

July 29, 2022

William Cook
Program Manager
Solid Waste Management Program
4244 International Pkwy, Suite 104
Atlanta, GA 30354

RE: Draft Comments on EPD's Permit Application Guidance for New Municipal Solid Waste Disposal Facilities (MSWDF) or Horizontal Expansions

The National Waste & Recycling Association ("NWRA") represents private solid waste companies in Georgia offering waste collection, recycling, and disposal services to communities, local governments, commercial and residential customers throughout Georgia.

The Georgia Chapter and NWRA has carefully considered the Georgia Environmental Protection Division's (EPD) changes to permit application guidance for new MSWDF's or horizontal expansions, and are in opposition.

NWRA recognizes and applauds the EPD in particular for its longstanding role as a leader in our industry with their current solid waste handling permitting practices. However, the NWRA requests that the EPD participate in a Solid Waste Stakeholder Group meeting to discuss these recent changes and our opposition discussed below.

As a general matter, the "Definitions" section of the Guidance needs to expressly incorporate the terms that have already been defined in Department of Natural Resources (DNR) Rules for Solid Waste Management and not depart or diverge from those definitions in the Guidance.

Otherwise, there could be confusion about what terms might mean that have not been specifically defined in the Guidance, and the regulated community could face one set of rules that have been established by the Board of DNR and another set of non-binding guidance that has been issued by the Environmental Protection Division (EPD). This is an untenable position for the regulated community to be in.

As a second overarching comment, EPD's choice to depart from the DNR Rules in several places to require counties and cities to act by "resolution, ordinance, or other similar binding document" is beyond the statutory and regulatory authority of EPD.¹ Both the Solid Waste Management Act and the DNR Rules merely require "written verification," *see* O.C.G.A. § 12-8-24(g); DNR Rule 391-3-4-.05(1)(a), and leave it to the political subdivisions to decide what format that written verification will take. This is fully consistent with the Georgia Constitution's home rule provisions, and EPD should not attempt through non-binding guidance to require something more specific than "written verification." If EPD desires such a change, it is for either the General Assembly or the Board of DNR to make that change – not EPD.

As a third comment that applies to multiple sections, the Guidance should recognize the statutorily-mandated exception to verification of consistency with the relevant jurisdiction's solid waste management plan when the circumstances envisioned by O.C.G.A. § 12-8-31.1(f)(2) have occurred. As presently drafted, the Guidance contains no such exception and is fatally flawed as a result.

Guidance Attempts to Require Public Meetings that Are Not Required by the Statute or Rules

The fourth paragraph of Section 1.1 indicates that a waste management needs meeting is required for a horizontal expansion of an existing MSWDF that serves a regional solid waste management authority. While such a meeting is required for the initial siting of an MSWDF that serves a regional solid waste management authority, *see* O.C.G.A. § 12-8-26(a), there is no such requirement when it is an expansion of such an existing facility in either the DNR Rules or in the Solid Waste Management Authority. EPD is acting beyond its statutory and regulatory authority to require such a meeting through non-binding guidance.

Similarly, Section 1.5 indicates that a siting meeting is needed for horizontal expansions of any existing MSWDF. While such a meeting is required for the initial siting of a MSWDF, *see* O.C.G.A. § 12-8-26(b), there is no such requirement for an expansion of such an existing facility in either the DNR Rules or in the Solid Waste Management Authority. EPD is acting beyond its statutory and regulatory authority to require such a meeting through non-binding guidance.

Specific Comments on Section 1.2

As discussed above, the Solid Waste Management Act requires written verification of consistency with local zoning and/or land use ordinances as well as consistency with a solid waste management plan. O.C.G.A. § 12-8-24(g). It does not require more than that. However, Section 1.2(a) of EPD's non-binding guidance, by incorporation of Section 1.4, requires action of local government by "resolution, ordinance, or other similar binding document." It is in excess of EPD's statutory and regulatory authority to overstep the parameters provided by the General Assembly and the Board of DNR.

Section 1.2(d) may be unconstitutional. Under dormant commerce clause jurisprudence, courts have consistently held laws and rules unconstitutional if the acceptance of waste is predicated on

¹ See Sections 1.2(b), 1.4(a), 1.4(b), 1.4(c),

the location of its origin. *See, e.g., Oregon Waste Systems v. Department of Environmental Quality*, 511 U.S. 93 (1994); *Fort Gratiot Sanitary Landfill v. Michigan Dep't of Natural Resources*, 504 U.S. 353 (1992). Waste generated within a county (or within counties being served by a regional MSW landfill) that contains a Most Significant Groundwater Recharge Area is no more or less acceptable for disposal in that area than waste generated outside of that county or region.

