

Non-Municipal Solid Waste Landfills

Purpose:

This document attempts to clarify an ongoing debate occurring between solid waste industry professionals of Idaho as represented by the Non-Municipal Solid Waste Landfill Committee (committee) and the solid waste regulators of Idaho related to acceptable types of waste in Non-Municipal Solid Waste Landfills (NMSWLF). Both parties agree NMSWLF's cannot accept household waste, but disagree on what constitutes as a household waste. In 2014 the Idaho Department of Environmental Quality (IDEQ) published a guidance manual on the topic of Non-Municipal Solid Waste Landfills (NMSWLF). "Non-Municipal Solid Waste Landfill" is a term created by Idaho to represent the term "Industrial Waste Landfills" as defined by the Environmental Protection Agency(EPA). 39-7404, Idaho Code, does not give authority to IDEQ to prohibit materials above and beyond those listed in federal code. This article identifies the opposing perspectives between the committee and IDEQ and suggests a pathway to finding a resolution acceptable to both the committee and regulators.

Introduction:

The committee believes IDEQ's guidance prohibits certain types of wastes from being disposed of in NMSWLF's that are not prohibited by federal law. By being more restrictive than the federal law, current Idaho NMSWL guidance does not allow residents of Idaho the full flexibility of federal laws. The following excerpt from Idaho Code shows the Idaho Legislature's intention of the Idaho Solid Waste Facilities Act; *"By the provisions of this chapter, the legislature desires to avoid duplicative or conflicting state and federal regulatory systems and allow local MSWLF unit owners the maximum flexibility possible under 40 CFR 257 and 258, to meet the substantive goals of protection of human health and the environment with consideration for actual site and climatic conditions"*(Idaho Code 39-7404). The Idaho legislature makes it clear that it intends to afford the solid waste industry, and Idaho residents, the full flexibility of federal law.

Another excerpt from this same chapter of Idaho Code states, *"The board may not promulgate any rule pursuant to this act that would impose conditions or requirements more stringent or broader in scope than the referenced RCRA regulations of the United States environmental protection agency or the provisions of this chapter"* (Idaho Code 39-7404). While the rules outlined in IDAPA 58.01.06 restrict the state from imposing conditions or requirements more stringent or broader in scope than federal rules, the guidance shows that IDEQ's interpretations of the rules are more restrictive and narrower in scope. IDEQ recognizes that guidance is not enforceable by law, but the department has made it clear that NMSWLF's in Idaho are expected to comply with the published guidance.

Background:

The term NMSWLF is not recognized by the EPA. The EPA identifies two types of landfills: Municipal Solid Waste Landfills and Industrial Landfills. According to the EPA, a municipal solid waste landfill is, *“a discrete area of land or excavation that receives household waste. Industrial Solid Waste Landfills are defined by EPA as, “any landfill other than a municipal solid waste landfill, a Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste landfill, or a Toxic Substances Control Act hazardous waste landfill. It is used to dispose of industrial solid waste, such as RCRA Subtitle D wastes (e.g., non-hazardous industrial solid waste defined in Title 40 of the Code of Federal Regulations or CFR in section 257.2), commercial solid wastes, or conditionally exempt small-quantity generator wastes.”*

In Idaho Administrative Code (IDAPA) a NMSWLF is defined as, “a landfill that accepts only non-municipal solid waste”. Non-municipal solid waste is then defined as a solid waste that is, “not mixed with household waste or not excluded by subsection 001.03” (IDAPA 58.01.06). Both CFR and IDAPA define household waste as, *“any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas)”* (IDAPA 58.01.06, CFR). It is clear that household waste is not allowed in NMSWLF. However, certain types of waste from households are allowable in a specific type of Industrial Landfill known as a Construction and Demolition (C&D) Landfill. The current guidance already acknowledges that inert waste is acceptable into NMSWLF’s even if generated by a household.

The committee would like to see guidance updated to either clearly reflect EPA’s definitions of Municipal Solid Waste Landfills and Industrial Landfills, thus abandoning the Idaho-based term “Non-Municipal Solid Waste Landfill”; or clearly identify the types of waste that are and are not accepted in an NMSWLF. The current NMSWLF published guidance has internal inconsistencies as well as inconsistencies with federal guidelines. The committee plans to provide IDEQ proposed edits to the NMSWLF guidance through a redlined version of the document. The committee has identified the following major areas of concern with the current NMSWLF guidance as supported by IDEQ:

ISSUE #1: C&D

IDEQ did not include many waste types in the section of the guidance titled Waste Types. “Regulated Solid Waste” was included as a waste type but is not defined by either IDAPA or CFR. “Construction and Demolition Debris Waste” (C&D) was not listed at all and is a major waste type accepted in NMSWLF’s. “Carpet” and “Treated Wood” are listed as prohibited on the published guidance even though they can be “C&D Waste” by definition.

