

Comments of John Brabant
Vermonters for a Clean Environment
2020 Draft Solid Waste Management Rules
Annotated Version
4-21-2020

Thank you for this opportunity to provide comment on the current draft of the proposed changes to the Vermont Solid Waste Management Rules. My comments are not exhaustive, but address proposed changes that stand out as most important to discuss. I have also provided suggested language improvements where language is confusing, contains typographical errors, isn't consistently applied, and where new definitions are needed.

§ 6-201 Definitions

"Adjoining Residences and Landowners" - The definition has stripped out adjoining residences, despite the definitional title. Not all Vermonters can afford to own real estate, many rent, particularly those at the lower end of the income spectrum. The changes proposed would deny these residents who reside directly adjacent to solid waste facilities such as landfills and large transfer stations public notice as they are simply tenants and not landowners. This change is inappropriate and smacks as an environmental justice issue. Please keep current definition or amend the definition proposed to include adjoining residents as the original definition intended.

"Discrete Disposal Facilities" – this term along with its definition has been struck from the Rule in your draft. This term is struck throughout the document and replaced with "landfill". While the change to the using the term "landfill" is a good clarification, it is important to now add a definition for "Landfill" upfront in the definitions section. I will let you define it, but it does need to be defined.

"Diversion" – this is a totally new definition. It is inconsistent with statute in that it states in relevant part: ""Diversion" means the management of solid wastes through methods other than disposal. Diversion includes recycling, composting, **reuse** and anaerobic energy production." For a material to become a solid waste, the material must first be "discarded". To reuse a material for a different application than it was originally used for occurs prior to it being discarded and becoming a regulated solid waste. Please remove the word reuse from this definition as characterizing a material that is being reused as a solid waste is inconsistent with Vermont law.

"Organics" – this proposed term is used inconsistently throughout the draft Rule document. The second sentence of this very definition interchanges the term "organic materials" for "Organics". The term Organics is really slang for Organic Materials and doesn't belong in a regulation as a regulatory term. I would suggest changing the term from "Organics" to "Organic Materials" both here and throughout the document. In the alternative (although I believe street slang should not be used in a Rule), you at very least could change the term being defined to ""Organics" or "Organic Material"", which would allow for two terms to be interchanged throughout the Rule document as occurs in the current draft Rule.

"Organic Drop-Off". Typo / inconsistency. As provided above, change term to (preferably) read as "Organic Materials Drop-Off" or (less-preferred) "Organics Drop-Off".

"Organics Recovery Facility" or "ORF". The proposed new definition states in relevant part: "Organics Recovery Facility" or "ORF" means a facility where organic materials are collected, treated, and or

stored in preparation for” This facility would actually be the recipient of “discarded” organic materials. For regulatory clarity and consistency with statute, please amend the proposed definition as follows: “Organics Recovery Facility” or “ORF” means a facility where **discarded** organic materials are collected, treated, and or stored in preparation for”

§ 6-304 Prohibitions. My general comment is one of disappointment that the Secretary ANR still allows the burning of structures for the purpose of training firefighters. Having been a firefighter and as a town selectboard member, I am very much aware that the burning of structures in this day and age is unnecessary for the purposes of firefighter training and in fact disallowed under current health and safety standards as well as by insurers of municipalities and fire companies. Structures are now filled with artificial smoke for training. The only reason to burn a structure, most containing lead paint and other hazardous air contaminant sources when burned, is to provide an inexpensive, but environmentally unsound disposal alternative to landfilling a demolished structure. Burning such structures occurs without notice to neighbors and results in nearby residents (including elderly, women in their reproductive years and children) inhaling volatilized lead and other hazardous air contaminants, contaminants that contaminate nearby properties, organic farm fields and vegetable gardens. I worked on changing this policy in 2004 and we were close to eliminating it, but due to a single manager, such change was stopped. This, despite statements from fire department officials around the state supporting this change. Please consider working with your colleagues at the ANR Air Quality & Climate Division to see this unnecessary and unhealthy practice ended.

§ 6-402

Section § 6-402(a) reads in relevant part:

- (a) “A municipality shall be a member of a district or alliance, or shall be an independent town, collectively these municipalities are referred to as Solid Waste Management Entities (SWME).”

This sentence structure and the odd use of the term “shall” should be changed. I would suggest the following change to the first sentence to read as follows: “Municipalities participating as member towns to a solid waste management district or alliance, or acting as independent towns in the performance of their solid waste management responsibilities are referred to as Solid Waste Management Entities (SWME).”

§ 6-402

- (b)(2) typo: “ describe siting **critical...**” should read as “describe siting **criteria...**”
- (b)(4) typo: Should read as: “describe how proposed facilities will be reviewed for **inclusion** ~~including~~ within the SWIP”
- (b)(6) Revise as follows: “**Include** copies of any solid waste related ordinances ~~with the SWIP~~; and
- (b)(7) ~~demonstrate a demonstration of~~ conformance with any applicable regional plan. ~~Such~~ a demonstration can be in the form of a letter from the applicable regional planning commission, copies of pertinent sections of the regional plan, or other documentation that **demonstrates** ~~proves~~ conformance.

