

## REGULATORY IMPACT ANALYSIS

### AMENDMENTS TO 15A NCAC 13B REQUIREMENTS FOR CONSTRUCTION AND DEMOLITION (C&D) AND MUNICIPAL SOLID WASTE (MSW) LANDFILL FACILITIES

November 12, 2021

#### GENERAL INFORMATION

Agency:	Environmental Management Commission (EMC)
Department:	Department of Environmental Quality Division of Waste Management Solid Waste Section <a href="https://deq.nc.gov/about/divisions/waste-management/solid-waste-section">https://deq.nc.gov/about/divisions/waste-management/solid-waste-section</a>
Contacts:	Sherri Stanley Permitting Branch Head Solid Waste Section <a href="mailto:Sherri.Stanley@ncdenr.gov">Sherri.Stanley@ncdenr.gov</a> 919-707-8235  Jessica Montie Environmental Program Consultant Solid Waste Section Rule-Making Contact <a href="mailto:Jessica.Montie@ncdenr.gov">Jessica.Montie@ncdenr.gov</a> 919-707-8247
Rule Citations:	15A NCAC 13B .0533, .0535, .0543 - .0545, .1603, .1617, .1627, and .1631-.1637 Requirements for C&D and MSW Landfill Facilities
Authority:	G.S. 130A-294; S.L. 2021-153
Impact Summary:	- State Government Impact? None beyond the effect of S.L. 2021-153 - Local Government Impact? None beyond the effect of S.L. 2021-153 - Private Sector Impact? None beyond the effect of S.L. 2021-153 - Substantial Economic Impact? No
Appendix 1	Session Law 2021-153

## **PROPOSED RULEMAKING SCHEDULE**

<i>Date</i>	<i>Action</i>
01/12/2022	GWWMC Meeting: Approval of proposed rule text and regulatory impact analysis to go to EMC.
03/10/2022	EMC Meeting: Approval of proposed rule text and regulatory impact analysis for public comment.
04/18/2022	Comment Period Begins - Published in NC Register and on Department website
05/03/2022	Earliest date for public hearing.
06/17/2022	Comment Period Ends.
07/14/2022	EMC Meeting: Approval of Hearing Officer's Report and Adoption of Rules.
08/01/2022	Submittal to OAH (rule exempt from RRC Review per S.L.)
--	Effective Date is Pending Legislative Review per S.L.

## **PURPOSE AND SUMMARY OF RULE AMENDMENTS**

The Division of Waste Management (Division) Solid Waste Section (Section) is responsible for regulating solid waste management within the state under the statutory authority of the Solid Waste Management Act, Article 9 of Chapter 130A of the General Statutes. Rules governing solid waste management are codified at Title 15A, Subchapter 13B of the North Carolina Administrative Code. Rules .0531 - .0546 and Section .1600 establish requirements for construction and demolition landfill facilities and municipal solid waste landfill facilities, respectively; including requirements for permitting, construction, operation, closure, post-closure care, and environmental monitoring.

The proposed amendments are required by Session Law 2021-153 Section 1.(d), which requires the amendments to be substantively identical to the implementation requirements in S.L. 2021-153 Section 1.(c). The Session Law is attached as Appendix 1.

15A NCAC 13B Rules .0533, .0535, .0543, .1603, .1617, and .1627 regarding Permit Application Requirements are proposed for amendment to provide specific application requirements for permit amendments required for a change in ownership or corporate structure, and to revise the requirements for the Department to issue a permit for a closure and post-closure care permit. When there is a change in ownership or corporate structure of an existing permitted facility, many of the documents submitted in that facility's new or recent permit application would not be changing, so only the documents that require revision to reflect the ownership change need to be submitted again. Also, when a facility is closing and beginning their post-closure care period, many of the documents incorporated into the most recent permit to operate would not be changing, so only documents that are changing or that need to be updated would need to be resubmitted for the Division to issue the closure and post-closure care permit.

