

Solid Waste Regulations Discussion



SWAC

September 21, 2021

Process & Schedule – SW Regs

- Overall review of solid waste regulations
 - Reviewing both full sets of solid waste regulations:
 - 310 CMR 16.00 – site assignment regulations
 - 310 CMR 19.000 – permitting regulations
 - Seeking external input prior to finalizing draft regulations for formal public comment & hearing
 - Expect to issue for public comment in mid to late 2022
 - Independent of proposed waste ban regulations, which are proceeding separately this fall

Key Caveat

- Potential changes presented today are for discussion purposes only
- MassDEP will prepare a public hearing draft of proposed amendments in 2022

310 CMR 16.00 Overview

- 16.03 – exempt activities
- 16.04 & 16.06 – general permits
- 16.05 & 16.06– recycling, composting, and conversion facility permits
- 16.07 – 16:40 – solid waste site assignment requirements

310 CMR 19.000 Overview

- Part 1 – General Requirements, Procedures & Permits
 - 19.001 – 19.083
- Part II – Landfill Design & Operational Standards ☐
 - 19.100 – 19.151
- Part III – Transfer Station Design & Operational Standards
 - 19.200 – 19.207

310 CMR 16.00 Proposed Changes

Wastewater Treatment Plant Residuals Facilities

- 16.01(3)(b)
- Clarify that facility that treats sludge not regulated by BWR then will require solid waste site assignment and permitting
- Related change to definition of solid waste

Small Pilot Projects

- 16.03(2)(a)5
- Small pilot solid waste projects may occur on non-site assigned parcels if meet conditions in 310 CMR 19.063
 - Up to 100 tons total
 - 90 days with one 90 day renewal
- Provide additional flexibility to test innovative solid waste management technologies & approaches.

Speculative Accumulation

- 16.01(8)(a)10
- Also definition added (in 16 and 19)
- Accumulate any materials or waste and stores them for more than 90 days, except as otherwise specified in 310 CMR 16.00
- Exemption for storage of processed material to obtain full truck load
- Easier enforcement for illegal storage of waste materials

General Permits

- 16.04(1)(a) Applicability.
- MassDEP may respond in writing to a general permit certification with a determination that 16.04 does not apply to the proposed operation or that additional information is needed.
- In that case, operator shall not commence operating until MassDEP has issued written approval

General Permit for Food Material Collection

- 16.04(1)(d) Applicability.
- Add general permit pathway for the limited collection and consolidation of food waste
- Can take no more than two tons of food material per day and have no more than six tons on site at any time

General Permit for Food Material Collection

- Add section 16.04(4) General Permit Requirements for a Food Material Collection Center.
- Sets conditions for operating under general permit
 - Handles the material in an enclosed handling area,
 - Material is stored in leak proof containers and sealed when food material is not being added;
 - The material is moved from the center so does not create nuisance conditions such as odor or vectors;
 - The material cannot be kept at the center for longer than 5 days; and
 - the operator submits a compliance certification

General Permits

- 16.04(3) Composting or AD
- Added setbacks to address concerns with odors, trucks and nuisance conditions.
 - Odor control plan & vector control plan must be provided in writing as part of general permit certification
 - 400 feet away from public drinking water supply well
 - 300 feet from a residence
 - 250 feet from a private drinking water supply well
 - 100 feet from a property line

General Permits

- 16.04(3)(b)5. Allows MassDEP the ability determine that an organic material may be problematic and require an RCC permit.
- Goal to prevent potential nuisance conditions from forming at general permit operations

General Permit Notices

- 16.04 (2)(i), 16.04(3)(a)(10) & 16.05(4)(w)–
- Adds: Must report by next business day any occurrence that cause the operation to change conditions for accepting materials or any emergency condition(s) that will impact the operation, its pollution control(s), or acceptance of incoming waste loads (unless otherwise required to notify sooner)

EJ Notice Requirements

- Added in several places in proposed changes
- Codifying practices we are already implementing

Site Suitability Criteria

- Agricultural Lands Siting - Old Language- 16.40(4)(a)

Agricultural Lands. No site shall be determined to be suitable or be assigned as a solid waste management facility where:

1. The land is classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service; or
2. The land is deemed Land Actively devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility; and
3. A 100-foot buffer would not be present between the facility and those lands classified at 310 CMR 16.40(4)(a)1. Or 2.