Background:

C&D landfills are an integral part of the EPA's structure for Industrial Landfills and should be for IDEQ as well. C&D Landfills are defined by the EPA as, "a landfill that receives construction and demolition debris, which typically consists of roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste" (40 CFR section 258.2). To clarify the intent of this definition we have included a couple of excerpts from EPA documents:

- *"The six activities that generate C&D debris from buildings include the construction, demolition, and renovation (improvements and repair) of both residential and nonresidential buildings. Residential buildings include single-family houses and duplexes, up to and including high rise multi-family housing."*ⁱ
- *Also, "Renovation (or remodeling) includes improvements and repairs to existing buildings. Renovation debris consists of both construction and demolition materials. Remodeling waste quantities are even more variable than construction or demolition waste. Renovation debris ranges from single materials being generated, such as when driveways or roofs are replaced, to multiple material generation, such as when buildings are modified or enlarged."*ⁱ

The definition of household waste was not aimed toward any constituent that is part of the household structure itself, rather for items within the household. In one study done for the EPA, carpeting is shown as a constituent of C&D waste in a column labeled 'Residential Construction'.ⁱⁱ In another table of this same document, carpet is shown as part of the C&D waste stream from studies in Florida and Vermont.ⁱⁱ EPA also published an educational series regarding C&D waste reduction and recycling that lists carpeting in a table labeled 'Typical Components of Building-Related C&D Debris'ⁱⁱⁱ

A RCRA-IN-FOCUS guidance addressing Industrial Landfills (specifically Construction and Demolition Landfills) says, "Many states exclude certain materials from the legal definition of C&D debris, using terms such as "hazardous," "unacceptable," "potentially toxic," or "illegal". These wastes might or might not meet the federal definition of hazardous waste (see page 5)".^{iv} In the case of the Idaho Guidance, the term used is "prohibited". This document also specifically mentions treated wood as a type of waste that **some** states may **choose** to label as unacceptable. In order to provide the full flexibility of federal code, IDEQ should not prohibit any additional items; especially when a federal guidance specifically mentions that it is up to the states to decide whether or not to "exclude" the items.

POSITION:

These definitions and clarifications lead us to believe that if a waste is the result of a construction, demolition, or renovation then it should be allowed in a NMSWLF regardless of the source. Furthermore, any waste generated from construction, demolition, or renovation should not be considered household waste and should not be excluded for this reason.

The committee believes carpet and treated wood from a construction, demolition, or renovation are C&D wastes and should not be classified as a household waste. These materials are not defined as hazardous waste by RCRA and are not specifically excluded by any other federal regulation. Both carpet and treated wood can be a part of the structure being constructed, demolished, or **renovated (or remodeled)**. If these two materials are considered a part of a C&D project at a commercial business then by default they are also considered part of a C&D project at a household.

RECOMMENDATION:

The committee recommends removing both carpet and treated wood from the “prohibited waste” section of the guidance.

The committee also recommends including C&D waste as a waste type in the guidance. Adding a section for acceptable wastes and a section for unacceptable wastes would add clarity to the document as well. Prohibited wastes should include only wastes that are specifically prohibited by law (i.e. RCRA Hazardous Waste, Universal Waste, Regulated Medical Waste, etc....).

ISSUE #2: Yard Waste

IDEQ specifically excludes yard waste (From households...etc.) in the guidance.

Background:

Yard Waste is defined in IDAPA as “*weeds, straw, leaves, grass clippings, brush, wood, and other natural, organic, materials typically derived from **general landscape maintenance activities** (IDAPA 58.01.06).*”

POSITION:

The committee agrees that yard waste (as defined above) is not suitable to be placed in a NMSWLF. The committee also believes that site clearance waste (land clearing debris) is acceptable under the definition of C&D waste. This means that branches, trees, shrubs, earth, sod, and rock that are **not a part of general landscaping activities** should also be allowed in NMSWLF’s regardless of where they are generated. While yard waste (as defined by IDAPA) is not acceptable into NMSWLF’s; other similar materials may be accepted as C&D waste.

RECOMMENDATION:

Household waste should be listed as a waste type under unacceptable wastes. All household waste, including yard waste (as defined above), is unacceptable into NMSWLF's and therefore specific items should not be listed as prohibited. Examples of land clearing debris should be listed under the acceptable waste type (C&D waste) in order to clarify that some materials similar to yard waste are C&D waste and thus may be accepted into NMSWLF's.

ISSUE #3: Furniture

IDEQ specifically excludes household furniture from NSMSWL's in the guidance.

