



IDAHO SOLID WASTE ASSOCIATION

P.O. Box 159

BURLEY, IDAHO 83318

Dear Mr. Beeter,

The Idaho Solid Waste Association (ISWA) appreciates the opportunity to comment on the Idaho Department of Environmental Quality's (IDEQ) guidance development process to address the inconsistencies with operations of Non-Hazardous Solid Waste Impoundments (NSWI) in Idaho.

ISWA represents the solid waste industry in Idaho, including both public and private solid waste professionals throughout the state. We understand how critical it is for facilities throughout the state to operate consistently while still maintaining the flexibility of the Idaho Solid Waste Facilities Act and 40 CFR Part 257 and 258. Please see the attached comments that were prepared by an ISWA committee assigned and dedicated to this topic.

Thank you,

Nate Francisco

ISWA Secretary

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Non-Hazardous Solid Waste Impoundments
Comments 7/17/2019

- **Applicable laws, rules, regulations (state and federal)**
 - Mention all applicable laws and regulations specifically by referencing codes and the basics of how they apply to this particular waste.
 - Is this material solid waste or wastewater? At what specific point does wastewater become a solid waste? (When it is mechanically removed with intent to discard at a solid waste facility). The answer to this question can be answered by providing code references to all applicable rules and regulations. (It falls under either 58.01.06 or 58.01.16; not both)
 - 40 CFR part 261 places waste characterization burden on the generator, Idaho guidance should do that as well.
- **Definitions**
 - Guidance should include definitions of all terms in the guidance document and reference them back to the applicable code.
 - Effort should be made not to include terms in the guidance document that can't be pointed out in an applicable regulation. However if it is necessary in the guidance it should be stated that the term is used only for the purposes of this guidance.
- **Best Management Practices (for generators, pumpers, disposal facilities, and regulatory agencies.)**
 - Siting should not be a major portion of this guidance; IDAPA 58.01.06 states "If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion." It is not DEQ's job to design the facilities or come up with acceptable designs; IDAPA was written to put this responsibility on the Qualified Professionals (licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in good standing and in compliance.....) that are hired by facilities for siting and design.
 - References to designs that are considered best management practices may be included in the guidance for reference; however, the flexibility of 58.01.06 should be maintained.
 - DEQ appears to be shifting the burden to disposal facilities when in fact the burden should be on generators to characterize their waste. This is not to say that disposal facilities shouldn't choose to implement quality assurance tactics in their Operations Plan (Hazardous Waste Exclusion Plan) to ensure that the waste profiles and other information received from generators is accurate.
 - Excepted process for solid waste Hazardous Waste Exclusion Plans is random load inspections/investigations
 - Best management practice (BMP) for disposal facilities is to require a completed and signed waste profile from the generator or generators representative. It is also bmp to have staff available that understand the regulations and can review and screen incoming waste profiles; if a suspicion arises with a particular profile then more questions, analyses, and/or a site inspection may be necessary before waste is accepted.

- BMP for generators is to have qualified environmental staff or hire outside consulting to properly characterize their waste. (This is the burden of being the generator of waste). “Generators must conduct a hazardous waste determination according to the hierarchy specified in 40 CFR 262.11”
 - Generators may use process knowledge as long as they do not have reason to believe that there was contamination with hazardous waste. The idea that people are going around and dumping hazardous waste in drains that would in turn the entire sump into a characteristic hazardous waste is a “farfetched” concept and not usually taken into consideration with other solid wastes.
 - Generators may choose to use their waste handlers as a resource for characterizing their waste based on them having more knowledge; however, it is still the responsibility of the generator to make sure that determination is accurate.
 - It is in a generators best interest to hire an environmental professional to make waste determinations; be it a waste hauler, owner of a waste disposal facility (disposal facility staff may not be willing to take on the liability of helping a generator characterize their waste), inside staff, or outside consultant.
- BMP for pumpers is to have qualified staff that inspect the site to ensure that the information provided on the waste profile is in fact the material that they are pumping for their customer.
- BMP for DEQ is to address compliance through either formal inspections or on a complaint/tip-off basis. When suspicion arises due to a complaint, DEQ should first and foremost go to the generator and find out the process they used to characterize their waste, they can then go to the pumper and ask where the waste was taken, they can then go to the disposal facility and ask if the waste was profiled prior to acceptance and that their operations plan was followed. After looking into these avenues it is then DEQ’s burden to prove whether or not the waste was in fact hazardous depending on the situation. This situation does not constitute a “this waste is hazardous unless proven otherwise” mentality.
 - An enforcement official’s job is to “prove the positive” or, in other words, there needs to be a tangible, single observation above the regulatory level in order to draw a valid conclusion that at least some of the waste exceeds the level of concern.
 - A regulatory agency should not place blame on a waste disposal facility for “possibly accepting hazardous waste” when there is no tangible evidence in support of that. This is a much different story if a facility “knowingly accepts hazardous waste” based on the results of the generators waste profile.

- **Education for Generators**

- The industry thinks that this guidance needs to focus on generator education since it is ultimately their responsibility to properly characterize their waste.
 - Educational materials should be developed that pumpers, waste disposal facilities, consultants, and other stakeholders can distribute to generators.
 - The pamphlet “The Key to Managing your Sump Waste: Determining if it’s Hazardous” uses particular language that seems outside the scope of a guidance document and more appropriate for a rule making. In our findings there is no rule, regulation, statute or federal guideline that mentions when a test “needs” to be run on this specific type of solid waste, or where it says “knowledge of process nonhazardous determination is not allowed”. This type of language is not appropriate for a guidance unless it can be referred back to a specific regulation, federal guidance, or case law.