

The “Storm Water Discharge Permit Coverage at Solid Waste Landfills” guidance was developed to provide assistance to the DNR Runoff Management Program and the Waste and Materials Management Program, landfill owners and operators, and consultants who work on landfills. The guidance document establishes a new policy that will require landfills and associated non-commercial soil borrow sites to obtain a separate DNR industrial storm water permit.

The Department is soliciting comments from the public on this draft guidance. Once the 21 day notice period is complete, all comments will be considered by the Department. After considering all public comments, revisions may be made to the guidance document and final guidance will be made available to internal and external stakeholders. Comments related to this draft guidance document should be sent to:

DNRGUIDANCEDOCUMENTS@Wisconsin.Gov.



**BUREAU OF WATERSHED MANAGEMENT
BUREAU OF WASTE AND MATERIALS MANAGEMENT
JOINT PROGRAM GUIDANCE**

**Storm Water Discharge Permit Coverage
at Solid Waste Landfills**

Effective [Date]

Watershed Management Guidance #: 3800-2016-01

Waste & Materials Management Guidance #: PUB-WA XXXX

Notice: This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

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A. Applicability

This guidance is intended for use by DNR staff in both the DNR Runoff Management Program (RMP) and the Waste and Materials Management Program (WMMP), landfill owners and operators, and consultants who work on landfills. The guidance applies to all active and proposed landfills¹ and non-commercial soil borrow sites for landfills regulated under the ch. NR 500 series of the Wis. Adm. Code and is applicable to any proposed hazardous waste landfill regulated under the ch. NR 600 series of the Wis. Adm. Code.

Maintenance or remediation work at closed solid waste landfills, construction and operation of dredge material and low-hazard exemption land disposal facilities, and work at non-landfill solid or hazardous waste facilities may require coverage under a construction site and/or industrial storm water discharge permit. However, storm water discharge permitting of these types of facilities is not the subject of this guidance.

B. Summary of Guidance

For the past several years, solid waste landfills have not been required to obtain separate coverage under a storm water discharge permit if they are in compliance with another DNR permit or approval with appropriate storm water controls as provided under ss. NR 216.21(4) and 216.42(6), Wis. Adm. Code. In the past, landfill operators have been able to rely on compliance with the storm water management requirements in the ch. NR 500 code series to achieve compliance with NR 216, Wis. Adm. Code.

Review of the above storm water permitting approach by USEPA and by DNR has indicated a need to modify this policy to ensure consistency with the federal Clean Water Act and to compliance with NR 151 Performance Standards.

The new policy will require landfills and associated non-commercial soil borrow sites to obtain a separate DNR industrial storm water permit. In most cases, the permitting will take the form of securing coverage under the general Tier 2 industrial storm water permit. The general Tier 2 industrial storm water permit is scheduled to be reissued by April 30, 2016. Once the general permit has been reissued, coverage under and adherence to the terms of the general permit will constitute compliance with the NR 216 industrial storm water permit requirement and the construction site and post-construction standards in ch. NR 151, Wis. Adm. Code.

C. Background

Sections NR 216.21(4) and 216.42(6) authorize the DNR to determine that a facility is in compliance with permit coverage required under s. 283.33, Stats., and will not be required to hold a separate permit, if storm water discharges are in compliance with another DNR permit or approval that includes storm water control requirements at least as stringent as those in subch. II of ch. NR 216 for industrial facilities and subch. III of ch. NR 216 for construction sites.

In 1997, shortly after the storm water regulations were adopted in Wisconsin, the RMP and the WMMP agreed on an approach to permitting that would streamline storm water management requirements for landfills regulated under the ch. NR 500 code series and reduce regulatory redundancy. Invoking the provisions of ss. NR 216.21(4) and 216.42(6), Wis. Adm. Code, the DNR did not require separate storm water discharge permit coverage under subchs. II or III of ch. NR 216 for proposed, active or closed landfills or non-commercial landfill soil borrow sites. Instead, landfills and non-commercial landfill borrow sites were required to comply with the storm water management requirements of ss. NR 503.10(3)(f), 504.09(1), 506.07(2), 512.14(1)(e), 512.16(2)(b), 514.05(6), and 514.06(5). Landfill non-commercial soil borrow sites were to comply with the storm water management requirements of s. NR 504.075(9).

¹ Section NR 500.03 (120), Wis. Adm. Code, defines “landfill” as a land disposal facility, not classified as a landspreading facility or surface impoundment facility, where solid waste is disposed on land by utilizing the principles of engineering to confine the solid waste to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth or other approved material as required.

Landfills proposed after 1997 have been approved by the DNR with storm water management systems designed to meet the performance standards contained in s. NR 504.09(1). The proposed storm water management plan and engineering details have been written into landfills plan of operation reports and approved with conditions as needed. Compliance inspections have been performed by WMMP staff.

More recently, there have been two developments that make it necessary to modify the past policy. First, in 2011 the USEPA notified the DNR that as a result of its WPDES program review, the discretion allowed the DNR under ss. NR 216.21(4) and 216.42(6) is not consistent with federal law. Second, the RMP has adopted ch. NR 151, Wis. Adm. Code, which establishes performance standards for construction sites and post-construction activities. Formal compliance with the construction site and post-construction performance standards in subch. III of NR 151 is required under ch. NR 216 and the associated construction site general permit. The storm water management standards in s. NR 504.09(1) have not been updated and are no longer consistent with (and in some cases may not be as stringent as) the requirements of chs. NR 216 and 151. It is also more difficult for DNR and facility operators to demonstrate compliance with ch. NR 216 storm water discharge permit coverage at landfills and non-commercial landfill soil borrow sites in the absence of separate storm water permits.