Site Suitability Criteria

- New Language
- General Site Suitability Criteria. The following Site Suitability Criteria shall apply to all types of solid waste management facilities.

Agricultural Lands.

1. No site shall be determined to be suitable or be assigned as a solid waste handling facility or a solid waste combustion facility where the land meets the definition of Land Actively Devoted to Agricultural or Horticultural Uses, as defined at M.G.L. c. 61A §3, and has been used as such within the previous five years.

Site Suitability Criteria

1. 2. No site shall be determined to be suitable as a landfill facility where:
 - a. The land meets the definition of Land Actively Devoted to Agricultural or Horticultural Uses and has been used as such within the previous five years.
 - b. The soil is classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service unless the applicant commits to preserving an equal amount of land with soil classified as Prime, Unique, or of State and Local Importance.

Site Suitability Criteria

- 16.40(4)(d)3. ACEC. Adds that for an existing handling facility located in an ACEC that is seeking a modification or expansion of the site assignment, the expansion/modification will only be found unsuitable for site assignment if it would fail to protect the outstanding resources of an ACEC as identified in the Secretary's designation.
- 16.40(5). Integrated Solid Waste Management Siting Criteria. Deleted criterion related to capacity and updated language. Already covered in permitting regulations.

310 CMR 19.000 Proposed Changes

Private Facility Tax & Financial Assurance Requirements

- 19.050(5) Amount of the Tax – Updated the tax rate.
- 19.051 Financial Assurance Requirements – Closure, Post-Closure or Corrective Action Trust Funds.
 - 19.051(2),(4) & (8) – added the term corrective action to make it clear it is covered in this section.
 - 19.051(8) - Add language that limits the FAM from decreasing below 50% of the original FAM. Ensures there are funds for any potential problems that may arise beyond the initial 30-year (post-closure) period.

Financial Assurance Requirements

- 19.051(5)-
- When MassDEP has not requested the owner/operator to provide a specific corrective action cost estimate for FAM establishment purposes, MassDEP shall be able to access full amount of the FAM to perform corrective actions
- Owner/operator will then be responsible for replenishing the amount of the closure or post-closure FAM to the full amount required by MassDEP for the facility.
- 19.051(7) – Revising language to state facility must notify MassDEP if financial assurance calculation increases by 5% and provide such additional financial assurance.
- 19.051(12)(a)5 – Clarifying language relative to initial payment into trust fund for corrective action.

Beneficial Use Determinations

- 19.060 Beneficial Use of Solid Waste.
 - 19.060(3)(c) – All BUDs issued by MassDEP without an expiration date must be renewed after 5 years.
 - Ensures that BUDs will be afforded continuing review to ensure that the material and use are still appropriate.
 - 19.060(12) – Prohibits speculative accumulative of BUD materials.
 - 19.060(12) – Adds language stating MassDEP may modify any BUDs based on new info on possible contaminants.

Demonstration Projects & Small Pilot Projects

- 19.062(3)(h) Demonstration Projects – Added language to ensure that MassDEP checks with the local BOH prior to approving.
- 19.063 Small Pilot Projects – New Section
 - Extends MassDEP's authority pursuant to M.G.L. c. 111, §150A to allow small solid waste pilots on non-site assigned parcels
 - Limited to 100 tons total and 90 days with one 90 day renewal.
 - Mirrors 19.062 in all other conditions.
 - Adds flexibility for innovative technologies and processes to be tested on a small scale

Environmental Monitoring Requirements

- 19.132(2)(h)4. - Add Perfluorinated compounds to list of tested parameters.
- 19.132(2)(j) – Replaced language that if exceedances of any of the parameters listed in 310 CMR 19.132(2)(h) are historically present then the owner/operator does not need to submit another round of testing to MassDEP and instead require supporting documentation that previous assessments have characterized the full nature and extent of the contaminant(s), and the risks of harm to public health, safety and the environment.

Landfill Post-Closure Requirements

- 19.142(2) Post-closure Period - adds that post closure period shall extend for a minimum of a 30 year period. The post-closure period will remain extended until the MassDEP has issued a written determination that the post-closure period has ended. Adds clarity that the post-closure period does not end at 30 years but at the discretion of MassDEP.
- Delete section 19.142(3) post closure period waiver, MassDEP has never used this provision and there is not a viable reason to waive the post closure period.
- Delete section 19.142(4) post closure period extension. The post-closure period does not end at 30 years. It continues until MassDEP has issued a determination that it has ended.

