Solid Waste Compliance & Enforcement Pitfalls: How to Avoid the Dreaded Referral

SWANA SC Palmetto Chapter
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Things are Different in Jersey

“I didn’t realize, Your Honor. I assumed the law here was the same as in New Jersey. As you may know, dog eat dog is permissible there.”
The Enforcement Process

- Inspections: DHEC has a Published Frequency List
- If allege a violation, will have follow-up inspection(s)
- If unsure or extenuating circumstances, may call Compliance in Columbia for guidance before referring
- No resolution: Officially Referred to Compliance
  - Marty Lindler
- No resolution: Referred to Enforcement
  - Cindy Williams

The SW Enforcement Family Tree

You (Permitted SW Facility) = The Little Brother

Regional Inspectors = Your Big Brothers

Compliance = A Usually Sympathetic Uncle

Enforcement = Your Dad
You = The Little Brother

You Are a Good Kid!
- You Have all Your Permits & Try Your Best
- You Don’t Intend to Break the Rules or The Rules Keep Changing

...Things Happen & Every Brother is different.

Regional SW Inspector: Your Big Brother

- DHEC Family: 8 Regions/12 Offices /12 Inspectors
- Get Along: Need to foster this relationship
- Most have Years of Experience:
- Some Are New and Inform You of New or Different Rules to Follow
- Nice Brother: Doesn’t want to turn you in, but he will if you push it!
- Not so Nice Brother: Always finds something you aren’t doing right
### Inspection Report Form Options for Compost/Wood Chipping Facilities

- **E** = Excellent
- **1** = Adequate (only minor and/or potential problems exist)
- **2** = Improvement Needed (significant problems exist; corrective action necessary)
- **3** = Unacceptable (serious problems and/or recurring problems with no corrective action taken)
- **4** – Not Applicable
- **5** – Not Inspected

Some Sections Only Y or N  
No Grey Areas

### Inspection Form Options for Class One, Two & Three Landfills

- **1** – Meets or exceeds regulatory requirements
- **2A** – Improvement needed (minor issues exist; corrective measures recommended)
- **2B** – Improvement needed (moderate issues exist; corrective action required & scheduled)
- **3** – Unacceptable (serious issues and/or recurring issues with minimal or no corrective action taken – alleged regulatory or permit condition violations have occurred – enforcement referral required)
Class One, Two & Three Inspection Form Options (cont’d)

- **Y** – Yes: meets or exceeds regulatory requirements
- **N** – No: corrective measures recommended that should be fixed by the next inspection or an agreed upon completion date
- **NA** – Not applicable
- **NI** – Not inspected

* With Class 1,2 & 3 landfills, if you get a 2B – there will be follow up; if you get a 3 – there will be a referral. Need to take 2Bs, 3s, and Ns seriously

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What Really Makes Him Upset?

1. You are Messy
2. You Don’t Follow the House Rules
3. You Don’t Take Him Seriously
4. You Lie
1. Messy = Poor Housekeeping

- Litter
- No Cover or Not Enough Cover
- Not Maintaining Cover
- Strong Odor
- Clogged Drains
- Not Maintaining Slope

Keep it Clean
2. You Don’t Follow the House Rules

- You Don’t Follow Your Own Operational Plans
  - Waste Assessments/Waste Screening
  - SW Management - Labeling
  - Fill Progression
  - GW Monitoring
- You Can’t Find Your Plans
- You Are Working From the Wrong Set of Plans
- The On-Site Employee is Not Familiar with the Content of the Plans

House Rules (Cont’d)

- Have the Plans accessible at all times
- Employees on-site must have access to them and be familiar with them
- Make sure the most current plans are the ones being followed
- Upper Management required to know them & make sure facility is following them
- Don’t plead ignorance: Fix it or ask to have the plans modified – timing is tricky and not your fault
3. You Don’t Take Him Seriously

- Unless serious threat or egregious, the inspector will most likely give you a chance to fix or explain an alleged violation
- Almost always at least 3 chances to fix or explain over a period of months (NOVs reflect this)
- The on-site employee who signs the Inspection Report should take immediate action on any alleged violations – even just a call or letter
- If you contest the finding, call, write a letter or email...don’t do nothing & “wait and see”

Finger-Pointing

“Legal advice finger-pointing.”
Take Him Seriously (Cont’d)

- Have Procedures in Place During & After an Inspection
- Need a Designated Employee trained to respond
- Inspection Reports –
  - Employee can sign but also comment (“Contested”)
  - Have ALL reports go up the chain to designated person
  - Know DHEC’s frequency schedule
- Have a tickler on calendar when inspection expected and when reports should be coming up the chain

