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Mr. Chris Solloway
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Bureau of Waste Management
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RE: Comments on WMGR096 published October 6, 2018

Dear Mr. Solloway;

The department issued the draft WMGR096 permit on October 6, 2018 for public comment. The WMGR096 permit is set to expire on December 23, 2018. Although the expiration of the permit has been set for 5 years, the department chose to issue draft language so that there is only 18 days from public comments to permit expiration date. Please accept these comments on the draft WMGR096 General Permit.

1. The current WMGR096 was issued December 23, 2013 and expires on December 23, 2018. In the regulations 287.626 it requires a permit renewal application shall be submitted 180 days prior to the expiration date. On November 27, 2017 the Department issued a letter notifying the permittees of the 180-day renewal deadline. This letter indicated only "minor modifications". The draft permit and related MOF Policy are far beyond minor modifications and to streamline the process. The draft permit contains an additional 6 pages of conditions and 36 parameters, that is a greater than 46% increase. As the conditions for this permit are not final prior to the application period, applicants should be allowed an extended response period to address the unknown or modified conditions once the permit is made final.
2. The October 6, 2018 public notice of the draft permit WMGR096 in the Pennsylvania Bulletin indicates regulated fill can be moved to a property if used exclusively for commercial and industrial uses. The draft permit language in Section A.1 limit regulated fill to be used on a property where "regulated substances have been released and remain present". This condition contradicts the public notice. Previous versions of the permit allowed the use of Non-residential Greenfields, which was understood as exclusively non-residential but not contaminated. Is the department changing the requirements for siting a permit so that a site must now be contaminated? If not, we suggest the removal of Section A.1 as this is the conflicting language.
3. There are many published scientific papers prepared by reputable agencies, such as; the USGS, NJDEP, EPA, etc. that have detailed studies of the natural levels of constituents in soil. In the past this has been accepted in the attempt to document natural background levels. The background requirements in the draft MOF Policy would limit a sites ability to find an uncontaminated property to compare. The use of these scientific reports would be a sound alternative that has been successful for the last 14 years.

4. The term "Right of Way" and "Project Area" are used in the definition and should be defined also. These terms are used multiple times in the Permit and Management of Fill Policy.
5. The draft Management of Fill Policy has specifically excluded dredged material from being Clean Fill and is now only listed in the Regulated Fill definition. The citation of 25 PA Code 287.2 only references that if dredged material is deemed a waste then dredged material must be managed as Residual Waste. This is being managed under the Residual Waste general permit. However, if the dredged material is uncontaminated, such as meeting the clean fill limits, it would not be considered a waste. The Department should remove "or dredged material" from the draft Management of Fill Policy's definition of Clean Fill and include "dredged material" in the definition of Fill.
6. The draft permit makes many mentions of engineering properties and physical characteristics for the approved construction project and regulated fill. It is understood that the Department is looking for information to document that regulated fill is being used as a construction material. All approved construction projects are prepared and approved by Professional Engineers and contain specific standards and specifications for the project. The permit requirement for an approved plan negates the need for DEP to become involved with construction standards already accounted for. Regulated Fill is beneficially used as a construction material that substitutes for clean fill that has the same physical characteristics.
7. Section C.12.d requires the submission of an approved Subdivision and Land Development plan. This language is overly specific and should be changed as not all construction projects might be required to have such a plan. Many municipalities have other approval mechanisms for a construction plan such as grading plans, fill permits, and some municipalities defer to PA Labor & Industry plan review and approval. The limitation of the condition to a "subdivision and land development plan" would cause the inverse issue of being overly specific then in current permit forms.
8. Currently some permittees have been required to implement Waste Transportation Safety Plans but not all. This condition will help correct inconsistency by the Department.
9. The Draft permit requires a traffic study be conducted as part of the application for a DOA. Is this traffic study to be exclusive to the regulated fill operation? If so, what is the process of evaluation and limiting factors? Traffic studies have not been required for any other PADEP Waste General Permits. It should only be the responsibility of the permittee to ensure all traffic approaches do not contain a posted limitation for the type of traffic on the approach routes to the facility.
10. Draft permit condition D.1.b requires the structural load requirements be satisfied. Is this intended to refer back to condition C.12.b as construction project engineering properties or is it meant to be a different standard? The department is adding confusion with multiple terminologies. The construction project specifications should be all that is required.
11. Condition D.3.c states "manner that all direct contact exposure pathways are eliminated". As regulated fill is only to be used on non-residential sites, is it the departments intent that the fill with background levels must be placed deeper than 2 feet from final grade?
12. The drat permit condition D.5 requires a "TCLP analysis for any sample". The word "sample" should be changed to "parameter" as each parameter result must be compared to the