Other Changes to 310

CMR 16.00

General Permit Enforcement

- 16.01(8)(b)2.c.
- Adds option to apply for RCC permit if MassDEP rescinds, suspends, or revokes general permit

DON Expiration

- Determinations of Need
- 16.01(12)
- Clarify that all have expired and no entity may operate pursuant to prior DON

Definitions

- Beneficial Use Determination – adds definition.
- Composting or Composted – adds vermicomposting to the definition.
- Facility – Modify definition to make it clear which appurtenances are included as part of the facility and which structures and improvements are part of the facility.
- Solid Waste or Waste – adds language to require a site assignment and permit for WWTP residuals facilities that are not sited pursuant to c. 83 s. 6. (i.e. private facilities require solid waste site assignment).
- Speculative Accumulation - Accumulate any materials or waste, whether in their as-received, in-processed or processed condition, and stores them for more than 90 days, except as otherwise specified in 310 CMR 16.00, after the date such materials or waste are received. (exemption for accumulation of a single truck load)

Exemptions from Site Assignment

- 16.03(2)(b)6. Tire Chipping, Shredding or Other Tire Processing.
 - Creates a cut-off above which would require an RCC permit
 - 1000 tires total - removes the allowance for number that can be processed in a 24 hour period)

Exemptions from Site Assignment

- 16.03(2)(b)(7). Adds an exemption for source separated metal recycling.
- 16.03(2)(b)(8). Adds an exemption for ash derived from clean wood.

RCC Permits

- Add 16.05(5)1. Adds language to address EJ requirements to public notice
- Add to 16.05(5)(c) Intervention of Group of Ten Persons section that explains the requirements of to be part of the group
- Add 16.05(5)(f) which is the ability of MassDEP to issue a Provisional Decision
- 16.05(7) RCC Permit Modifications adds clarification to when a modification is required
- Add 16.05(8) which allows for transfer of permits process

SITE ASSIGNMENT APPLICATIONS-

Certification, Review of Application of Completeness, Review Period & Waivers

- 16.07 Rewrite of the Signatories information to update
- 16.10(4)(c) Public Notice of Application - updates the EJ language for this section
- 16.11(3)(b) Modification of Application updates this to more clearly that the Department shall determine whether the modification submitted is significant enough to be deemed a major modification
- 16.18 Delete Waiver of “Part 1” because 16.40(6) provides sufficient waiver capabilities.

SITE ASSIGNMENT APPLICATIONS-Public Hearing Rules

- 16.20(7) addition of language to define EJ requirements for the public notice requirements for hearings
- 16.20(10)(k)3. deletes the Tentative Decisions section as this section has not been utilized.
- 16.20(10)(k)4. Final Decision section is rewritten due to the deletion of the Tentative Decisions section

SITE ASSIGNMENT APPLICATIONS- Modifications to and Recissions and Suspensions of Site Assignment

- 16.22 Site Assignment Modifications - Clarifies language regarding minor modifications and major modifications to site assignment. This is not intended to change these requirements.
- Adds to the reserve capacity approvals that MassDEP can modify permitted operating hours and other conditions in response to emergency capacity needs without requiring a site assignment modification.

Other Changes to 310

CMR 19.000

Definitions

- Beneficial Use Determination added
- Commercial Solid Waste – deleted. It is not used in regulations.
- Facility – Modify definition to make it more clear what appurtenances are included when referencing the term facility.
- Inactive Landfill and Inactive Area – Add definition for clarity.
- Opportunity to Recycle or Compost – deleted. It is not used.
- Point of Compliance – Add definition for clarity of regulations.
- Responsible Official – Clarifying definition by adding quasi-public entities.
- Solid Waste - Revised definition to clarify that wastewater treatment residuals and sludge ash which is treated and/or disposed at a facility sited pursuant to M.G.L. c. 83, s. 6 is exempt (from the definition).
- Speculative Accumulation - Accumulate any materials or waste, whether in their as-received, in-processed or processed condition, and stores them for more than 90 days, except as otherwise specified in 310 CMR 16.00, after the date such materials or waste are received. We have proposed an exception for storage of a processed material. pending accumulation of a single full truck load.

