

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
 - Marty Lindler
- No resolution: Officially Referred to Compliance
 - Marty Lindler
- No resolution: Referred to Enforcement
 - Cindy Williams



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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



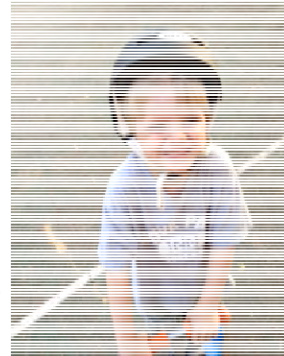
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You = The Little Brother

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.



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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



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



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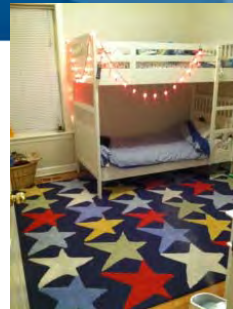
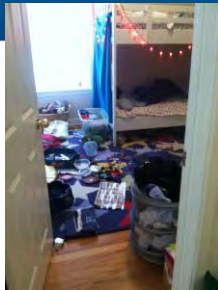
1. Messy = Poor Housekeeping

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



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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



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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



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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"



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Finger-Pointing

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"Legal advises finger-pointing."

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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



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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!



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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



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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](tel:803-896-4205) 803-896-4205
 - Waste Assessment: [Steve Burdick](tel:803-896-4120) 803-896-4120
 - Enforcement: [Cindy Williams](tel:803-896-4146) 803-896-4146



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Interviews with Members of the Regulated Community

- When acquiring an existing facility, sometimes the Operational Plans and Permits are very outdated and need modifications
- Inspectors are not always patient to allow this process to move 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

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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 NOV's



"Who do I see to get big government off my back?"

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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



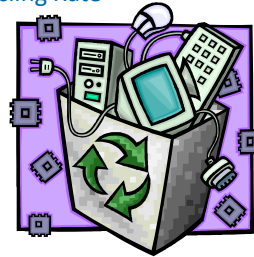
January 2012 – April 2013 (Cont'd)

- **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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Jessie focuses her practice on environmental legal issues. She has substantial experience dealing with local, state and federal governmental agencies involved in permitting and compliance issues. Jessie has helped companies and citizens earn environmental permits, negotiate compliance issues and litigate environmental matters that could not be settled outside the courtroom. She is a former staff attorney and head attorney for the Environmental Quality Control Division of the South Carolina Department of Health and Environmental Control.

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