corresponding hazardous waste limit. The word "sample" could cause confusion as the what limit is to be compared.

13. Condition D.7 seems unnecessary. To state that if regulated fill is to be placed off the permit area that a DOA application is required is obvious. Any exceedance of a permit boundary is subject to violations and penalties.
14. In Condition D.10 the word "and" should be removed from sentence as outlined "..GP-1b and shall cease..".
15. The draft permit is inconsistent in its requirement for local approval for the beneficial use of regulated fill. Determination of Applicability Requirements found in permit Section C all indicate only the need for notification of the local municipality. Operating Condition D.12, that discusses the erosion and sediment control plan, is the only location that states that disclosure of the use of regulated fill is required for "any approvals or permits sought from municipalities". This statement is tantamount to requiring municipal approval for the use of Regulated Fill. This statement is contrary to permit Section C conditions and many DEP regulations and policies. Residual Waste Regulations found in 25 PA Code 287.621.e that only requires notification to each municipality for a general permit application. In fact, the Solid Waste Management Act gives the municipality the right to review and comment on permit applications, but does not state that the permittee must obtain municipal approval. Again, in DEP's Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Authorizations for Facilities and Infrastructure 012-0200-001 does not list General Permits in the land use review. The department should clarify what process they are requiring in this draft permit and be consistent. It is our belief that the continued requirement for notification to local municipalities of the general permit application is all that is required.
16. Condition D.24 has a new requirement for general liability insurance. Most permittees already have insurance policies exceeding this requirement in place.
17. Table GP-1b has a notation for Arsenic testing that requires SPLP testing. As this is not listed for any other parameter, are we to assume this was provided to allow for Total Arsenic levels greater than 29 ppm? If this is the case then there should be a condition that allows for this use and the removal of a requirement for SPLP in cases where the arsenic is less than 29 ppm.
18. The notations for Arsenic in table GP-1b are incorrectly applied. Not only do the cited regulations not reference a similar numerical limit, but they reference a completely different type of material and use. If there was a basis for these notations then they should be applied to all parameters. Land application of sewage sludge does not relate to soils.
19. The draft permit incorporates SPLP Chlorides as a parameter to be considered. The Statewide Health Standards contain an MSC for Chlorides as a Secondary Contaminant in groundwater. There are no established MSC for direct contact of soil to groundwater. The application of chloride testing for all potential regulated fill will have a large impact to Pennsylvania's economy due to the use of salt in roadway ice treatment. Therefore, we suggest that a limit be established for direct contact or soil to groundwater. Following the SPLP evaluation there is no limit for chloride in tables 3 or 4 of Appendix A in 25 Pa Code Chapter 250.
20. The draft permit requires the analyzing for physical as well as chemical constituents. Physical constituents do not have any limits as set in WMGR096. This testing should not be required as part of the permit. The physical testing of the material is based on the construction project and should be based solely on these needs and not the permit. By listing physical sampling in the

same conditions as chemical testing it raises the questions as to frequency and what physical constituents.