310 CMR 19.000 Changes

- 19.011(2) Engineering Supervision – Allows MassDEP some latitude to not require a PE in certain instances.
- 19.014(2) & (3) – Addition of transport and transfer to prohibition on Open Dumps and Dumping Grounds and Illegal Disposal of Solid Waste – To provide more clarity.
- 19.017 Waste Bans – Separate regulatory package.
- 19.018(5)(e)d. & e. Third-Party Inspections – Revised so that MassDEP may remove a third-party inspector from the list if the inspector conducts inspections or submits reports that do not meet the regulations. (Prior version required a “pattern of noncompliance” by the inspector.)

310 CMR 19.000 Changes

- 19.028 Requirements for Construction, Operation, Modification or Expansion of a Solid Waste Facility – Defines the components of solid waste management facility permit for clarity.
- 19.030(6)&(7) - Remove the signatory and engineering supervision sections because they are duplicative of 19.011.
- 19.032 - Permit Procedure for a New Facility or Expansion Permit Application
 - 19.032(3)(c)3. – Add method of notice for English Isolation, low income, or minority EJ communities.
 - 19.032(3)(d) – Add information about how the public may access documents electronically to the public notice.

310 CMR 19.000 Changes

- 19.033(4) Provisional Decisions – Adds requirement that the comment period for a provisional decision is 21 days.
- 19.035(3) Transfer Station Certifications.
Add requirement that a notice of facility operation is recorded at the Registry of Deeds to ensure there is adequate protection for future site owners. This comports with M.G.L. c. 111, s. 150A.
- 19.038(2) – Clarify and update language to ensure that the facility alone or in conjunction with other operations maximizes diversion or each component of incoming loads.

Authorization to Construct & Authorization to Operate

- 19.041(4) – Sunset provision of Authorization To Construct. It will expire 5 years from date of issue instead of 3 years but cannot be renewed, a new ATC must be issued.
- 19.042(4) Authorization To Operate – As-built plans must be signed and stamped and submitted by a PE to indicate the facility has been constructed and prepared in conformance with the approved design plan and to hold the supervising PE responsible.

310 CMR 19.000 Changes

- 19.043 Conditions for Permits and Other Approvals.
 - 19.043(5)(l)7 Duty to Inform. Notification to MassDEP by facilities about any shutdown of operation or slowdown that requires the diversion of incoming materials.
 - 19.043(5)(j) Notification of bankruptcy shall be provided to the solid waste section chief of the appropriate region.
- 19.045(4) Facility Closure and Post-Closure. Add language that states the property of a facility may not be subdivided without an approved closure plan.
- 19.050(5) Amount of the Tax – Updated the tax rate.

Special Waste

- 19.061(1)(a) – Added language: No special waste shall be received or disposed at any facility unless 310 CMR 19.061 provisions are met and the waste is managed in accordance with any conditions specified by MassDEP in any approval to manage the waste. Ensures that special waste will be managed at an appropriate facility.
- 19.061(3)(a)3 – Any certification or presumptive approval for a facility handling asbestos waste, medical or biological waste, or sludge expires after 5 years. Would allow continuing review of the appropriateness of materials received at a facility.

Variations

- 19.080(1) Required Demonstration – Add language stating that any applicant that has received a waiver from MassDEP pursuant to 310 CMR 16.40(6) will not need to seek a variance as described in this section. This is done because the criteria are so similar.
- 19.080(5)b. Waivers - Deleted the separate appeal to Commissioner because the underlying permit may be appealed.

Enforcement Provisions & Enforcement of Minimum Recycling Requirements

- 19.081(2) changes made to add clarity
- 19.081(2)(h) Enforcement – Adding provision prohibiting speculative accumulation. Also clarifying that MassDEP may rescind, suspend or modify a permit in response to noncompliance or nuisances.
- 19.083 Enforcement of Minimum Recycling Requirements. Deleting the entire section, recycling has matured and incorporated into all solid waste permitting, therefore making this section unnecessary.

Landfill Facility Plan

- 19.104(4)(a) Landfill Design Plan – Adds all the diagrams, reports, studies, & other information including:
 - Detailed description of the type and size of facility.
 - Nature and amount of waste handled on daily and weekly basis.
 - Detailed description of facility, including recycling and composting components, site improvements and all system and other appurtenances necessary to comply with:
 - The operation and maintenance requirements;
 - The closure and post-closure requirements; and
 - Permit approval criteria.