15A NCAC 13B Rules .0544, .0545, and .1631 - .1637 regarding Groundwater Monitoring, Assessment, and Corrective Action Requirements are proposed for amendment to remove specific references in these rules to interim maximum allowable concentrations (IMACs), which are governed by 15A NCAC 02L .0200.

The requirement for submittal of an application for a closure and post-closure care permit was a new requirement in the rules, added as a part of the readoption process required by G.S. 150B-21.3A, adopted by the EMC July 9, 2020, and approved by the Rules Review Commission on October 15, 2020. The specific references to IMACs were also new to these rules as a part of readoption wherever there was a reference to 15A NCAC 02L .0200, but these references were only added for clarification, because the requirements for groundwater quality in 15A NCAC 02L are applicable to C&D and MSW landfill facilities regardless of whether the rules in 15A NCAC 13B include references to requirements in 15A NCAC 02L. All of the changes made to the existing rules during the 2020 readoption process were addressed in the fiscal note approved by OSBM during that readoption process.

However, because the Rules Review Commission received more than ten letters of objection for ten rules in the readoption package after the adopted rules were submitted for approval, the rules never became effective and were not added to the administrative code. The ten rules receiving objection letters were sent for legislative review instead. These rules became effective only upon the effective date of S.L. 2021-153 (September 16, 2021). The Division had requested that the effective date of all rules in that readoption package be delayed until the ten rules that were objected to became effective. S.L. 2021-153 was drafted after further discussion between the Division and the stakeholders to address the items the stakeholders had objected to.

The proposed amendments also include minor clarification or technical corrections to fix grammatical and formatting errors identified after the final drafts of the rules were prepared for addition to the administrative code after the 2020 readoption process.

## **BASELINE**

The baseline for the proposed amendments includes Article 1 and Article 9 of the General Statutes, the existing rules in 15A NCAC 13B .0531 - .0545 and Section .1600, and the requirements in 40 CFR 257 and 258 (40 CFR 258 is applicable to municipal solid waste landfills). Rules .0531-.0545 were first effective in 2007, and the rules in Section .1600 was first effective in 1993, however, as mentioned above, both rule sets were recently readopted pursuant to G.S. 150B-21.3A, effective September 16, 2021, per S.L. 2021-153.

The Session Law directly implemented the changes to practice and enforcement in Section 1.(c), it required that these rules be amended to be substantively identical to the implementation requirements, and it also stated that the implementation requirements in the Session Law would remain effective until permanent rules are adopted to include the changes. The Division has been operating in accordance with the Session Law requirements since it became effective on September 16, 2021. Therefore, implementation of the Session Law is also a part of the baseline for the proposed amendments.

## **PARTIES POTENTIALLY AFFECTED**

### **Regulated Community**

The rules proposed for amendment are applicable to current and future owners and operators of active and closed construction and demolition landfills and municipal solid waste landfills permitted by the Division in North Carolina in accordance with the dates and applicability stated in Rules .0531 and .1601. Owners and operators of these facilities may include local governments and the federal government. However, any effects of the changes to requirements for these facilities are effects imposed by the Session Law and are not caused by the proposed rule amendments directly.

Local Government (other than facility owners or operators described above)

Applications for new permits must include a franchise or similar local government and zoning authorization from any local government having jurisdiction over the facility location.

State Government

Solid Waste Section staff that review permit applications, issue permits, and provide regulatory compliance, enforcement, and technical assistance for permitted facilities; and take enforcement action against the management of solid waste that does not comply with applicable laws, rules, and permits may be impacted by the session law implementation.

**IMPACT ANALYSIS FOR THE PROPOSED AMENDMENTS**

*Impacts of the Proposed Amendments*

Because the majority of the proposed amendments were required by S.L. 2021-153, the Session Law implemented those changes directly, and the changes implemented by the Session Law do not expire until the proposed amendments become effective, no impacts (costs or benefits) to local governments, state government, or the regulated community are expected from the proposed amendments beyond the effects of S.L. 2021-153.