§ 6-503(a) – End of line 2, “notices” should be “notice”

§ 6-503(a)(4) – Strike this entire sentence. Provisional certifications can no longer be issued under the current chapter of law. This provision should be removed in the next rewrite of Chapter 159 as it only applies to unlined landfills that were operational January 1, 1990 and all such certified facilities were required to cease operations on July 1, 1992. In point of fact, this law was written to allow the Brattleboro landfill to get recertified despite its groundwater pollution issues until the Windham SW District could get its lined landfill build, which as we know now, was never built.

§ 6-503(c)(2) – Change first word to either “Organic Materials” or “Organics”, depending on what you decide to do with the “Organics” definition as discussed above.

§ 6-504(e)(22)- amend to include “adjoining **residents**” as previously discussed

§ 6-504(e)(24)- Please reconsider this stripping of public notice to town selectboards (legislative body), residents and landowners. Shrink the radius if need be, but cutting out towns and facility neighbors to facility public notices is really bad public policy, particularly when it involves large facilities with considerable community impacts such as large transfer stations, landfills and materials recovery facilities.

§ 6-504(f)(2)(G) please amend as follows: “An affidavit providing the names of adjoining **residents and** landowners...”

§ 6-504(g) – please amend as follows : “Upon (prior or concurrently with) submission of an application to the Secretary, the applicant shall provide written notice of the application to all adjoining **residents and** property owners.”

§ 6-507(d) – please amend as follows : “The applicant shall provide notice of application to all adjoining **residents and** property owners through the U.S. mail...”

§ 6-602(e) –typo – amend as follows: “Additional notice. At any time during the review of an application, the Secretary may require that a permit **application** being reviewed under the procedures....”

§ 6-606 (a) – There may be situations where the Secretary would not want to, or it may be inappropriate to, revoke a facility certification or registration in its entirety. For instance, if there was a rogue landfill operator and it became necessary to pursue the revocation of the facility’s operational authority, but not the other certification requirements such as closure requirements, leachate management requirements, capping requirements, financial responsibility requirements, etc. As such, it would be important to include language that provided for revocation of certain certification or registration provisions with revoking the entire authorization. To that end, I would suggest that 6-606(a) be revised as follows: “ Authority. The Secretary may suspend or revoke, **in whole or in part**, a certification or registration issued under this subchapter ...”

P. 76 – Table A – Consistent with changes further down in the draft rule, amend the last Category in the first column to read: “Minimum distance from waste management boundary to residences, schools, daycare facilities, hospitals, and nursing homes, ~~not owned by the applicant.~~”

P. 77 – Footnote 1 – typo on first line near end, should read as: “...non-EQ biosolids, and stabilized domestic septage...”

P. 77 – note your replacement of your “discrete disposal facility” term with landfill in Footnotes 2,3 & 8 (the addition of landfill in Footnotes 5 & 8 need to be underlined by the way), again without a definition upfront.

§6-904(i) – again, recommend changing “Organics” to “Organic Materials” Recovery Facilities...

§6-905(c)(4) - recommend changing “Organics” to “Organic Materials”.

§6-905(m)(1)- typo, should read as: “Untreated wood, concrete, bricks, mortar, or asphalt, ~~scrap~~ metals, **and** appliances ~~and~~ furniture are exempt from the containerization requirements of §6-905(d)(1) and may be stored uncovered at the facility.”

§6-1004(i)(2) clarification, recommend as follows: “Primary Liner. This component shall be designed to prevent leachate migration through the liner into the Leak Detection Drainage Layer or outside of the designed lined landfill cell area.”

§6-1102(s) - recommend changing “Organics” to “Organic Materials”.

§6-1108(b)(4)(A) – typo - should read: “If using a turned windrow system, the temperature must be maintained at 131 degrees Fahrenheit (55 degrees Celsius), or higher, for at least 13 of ~~16~~ 15 consecutive ~~15~~ days.

§6-1109(e) - This “custodial care” approval section fails to recognize the need to continually require mowing of the area above the closed landfill cell to prevent deep rooted, woody growth from damaging the landfill cap. Please add language to require mowing, and funding to assure mowing, in perpetuity. Towns provide such mechanisms for the maintenance of their town cemeteries. This can AND SHOULD be done for landfills in perpetuity.

§6-1306(p): General comment of concern: The cumulative limits in soils in the table in this section for all heavy metals are identical to the maximum allowable levels in biosolids being land applied on farm fields, with the exception of Mercury. In the case of Mercury, the cumulative level limit is raised from 10 mg/kg, dry wt. to 17. Mercury is a highly toxic and persistent heavy metal linked to neurological effects in humans and animals. These fields will be used for the growing of crops and hay for animal feed used for production of human food. Mercury bioaccumulates. The Residuals Management Section 20 years ago attempted this change in the Rule, in addition to raising the allowable levels of Hg in biosolids to be land applied to similar levels. This proposal was met with public outrage and the program backed off. Now here it is again. Please do not move forward with this proposed change, allowing increased cumulative levels of Hg on our precious food producing lands.

Thank you.

-John Brabant