Landfill Facility Plan

- 19.104(5) Landfill Operation and Maintenance Plan
 - Adds increased detail to be included in the Landfill Design Plan to improve detail of submissions.
 - Will help to ensure a more complete application and limit questions about required materials.

Construction Certification

- 19.107(4) - added section that states independent professional engineer shall notify MassDEP in writing when materials or methodologies used in construction do not meet the design standards or specifications approved by the Department, within 24 hours of the finding.

Ground Water Protection Systems

- 19.110(10)(a)4. - Addition that requires a means of measuring hydraulic head on the primary liner by pressure inducer or other direct means for each leachate collection area. This is to provide regulatory requirement for this device instead of trying to add it to permits.

Storm Water Controls & Air Quality Protection Systems

- 19.115(2)(c) Storm Water Controls – MassDEP will update the citation for 100-year storm data.
- 19.117(2) Air Quality Protection Systems– Clarifying language about the Lower Explosive Limit and point of compliance.

Design Requirements for Wood Waste Reclamation Facilities

- 19.120 modify the language of the regulation to remove references to woodwaste landfills and replace with wood waste reclamation facilities and indicate that they can only accept clean wood

Operation & Maintenance Requirements

- 19.130(16) – added requirement to prevent nuisance conditions from developing at and migrating from the facility.

Operation & Maintenance Requirements

- 19.130(15)(a)(5) & (6) Cover Material – adds that cover material must:
 - be free of substances which would attract vectors and free of large objects that would hinder spreading and compaction or otherwise interfere with the proper functions of cover material; and
 - not result in increases in the environmental concentrations of any critical contaminant of concern (CCCs), including persistent, bioaccumulative toxins (PBT) and other priority chemical pollutants as may be identified by MassDEP.

Environmental Monitoring Requirements

- 19.132(f)2. – added specific report requirement to include identifying any issues of concern with a categorization of groundwater (i.e., GW-1, GW-2 & GW-3) at the site and immediately down-gradient of the site in accordance with the Massachusetts Contingency Plan.
- This includes demonstrating whether the site is or is not in a potential and/or current drinking water source area (i.e, Zone II, IWPA, Zone A, within 500 feet of private water supply well).
- Information obtained on private wells shall be current based on recent surveys (i.e., within 5-years)

Environmental Monitoring Requirements

- 19.132(k) adds that if contaminant(s) exceeds any applicable standards, the owner or operator shall undertake additional assessment, unless as otherwise specified by the Department.

Environmental Monitoring Requirements

- 19.132(m) adds the Department may make a determination that an assessment and/or corrective actions are needed at any site, consistent with the provisions of 310 CMR 19.150.

Landfill Closure Requirements

- 19.140(7)
- Adds section for inactive landfills and dumping grounds to document and confirm proper closure

Post-Closure Use of Landfills & Landfill Assessment Requirements

- 19.143(2) Submission of Post-Closure Plans. The permit application shall include a Notice of Landfill Operation in accordance with 19.141. No approval will be granted or considered valid without evidence of the Notice of Landfill Operation. This ensures that it is recorded that the site was once used as a landfill.
- 19.150(b)4.-Add provision that MassDEP may seek a landfill assessment for dumping grounds or inactive landfills that lack a final cover.

Solid Waste Handling Facility Requirements

- 19.206 Section changed from C&D Processing Facility Requirements to Solid Waste Facility Requirements
- 19.206(3) - add additional language to regulate stormwater or water coming into contact with waste at solid waste handling facilities.
- 19.206(4) – adds Storm water drainage structures shall be designed, constructed and maintained to ensure integrity of the drainage structures and to prevent the discharge of pollutants into the environment.

Handling Facility Operation and Maintenance Requirements

- 19.207(8) Banned or Restricted Solid Waste - adds language for how wood is to be handled, stored and moved at handling facilities:
 - If clean wood is accepted at the handling facility, provisions should be made for the clean wood to be received in bundles no larger in size than can be handled in an acceptable and sanitary manner by the specific equipment. Clean wood shall not be brought to a facility for disposal.

Contact Info

- For more information
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