Section 1.2(h) requires a resolution from the adjoining county or municipality when a landfill is located within one-half mile of that adjoining governmental jurisdiction, which is not required by the Solid Waste Management Act. Rather, O.C.G.A. § 12-8-25(a)(3) merely requires express approval rather than a more formal resolution. Further, O.C.G.A. § 12-8-25(a)(3) even provides an exception to that requirement if there is evidence that no alternative sites or methods are available in the host jurisdiction or any adjoining jurisdiction. EPD's Guidance does not appear to contemplate the exception provided by the General Assembly in the statute. Consequently, EPD is both exceeding its statutory authority and in conflict with the Solid Waste Management Act by requiring more than the statute requires and without including the statutorily-provided exceptions.

An additional fatal flaw in Section 1.2(h) is that it applies to horizontal expansions of an existing MSWDF when the Solid Waste Management Act expressly provides that such consent from a neighboring jurisdiction is not required. *See* O.C.G.A. § 12-8-25(b)

Specific Comments on Section 1.4

As discussed above in the introductory section as well as the comments on Section 1.2(a), requiring host jurisdictions, in-state generating jurisdictions, and out-of-state jurisdictions all to take action by "resolution, ordinance, or other similar binding document" is a level of specificity that is not required by either the Solid Waste Management Act or the DNR Board's Rules. EPD should not dictate through non-binding guidance how other governmental bodies must act merely to fulfill the "written verification" requirement of the Solid Waste Management Act. If EPD feels such specificity is needed, the more appropriate action would be to request changes to the Act from the General Assembly or changes to the Rules by the Board of DNR. If EPD is not willing to request those bodies take such actions, the Guidance should reflect that it is just guidance and use words like "recommended," "suggested," or "preferred." Decisions about how governing jurisdictions fulfill the "written verification" requirement should be left to those individual governing jurisdictions.

Throughout Section 1.4, the defined term "RO" is used concerning the responsible official at the relevant jurisdiction that passed the "binding document" the Guidance is requiring. *See* Sections 1.4(a)(iv), 1.4(b)(iii), and 1.4(c)(ii). However, the "Definitions" section define the RO as someone – such as the principal or chief executive officer of the permit applicant – who is responsible for submitting permit documentation. It cannot be that EPD intends the responsible official of the applicant to also be the responsible official of at least one – and potentially many – relevant jurisdictions. EPD should revisit these definitions.

Section 1.4(c) imposes Georgia Solid Waste Management Act requirements such as a solid waste management plan and a solid waste reduction goal on out-of-state jurisdictions that send waste to a new or expanded Georgia MSWDF. While it is acknowledged that this is required by O.C.G.A. § 12-8-24(g), such a requirement potentially runs afoul of the dormant Commerce Clause and should not be reiterated in guidance. Further, Section 1.4(c) requires that verification of compliance with those Georgia-law requirements by those out-of-state jurisdictions be in the form of a “resolution, ordinance, or other similar binding document”. Just as EPD does not have the jurisdiction to tell Georgia jurisdictions what format the required “written verifications” are to be provided in, Georgia EPD certainly does not have the authority to mandate how an out-of-state jurisdiction provides those same written verifications.

Specific Comments on Section 1.5

Section 1.5 imposes the public meeting siting decision requirements from O.C.G.A. § 12-8-26(b) on horizontal expansions of existing MSWDFs. While it is clear that such a public meeting is required before a new MSWDF is sited in a jurisdiction, there is no such requirement in either the Solid Waste Management Act or in the DNR Rules. EPD would be acting in excess of its statutory or regulatory authority to require such actions by virtue of non-binding guidance.

Specific Comments on Section 6.2

With Section 6.2, EPD continues to seek to require more of permit applicants than the Solid Waste Management Act and DNR rules require. While the DNR rules require reaffirmation of zoning consistency prior to permit issuance, *see* DNR Rule 391-3-4-.05(1)(a), neither the statute nor the rules require reaffirmation of consistency with a solid waste management plan or recertification of the jurisdiction’s involvement in waste reduction strategies. Further, the statutory provision and rule cited above only require the reaffirmation of zoning/land use consistency from the host jurisdiction – not all jurisdictions that previously provided letters under Section 3.4 of the Guidance. EPD needs to completely revisit its approach to this section of the Guidance.

Request for Further Stakeholder Input

While we acknowledge that guidance documents can assist permit applicants in many contexts, guidance should not be issued that seeks to alter or amend DNR’s Rules. We request that EPD engage in a stakeholder process to discuss its comments and the comments of other industry members prior to any further revisions to this draft guidance are made, and certainly prior to any final issuance of any such landfill permitting guidance.

We respectfully ask that you postpone the implementation of this guidance until the concerns we have outlined in this letter have been addressed appropriately. Should you have any questions, please contact Abby Blocker at ablocker@wasterecycling.org.

Respectfully Submitted,

A handwritten signature in black ink that reads "Abby Blocker". The signature is written in a cursive style with a large initial 'A' and a long, sweeping underline.

Abby Blocker
Vice President, State Affairs
1550 Crystal Drive, Suite 804
Arlington, Virginia 22202
ablocker@wasterecycling.org
912-515-8022 Mobile