BACKGROUND:

Neither the EPA nor IDEQ has a clear definition of furniture.

Inert Waste is defined in IDAPA as, *“Noncombustible, nonhazardous, and non-putrescible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack. “Inert waste” includes, but is not limited to, rock, concrete, cured asphaltic concrete, masonry block, brick, gravel, dirt, inert coal combustion by-products, inert precipitated calcium carbonate and inert component mixture of wood or mill yard debris.” (IDAPA 58.01.06)*

POSITION:

The committee agrees that certain types of furniture that have the potential to negatively impact the environment should not be placed in NMSWLF's regardless of the source. However, furniture that meets the definition of inert waste should be acceptable in NMSWLF's. Idaho's Solid Waste Management Rules (IDAPA 58.01.06) do not apply to Inert Waste.

Although furniture more closely resembles the consistency of C&D waste than household waste, it should be considered a household waste if generated from a household because it is a personal item and not a part of the structure undergoing construction, demolition, or renovation.

RECOMMENDATION:

The committee recommends removing furniture from the list of prohibited wastes. Household waste is listed in the guidance as “prohibited” and we see no reason to list furniture separately; if it is in fact generated by a household, then it is considered a household waste, and is already prohibited for that reason. Furniture meeting the definition of inert waste should be acceptable in NMSWLF's.

ISSUE #4: Inconsistencies

The committee has found inconsistencies in the guidance that need to be addressed.

BACKGROUND:

One inconsistency is under the section “Prohibited Waste”. The first sentence states “In addition to municipal wastes, the disposal of other wastes in NMSWLF’s is prohibited.” This should not refer to “Municipal Waste” and should be replaced with “Household Waste”; or restructured to include Household Waste as a prohibited waste. A second inconsistency in this section is the prohibition of electronic waste. Electronic waste is part of a larger waste group called Universal Waste. Universal Waste should be listed as an unacceptable waste type in the guidance, not just electronic waste. Additional inconsistencies will be addressed through a redlined version of the guidance.

POSITION:

Input from the solid waste industry should be considered to amend the guidance and eliminate confusion amongst both regulators and operators.

RECOMMENDATION:

The committee recommends that IDEQ take into consideration a redlined version of the NMSWL guidance manual in order resolve concerns of the industry. The NMSWLF Committee will develop the redlined document and provide it to IDEQ for review.

CONCLUSION:

NMSWLF is a term created by Idaho to address 40 CFR Part 257. The structure of NMSWLF’s in IDAPA is unique to Idaho and does not align with federal regulations for Industrial, C&D, and Inert landfills. This has created confusion about what is acceptable in NMSWLF’s and what is prohibited. The committee believes that the either the recommendations in this white paper need to be incorporated into the guidance or IDAPA should be amended to align with federal regulations.

A common ground needs to be found so that the solid waste industry and its regulators can move forward harmoniously, protecting the environment while taking into account the full flexibility allowed by federal law, and the intent of those laws. Operators in the solid waste industry have an obligation to follow the law; Regulators have an obligation not to impose regulations that are more stringent than that of federal law.

NMSWLF Committee Members

Stephen Freiburger – ISWA President

Josh Bartlome – ISWA Vice President, SISW

Johanna Bell – Association of Idaho Cities

Robert Simmons – Simmons Sanitation

Tim Davis – ISWA Member, City of Moscow

Amanda Bashaw – ISWA Member, Latah
County

Rachele Klein – ISWA Legislative Com. Chair,
Republic Services

Nate Francisco – ISWA Secretary, SISW

Kelli Brassfield – Idaho Association of
Counties

Ed Marugg – PH-INCD

Dave Walrath – ISWA Member, Jefferson
County

ⁱ Franklin Associates. (June 1998). Characterization of Building Related Construction and Demolition Debris in the United States. Retrieved from https://www.epa.gov/sites/production/files/2016-03/documents/charact_bulding_related_cd.pdf

ⁱⁱ Franklin Associates. (June 1998). Characterization of Building Related Construction and Demolition Debris in the United States. Table A-16. Retrieved from https://www.epa.gov/sites/production/files/2016-03/documents/charact_bulding_related_cd.pdf

ⁱⁱⁱ United States Environmental Protection Agency. C&D Waste Reduction and Recycling Series. Table 'Typical Components of Building Related C&D Debris'. Retrieved from http://wastexchange.org/upload_publications/CompositionofCD.pdf

^{iv} United States Environmental Protection Agency. (September 2004). RCRA In-Focus: Construction, Demolition, and Renovation. Retrieved from <https://www.epa.gov/sites/production/files/2015-01/documents/rif-cd.pdf>.