4. You Lie

- This will get you to Enforcement
- DHEC: This is not a problem with this group
- If say you are going to do something, do it!
- Call & document why you didn’t get it done and when you will
- Set Reasonable Expectations – Ask for more time if you need it
- COMMUNICATE the issues – old plans need amending, need time to get it done!
Compliance = Your Sympathetic Uncle

- Inspectors call Compliance for guidance on grey areas
- You can call Compliance if want to clarify or give more info
- While Inspectors give you 3 or more chances, Compliance will usually give you only 1 after formal referral
- If showing progress, won’t refer to enforcement
- Sometimes facility keeps trying something that working . . . not lying, but not fixing

Enforcement = Dad

- Once it gets to Enforcement, an Order is likely
  - Can be Consent or Administrative (Without Consent)
- What to do if you get an NOAV:
  - Don’t wait to start compliance steps, gathering info
  - Send in proof of compliance, contact inspector and show him/her
  - Don’t wait for enforcement conference to communicate and show progress
  - Get attorney involved now if wish to fight it
The Enforcement Conference

- Arrive at conference with documentation of fixes
- If money is an issue, bring proof and a plan
- Don’t blame it on your employees not knowing what to do or not telling you
  - If rogue employee, show discipline taken (fired?)
- Even if in compliance at conference, may still get an Order
- Ask for a Warning Letter
- Negotiate the terms of an Order

Referrals to Compliance and Enforcement

- Interview with Marty Lindler & Cindy Williams
  - Biggest Issue – Waiting to Fix (or show progress in fixing)
  - Don’t hesitate to call Marty or Cindy to clarify issue/ask questions
  - Work with your inspectors – they don’t want more work (which referrals create)
- Over the last year, been 60 or so referrals to Compliance from the Regional Inspectors
- Of those, about 90% end up in Enforcement
  - Compliance: Marty Lindler 803-896-4205
  - Waste Assessment: Steve Burdick 803-896-4120
  - Enforcement: Cindy Williams 803-896-4146
Interviews with Members of the Regulated Community

- When acquiring an existing facility, sometimes the Operational Plans and Permits are very outdate and need modifications
- Inspectors are not always patient to allow this process to moved forward
- Regulated Facility can’t rush permitting, but Inspectors don’t always consider this
- New Inspectors change the rules – interpret the “gray” areas differently
- Inspections are too frequent when monthly – need quarterly at most

Interviews with Members of the Regulated Community

- Something allowed under one DHEC permit (like storm water), a problem to an inspector?
- Inspectors have different styles- some verbal warning first time, some write you up immediately
- Inconsistency an issue
  - Between Inspectors
  - Between Regions
  - Between Central Office & Inspectors
- Fines a lot less here. A lot less NOVs

"Who do I see to get big government off my back?"
SW Enforcement Activity
January 2012-April 2013

- **Class Three MSWs:** 1 NOV
  - Closure Issues: Maintain Cap, Deed Notification Issues

- **MSW/C&D Transfer Stations:** 1 NOV
  - Significant Amount of Litter, Uncovered Trailers, No Corrective Action taken despite 4 inspections, partial action before 5th

- **Class Two Industrial Landfills:** 2 NOVs, 2 COs (same)
  - Not labeling, Solidification pits too full
  - Not testing waste pursuant to plan, Cover not Applied
  - Warehouse not in location in approved plans
  - Slope not 3:1 and Surface area too big

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January 2012 – April 2013 (Cont’d)

- **Class Two C&D/LCD:** 2 NOVs (Same Facility)
  - Recordkeeping (Annual Reports not Submitted)

- **Composting:** 1 NOV, 3 Consent Orders (2 to the same Co.)
  - No Signs
  - Windrow Location & Spacing Not as Approved in Plans
  - Too Much Waste Onsite
  - Not submitting Annual Reports

- **Waste Tires:** 1 NOV
  - Too Many Tires on site – There long time after closure
SW Enforcement Activity
January 2012 – April 2013 (Cont’d)

- **Electronics Recycling (Unpermitted): 1 NOV**
  - No permit, No processing (just stockpiling)

- **Recovered Materials Processing: 1 NOV**
  - No Annual Reports & Not Meeting 75% Recycling Rate

- **Short Term Structural Fill: 1 NOV**
  - No stakes, no attendant, no fence/gate
  - No monthly cover
  - Filling in unpermitted area

- **Illegal Dumping: 27 NOVs, 2 COs, 1 AO**

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