21. For each new source the draft permit Condition D.5.b requires the permittee to “submit a request to the Department”. This formal request does not dictate any review timeframe unlike the current permit’s allowance of 10 working days. If a reasonable timeframe such as 10 days is not included, the Department should require the submission from an Environmental Professional as defined by ASTM and allow the permittee to accept source as deemed approved.
22. Draft permit condition F.1 requires records be maintained on the “placement locations” of regulated fill. The department provides no guidance as to what is a “placement location” therefore, it currently is up to the permit application to designate the placement areas.
23. Physical evaluations are not required to be conducted by a laboratory accredited under Pennsylvania Environmental Laboratory Accreditation Act of 2002. Condition F.2 requires a minimum of information needed for physical samples. This list would not be applicable to most physical samples and should be removed to prevent confusion.
24. The draft permit allows for “outgoing shipments”. This would seem to imply that the WMGR096 permitted site can be a transfer site and not final placement and beneficial use.
25. Condition F.3.c requires that records be kept as “weight in dry tons”. We believe the department is using the incorrect verbiage here and should be “as received weight”. Using dry tons would require all fill to be dried from current condition and calculations be conducted on all loads received. Fill is shipped in an “as is” condition dependent on the weather and material. This could change from load to load.
26. The requirement to include the annual deed notice within the fourth quarter report is not a feasible timeframe. The deed restriction cannot be prepared until January 1 and the processing time from a county recorder of deeds office has often taken well over a month to return the recorded document. The annual/fourth quarter report is due by January 20.
27. The requirement for an annual survey requires the same interval scale be utilized as the original application. The detail of ongoing fill operations should not be required to the same interval scale as the more detailed original or final grades surveys. This unnecessarily burdens the permittee to provide erroneous detail during construction. Simply installing surveyed grade stakes along the perimeter will allow the Department to quickly see the estimated grades. If there is any concern to the fill elevation to final grade the department should be able to request spot surveys as needed.
28. Condition G.3.c.vii requires the recording of “dry weight” of regulated fill received. The requirement for dry weight would require all loads to be dried in an oven and then converted for “dry” tonnage. All facilities accept fill as a “received weight” that is readily changed by weather and soil conditions. “Dry weight” is a term used in analytical evaluations but not in the practical weight of goods.
29. Extensive changes made to the draft permit and policy dictate some of the requirements for making a determination. These additions still do not remove the need for professional judgement to be applied in the fill determination. The draft Management of Fill Policy references ASTM standard E1527-13 as part of an environmental due diligence. Both 40 CFR 312.10 and ASTM E1527-13X2 defines an Environmental Professional and related experience required to perform such work. It is our suggestion to utilize Environmental Professionals in making these determinations without the unnecessary rigid conditions due to the variable

nature of such sites and materials. To date, the permitted sites have all been using such Environmental Professionals without issue.

30. It was believed that one of the reasons for the changes to the draft permit and MOF policy was to remove any inconsistencies between the Clean Fill, Regulated Fill and Reclamation Fill policies. The changes proposed in the draft WMGR096 permit and MOF policy do nothing to unify these policies, but rather further confounded the problem. The requirements vary from sampling to the method of which the limits are chosen.
31. In the draft permit the definition of Regulated fill states it "...is not "uncontaminated material" ...". Is it the departments intention to continue to allow Clean Fill to be accepted under the Regulated Fill permit if the permittee so chooses? The draft permit makes no mention of that. It would be important to record this as any use of clean fill would reduce the available volume under the permitted boundaries. The permittee should have the option to use less contaminated material if the need arises.
32. The Department's delay in publishing the changes and significant changes to the WMGR096 permit have caused a timeframe issue for the timely review of the renewal applications and permit expiration. Though all renewal applications were submitted prior to the 180-day timeframe from expiration, the final published version of the WMGR096 permit will likely not be issued until immediately before the current permit expires or sometime thereafter. What is the department's intent for extending these permits as the delay is not a fault of the permittee? We would suggest the most legally sound way to handle this situation would be to grant an extension of all existing WMGR096 permits for a period of time of at least 1 year. This would allow reasonable time for the permit and MOF Policy to be issued as final and the applicants to respond to technical deficiency letters already issued by the department that reference the draft permit.

This draft WMGR096 will lead to extensive comments due to the significant changes proposed. The timeframe from comments to the expiration date is limited to only 13 workdays. We hope the department puts the correct weight and consideration behind all the comments provided by the public in re-drafting this permit rather than rushing in this timeframe. The significant changes to this permit will result in an extensive impact to Pennsylvania businesses and economy.

Sincerely;



Brian Hilliard
Director