The remaining amendments that were not required by the Session Law are for minor clarification or technical corrections to fix grammatical and formatting errors identified after the final drafts of the rules were prepared for addition to the administrative code after the 2020 readoption process.

Based on the above, the proposed amendments do not cause impacts to state or local governments, and do not cause a substantial economic impact.

# **APPENDIX 1**

Session Law 2021-153

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2021**

**SESSION LAW 2021-153**  
**SENATE BILL 60**

AN ACT TO REVISE CERTAIN RULES RELATED TO SOLID WASTE MANAGEMENT FACILITIES ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** Definitions. – For purposes of this section and its implementation, "Solid Waste Landfill Rules" means the following rules as adopted by the North Carolina Environmental Management Commission (EMC) on July 9, 2020, and approved by the Rules Review Commission on October 15, 2020:

- 15A NCAC 13B .0533 (General Application Requirements and Processing for C&DLF Facilities)
- 15A NCAC 13B .0535 (Application Requirements for C&DLF Facilities)
- 15A NCAC 13B .0543 (Closure and Post-Closure Requirements for C&DLF Facilities)
- 15A NCAC 13B .0544 (Monitoring Plans and Requirements for C&DLF Facilities)
- 15A NCAC 13B .0545 (Assessment and Corrective Action Program for C&DLF Facilities and Units)
- 15A NCAC 13B .1603 (General Application Requirements and Processing)
- 15A NCAC 13B .1617 (Application Requirements for MSWLF Facilities)
- 15A NCAC 13B .1627 (Closure and Post-Closure Requirements for MSWLF Facilities)
- 15A NCAC 13B .1631 (Groundwater Monitoring Systems)
- 15A NCAC 13B .1632 (Groundwater Sampling and Analysis Requirements)
- 15A NCAC 13B .1633 (Detection Monitoring Program)
- 15A NCAC 13B .1634 (Assessment Monitoring Program)
- 15A NCAC 13B .1635 (Assessment of Corrective Measures)
- 15A NCAC 13B .1636 (Selection of Remedy)
- 15A NCAC 13B .1637 (Implementation of the Corrective Action Program)

**SECTION 1.(b)** Solid Waste Landfill Rules. – Notwithstanding G.S. 150B-21.3, the Solid Waste Landfill Rules shall become effective when this act becomes effective, except that the EMC and the Department of Environmental Quality (Department) shall implement the Solid Waste Landfill Rules as provided in Section 1(c) until the effective date of the revised permanent rules that the EMC is required to adopt pursuant to Section 1(d).

**SECTION 1.(c)** Implementation. – The Solid Waste Landfill Rules shall be implemented subject to all of the following requirements:

- (1) One hundred eighty days prior to beginning closure of the final permitted landfill unit, an owner or operator of a construction and demolition debris landfill facility (C&DLF) or a municipal solid waste landfill facility (MSWLF) shall submit to the Department's Division of Waste Management (Division) a notice of intent to close the final unit (notice of closure), in writing, and place a copy of the notice of closure in the facility's operating



record. The notice of closure shall include the anticipated date that the facility will cease waste acceptance and a statement identifying the plans that were incorporated into the permit that the owner or operator will comply with during the closure and post-closure care period. The notice of closure shall include the dates that the plans were incorporated into the facility's permit and the file identification numbers that were assigned by the Division to the files containing these plans. If the owner or operator determines that updates or revisions to the plans are necessary, the owner or operator shall submit any changes to the plans to the Division as a permit modification.

