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March 16, 2020

Via Electronic Transmission: bodine.susan@epa.gov

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William Jefferson Clinton Building
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Re: COVID-19 State of Emergency Declaration – Landfill regulatory flexibility

On behalf of the solid waste industry, the National Waste & Recycling Association (NWRA) requests that additional flexibility be provided to the industry to address issues related to managing waste and recycling during the state of emergency over COVID-19. NWRA is a not-for-profit trade association representing private solid waste and recycling collection, processing, and management companies that operate in all fifty states.

At this time, all fifty states and Washington D.C. have declared a state of emergency due to the COVID-19 situation in order to limit the spread and threat of the disease and to ensure necessary services are available. On March 19, 2020, the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA) recognized the solid waste industry in their initial list of essential critical infrastructure workers.

As a result of CISA's determination, the Federal Motor Carrier Safety Administration (FMCSA) expanded their emergency declaration to include essential workers providing regulatory relief from hours of service rules and additional enforcement discretion for expired licenses and medical cards.

While the CISA list is welcome guidance, because it is just an advisory, the industry requires additional consideration directly from regulators. With this in mind, NWRA members would like to be prepared for what we anticipate may be upheavals in our ability to comply with permits. These disruptions are anticipated to occur for a variety of reasons, such as:

- Impacts to facility operations as a result of employees or contractors becoming ill from community spread of the virus;
- Employee or contractor availability due to issues such as childcare arising from school closings;
- Restricted movement for employees or contractors should states elect not to follow CISA's guidance or due to confusion arising from swiftly changing rules;
- Compliance with recommendations on social distancing could impact work where multiple employees need to work in close proximity;
- Limited availability of personal protective equipment (PPE) due to panic buying by the public;
- Limited supplies or equipment such as calibration gas due to supply chain interruptions; and,
- Limited availability of support services such as laboratories for sample analysis or reporting.

Any, or all of these could limit the operational efficiencies potentially causing disruptions in our ability to comply with very prescriptive permit criteria.

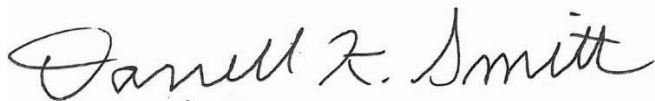
Landfills are subject to regulatory requirements under Subtitle D of the Resource Conservation and Recovery Act (RCRA), multiple sections of the Clean Air Act (CAA), and National Pollutant Discharge Elimination System (NPDES). These regulations subject landfills to a significant number of time-sensitive prescriptive requirements. When delaying these tasks or missing timelines do not hinder remedial measures required to protect the public and the environment, enforcement of these provisions should be suspended. Additionally, when events render it impossible to complete these tasks without violating other laws or placing people at risk, enforcement of regulatory timelines requirements must be suspended. Therefore, NWRA requests that the EPA consider granting enforcement discretion from the following restrictions:

- Compliance timelines – Regulations or permits often stipulate timelines for completing and/or documenting tasks such as sampling. Staff shortages may result in missed timelines.
- Notifications – Communications could be interrupted, especially in remote or rural areas where many landfills are located. Therefore, it should be recognized that notification may be delayed and, when communication is restored, simple notification (such as an email) sent by affected parties to a regulatory agency should be accepted as sufficient to document issues.
- Monitoring – Landfill gas wellfield monitoring, surface emissions monitoring, groundwater monitoring, leachate monitoring, among others could be delayed or otherwise impacted by availability of technicians.
- Infrastructure inspections – Routine inspections (e.g. cover integrity inspections under CAA) could be impacted by staff shortages.
- Sampling and analysis – Laboratories may be delayed in providing sampling bottles and also may be delayed in performing routine analysis resulting in missed analysis or timelines.

- Reporting and training - Routine required reporting and training (e.g., waste volumes, analytical data reports, deviation reports) could be delayed.
- Variance requests - We anticipate that regulators may be slow processing necessary variances. Therefore, it should be recognized that variances or other urgent permitting actions may require landfill operators to use their best judgment to address matters expeditiously that previously would require regulatory approvals.
- Operational changes – Due to availability of supplies or material (e.g. daily cover availability due to borrow pit not deemed essential), landfills may need to use discretion to deviate from normal operational procedures.

NWRA urges the quick consideration of this request so that our members can appropriately manage and stage material. NWRA appreciates your consideration of our comments and would appreciate the opportunity to discuss these comments further to clarify any points. Should you have any questions, please call Anne Germain at 202-364-3724 or e-mail at agermain@wasterecycling.org.

Very truly yours,



Darrell K. Smith
President and Chief Executive Officer
National Waste & Recycling Association

- c:
- A. Wheeler, EPA Administrator
 - P. Wright, Assistant Administrator, OLEM
 - A. Idsal, Principal Deputy Assistant Administrator, OAR
 - A. Gunasekara, Chief of Staff