESTIONS?

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