D. Storm Water Regulations Applicable to Landfills

Landfills are subject to two types of storm water regulation:

- The operation of a landfill is considered an *industrial* activity as provided in s. NR 216.21(2)(b)7 and subject to industrial storm water permitting. An industrial permit is an operational permit under which a Storm Water Pollution Prevention Plan, or SWPPP, is developed and implemented to address not just erosion/sediment control issues but also any other storm water material exposure issues.
- In addition, common construction activities for ancillary land disturbances of one acre or more on landfill properties such as waste processing or storage, road construction, soil berm construction and soil stockpiling are *land disturbing construction* activities as defined in s. NR 216.002(14); therefore landfills are considered construction sites as defined in s. NR 216.002(2), and must meet the applicable construction site and post-construction performance standards established in ch. NR 151.

Although landfills could be required to obtain both an industrial storm water permit and a construction site storm water permit, the storm water program regulates erosion and sediment control issues through the industrial storm water permit if land disturbance is an ongoing characteristic of an industrial operation. Solid waste landfills are extensive in area, conduct multiple construction and industrial types of operations, are decisively not residential activities, are conducted over extended timeframes, and may have continuing obligations for care and maintenance for decades after closure. In contrast, a construction site storm water permit is meant to regulate construction activity of a limited time period, usually less than 3 years in duration.

Since a landfill is typically active far beyond 3 years, has soil exposure as an ongoing characteristic, has exposure of material beyond soil, and its sediment control practices are more static than other types of development, landfills are more appropriately covered under an industrial (in this case, a Tier 2) storm water permit rather than the construction site storm water permit.

Note that the internal drainage within a landfill that is captured and treated through the leachate collection system is managed as a wastewater, not storm water. The regulatory framework described below does not apply to any area where all drainage at all times is captured and treated through the landfill leachate collection system.

E. Guidance

Ensuring Compliance with NR 151 Performance Standards: The current Tier 2 general industrial storm water permit will expire on April 30, 2016. Currently, the Tier 2 permit does not require compliance with ch. NR 151 construction site and post-construction performance standards. When the Tier 2 permit is reissued, a

requirement to comply with the applicable construction site and post-construction performance standards in ch. NR 151 will be added. This requirement will address ongoing land disturbance activities at landfills.

Prior to the reissuance of the Tier 2 general industrial storm water permit, on a case by case basis, DNR staff may determine that construction site storm water permit coverage, in addition to industrial storm water permit coverage, may be appropriate for a facility. This may be due to the purpose and duration of the construction activity, the area of land disturbance, the proximity to other activities associated with the landfill, or the extent of any impervious surface being added. The DNR anticipates sites needing separate construction site storm water permit coverage would be an exception, but it is possible that some non-commercial soil borrow sites will have a higher likelihood of needing construction site permit coverage since they involve mass soil excavation and movement.

Coordination of Permitting: RMP and WMMP staff will coordinate and synchronize their review activities as much as possible so that the approvals from both programs are timely and consistent. Generally this means that a storm water permit will be issued approximately in conjunction with issuance of a solid waste plan of operation approval.

Landfill owners often start construction activities on liner system phases prior to DNR issuance of a plan of operation approval to fully utilize the limited construction season in Wisconsin or due to an urgent need for disposal capacity. In those cases, the landfill owner will be expected to submit a request for initial construction approval—in essence, a condensed plan of operation targeting only those initial construction efforts that can be started before the full plan of operation approval can be issued. The landfill owner is then obliged to request the construction site storm water discharge permit coverage as early as necessary to accommodate the timing of construction.

Since WMMP staff has more routine interactions with landfill operations, WMMP will conduct inspections and document erosion and storm water management issues. Compliance oversight would be shared by both DNR programs. In cases where there are violations of the approved plan of operation or solid waste codes, the WMMP may take the lead on enforcement. In cases involving violations of the storm water permit, the RMP may take the lead on enforcement. In some cases, joint program enforcement may be warranted. As needed, WMMP staff will seek assistance from storm water staff with storm water technical and compliance issues.

New Landfills or Landfill Expansions: After the effective date of this guidance, applicants for new landfills or landfill expansions will be required to obtain coverage under the Tier 2 general industrial storm water discharge permit under ch. NR 216. Given the relatively small number of applications for new landfills currently in the siting process, those facilities currently in the siting process but that have not yet received a plan of operation approval will also be required to obtain Tier 2 general industrial storm water discharge permit coverage. Applicants should apply for Tier 2 general industrial storm water discharge permit coverage when the plan of operation is submitted.

As a part of the plan of operation approval, a new landfill or landfill expansion will be expected to comply with the applicable ch. NR 151 construction site and post-construction performance standards.

Existing Landfills: After the Tier 2 general industrial storm water is reissued in 2016, all existing active landfills not submitting a new plan of operation will be required to apply for and obtain permit coverage. Prior to that time, the DNR will contact existing facility owners notifying them about the change in permit requirements.

Closed Landfills: It is not expected that closed solid waste landfills will require storm water permit coverage. An exception may be a landfill where the landfill owner has allowed significant erosion or where the surface water control system to degrade. Maintenance or remediation work at closed solid waste landfills is also not uncommon and may result in exposed erodible soil surfaces. If one acre or more of land will be disturbed for such work, coverage under the construction site storm water permit is required. If inspections or complaints

reveal that excessive and potentially ongoing detrimental impacts on water quality is occurring, it may be necessary to require a review for industrial storm water permit coverage. In these situations, staff and supervisors will need to decide about permitting on a case by case basis.

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