- (2) An owner and operator of a C&DLF or MSWLF shall not be required to submit a permit application for the Division to issue a permit for closure and post-closure care of a landfill. The Division shall issue a permit for closure and post-closure care that incorporates the plans identified in the notice of closure submitted pursuant to subdivision (1) of this subsection. Owners or operators that closed all waste disposal units at the landfill prior to the date this bill becomes law shall not be required to submit a notice of closure pursuant to subdivision (1) of this subsection. If a closure and post-closure care permit has not already been issued for these facilities prior to the date this bill becomes law, the Division shall issue a permit for closure and post-closure care that incorporates the plans for closure and post-closure care that were included in the most recent permit to operate issued for the facility.
- (3) An application for an amendment to a permit for a C&DLF or MSWLF submitted solely for a change in ownership or corporate structure shall include all of the following information:
  - a. A description of the proposed ownership change including affected facilities and associated permit numbers, the schedule for the proposed change in ownership or corporate structure, and contact name and information for the proposed or new owner or operator.
  - b. Any changes to the facility name, property owner, facility operator, or billing contact names and contact information.
  - c. If the property owner has changed or will change as a part of the change to ownership or corporate structure, a copy of the recorded property deed for the new property owner.
  - d. For an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the proposed or new owner or operator, which shall be a business entity registered with the North Carolina Secretary of State.
  - e. An environmental compliance history for the applicant in accordance with G.S. 130A-295.3(b).
  - f. Any documentation that the Division may request in order to determine compliance with requirements for financial responsibility that must be established by the proposed or new owner or operator pursuant to G.S. 130A-295.2 and Section .1800 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, including an executed financial assurance mechanism for, by, or from the proposed or new owner or operator.
  - g. Any updates to the cost estimates required to be submitted in accordance with Section .1800 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.
  - h. Any potential modifications to be made by the proposed or new owner or operator to the plans incorporated into the facility's permit, or any

potential modifications to be made to the facility's permit to correct any information included in the plans that has changed due to the change in ownership or corporate structure, such as the owner or operator names and contact information.

- i. For any plans for which no changes or corrections are to be made, a statement that the proposed or new owner or operator shall continue to comply with the plans incorporated into the existing facility permit, which shall be identified in the statement by the date the plans were incorporated, and the file identification number assigned by the Division to the file containing the incorporated plan.
  - j. Copies of any federal, State, or local government permits or approvals required for the facility under law, which have been revised as a result of the proposed change in ownership or corporate structure, or a statement that these permits or approvals have not changed.
  - k. Any additional information that the Division may request that is necessary for compliance with the requirements of this section and the requirements of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.
- (4) All references to "interim maximum allowable concentrations" and "IMACs" shall be eliminated from the Solid Waste Landfill Rules.

**SECTION 1.(d)** Additional Rulemaking Authority. – The EMC shall adopt rules to amend the Solid Waste Landfill Rules to be consistent with Section 1(c). Notwithstanding G.S. 150B-19(4), the rules adopted by the EMC pursuant to this section shall be substantively identical to the provisions of Section 1(c). Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

**SECTION 1.(e)** Sunset. – This section expires when permanent rules adopted as required by Section 1(d) become effective.

**SECTION 2.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3<sup>rd</sup> day of September, 2021.

s/ Jim Perry  
Presiding Officer of the Senate

s/ Harry Warren  
Presiding Officer of the House of Representatives

s/ Roy Cooper  
Governor

Approved 11:50 a.m. this 16<sup>th</sup> day of September, 2021

**Montie, Jessica**

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**From:** Hollis, Carrie  
**Sent:** November 16, 2021 12:03 PM  
**To:** Montie, Jessica; Everett, Jennifer  
**Cc:** Snyder, Ashley B; Grozav, Anca  
**Subject:** Review - C&D and MSW Landfill Facilities, 15A NCAC 13B .0533, .0535, .0543 - .0545, .1603, .1617, .1627, and .1631-.1637  
**Attachments:** DEQ\_2021-11-16.pdf

OSBM has reviewed the Division of Waste Management's amendments of rules 15A NCAC 13B .0533, .0535, .0543 - .0545, .1603, .1617, .1627, and .1631-.1637 in accordance with G.S. 150B-21.4 and with E.O. 70 from 10/21/2010 as amended by E.O. 48 from 4/9/2014. OSBM has determined the amendments have little to no impact on state or local governments and no substantial economic impact. The regulatory impact analysis is approved for publication.

**Carrie Hollis**

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