



July 30, 2021

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Waukesha County  
SW/CORR

Subject: Response to Comments Received During Feasibility Review Period for the Proposed Orchard Ridge Recycling and Disposal Facility (RDF) - Eastern Expansion, Southern Unit, License #4491

Dear Interested Party:

Thank you for providing the Department of Natural Resources (department) with your comments on the Orchard Ridge RDF - Eastern Expansion, Southern Unit (Southern Unit) proposed by Waste Management of Wisconsin, Inc. (WMWI). This letter responds to the public comments the department received during the feasibility review period for the proposed landfill.

On February 19, 2021, the department determined that the information provided in the feasibility report met the minimum requirements for a complete submittal, pursuant to ch. NR 512, Wis. Adm. Code. A class 1 public notice was published to inform the public of this decision and to invite the public to participate by requesting a hearing and/or submitting comments within 30 days after the notice. The public comment period concluded on April 2, 2021. During this period the department received two requests for a public informational hearing and held a hearing on May 18, 2021. The hearing was a combined in-person and virtual format, providing individuals the option of providing oral testimony by the Zoom remote communication platform. The hearing officer extended the hearing comment period to May 28, 2021. All written comments regarding the proposal dated or postmarked by May 28, 2021 have been given the same weight and effect in the response to comments as oral testimony presented at the hearing.

For some background on Wisconsin's landfill siting laws, the Wisconsin legislature has documented in law that it finds safe and orderly disposal of solid waste generated by Wisconsin citizens and businesses is a worthwhile public good. The provisions of chs. 287 and 289, Wis. Stats. were adopted to provide regulation and oversight to solid waste management and disposal in the state. The department is charged with developing administrative code under the authority of chs. 287 and 289, Wis. Stats., to provide detailed regulation of solid waste management and disposal, and to implement these rules in an effective manner. The NR 500 series of administrative code has been adopted pursuant to these laws.

While these laws provide the department the duty of, and authority for regulatory oversight, there are limitations to the authority. If the department determines a proposed landfill meets all of the applicable regulatory requirements of the rules and can be constructed and operated in an environmentally sound manner, the department does not have the authority to not approve the proposed facility. Likewise, Wisconsin law does not allow local municipalities to veto landfill proposals within their jurisdictions. However, municipalities within 1,500 feet of the proposed limits of waste filling do have the authority to negotiate directly with the landfill applicant to address many issues and concerns by local governments and their constituents, including: protection of local property values; traffic, litter, noise, dust and odor concerns; times of operation; payment of host fees; monitoring of neighbors' water supply wells; and, numerous other issues. In addition, landfills are subject to local zoning regulations, which may limit where a landfill can be built within the municipality.

The department has received a total of 133 public comments during the feasibility review period. Many comments are similar in nature or redundant. In order to minimize the effects of redundancy, the department grouped similar comments together to provide a single response for each group. Some of the comments are ambiguous in nature and lack specifics for the department to focus on (e.g., “Digging up the Superfund site is not a good idea.”). In such cases, and without more details for us to provide a specific response, the department did its best to infer or interpret what the likely concern(s) may be that prompted the comment. The order of the comments and the department response below does not indicate any relative importance of the comment over other comments. Some sets of comments received also include numerous questions. Some of the questions are answered in this response letter; however, with the significant number of questions and the nature of many of the questions which either go beyond the scope of this review or would require a lengthy and detailed response, answering all of them in this format is not practical. That being stated, the department will continue to consider these questions during its review of the plan of operation.

The department’s responses to generalized comment groups are provided below.

### 1. Environmental Impact Statement (EIS)

***Comments:*** *More than half the comments submitted either explicitly requested or expressed concerns about the need for an EIS, in particular related to the exhumation of the closed Boundary Road Landfill (BRL), a Superfund site. Several commenters asked when an EIS is required. (Note: additional items related to waste exhumation, the siting process and public involvement are addressed separately below.)*

***Response:*** In accordance with s. [289.25\(1\)](#), Wis. Stats., the department made a preliminary determination on February 19, 2021 that an EIS is not required for the proposed Southern Unit, as indicated in the department’s project summary and environmental analysis. After additional review of the collective feasibility submittals, and input obtained from internal reviewers in multiple department program, and divisions, the department has confirmed that an EIS is not required for the proposed Southern Unit.

For the purpose of complying with the Wisconsin Environmental Policy Act (WEPA), s. NR 150.20(2)(a)7, Wis. Adm. Code, recognizes a solid waste facility feasibility approval as an integrated analysis action, meaning “a department action for which department programmatic procedures provide for public disclosure and include an environmental analysis that provides sufficient information to establish that an environmental impact statement is not required” [s. NR 150.03(12m), Wis. Adm. Code]. The department’s feasibility review of the proposed Southern Unit included an environmental analysis, a public comment period and a public informational hearing. The environmental analysis closely followed the content for an environmental review prescribed in s. NR 512.16, Wis. Adm. Code.

In response to commenters’ questions about when an EIS is required, there are two types of actions for which the department is categorically required to prepare an EIS under s. [NR 150.30](#), Wis. Adm. Code. Neither of these apply to the proposed Southern Unit. Under sections [293.39](#) and [291.27](#), respectively, of the Wisconsin State Statutes, the department is required to prepare an EIS for proposed metallic mines and for any proposed new hazardous waste facilities that will exceed 80 acres or one million cubic yards of solid and hazardous waste. The department has the discretion to follow EIS procedures for other types of proposed projects, as described in s. [NR 150.20\(4\)\(b\)](#), Wis. Adm. Code. These are evaluated on a case by case basis; however, the environmental analysis process for landfill feasibilities is robust and landfill siting, design and construction are well understood, making use of the EIS procedures for landfill feasibilities rare.

As stated in the project summary and preliminary environmental analysis that accompanied the feasibility completeness letter on February 19, 2021, the department recognizes that many of the requests for an EIS

are predicated on the potential impacts to human and/or environmental health by exhuming the historical waste within the BRL. The department has experience reviewing and regulating waste excavation and relocation projects from landfills, including the removal and reinternment of waste from a Superfund landfill with the potential to encounter hazardous waste. Reviews for this type of project occurs with technical support from staff in the department's Remediation and Redevelopment Program and includes input from the U.S. Environmental Protection Agency (EPA). In another similar proposal, an EIS was not required.

In addition, the feasibility review is only one step in the approval process. The plan of operation report that would need to follow a favorable feasibility determination would include the details for the proposed landfill design, construction, operation, monitoring and closure. In this case, the plan of operation would also need to contain a detailed waste excavation and relocation plan. The department has the authority to impose conditions in the feasibility determination to require the plan of operation contain certain protections to human health and the environment, including an environmental monitoring plan to monitor air and groundwater quality during and after the excavation and relocation project. The feasibility determination contains conditions intended to address these items.

## 2. Waste Exhumation and Nature of BRL Waste

***Comments:*** *More than half the comments submitted either explicitly or implicitly stated concerns about the unearthing, exhumation, or relocation of historical waste from the BRL, or about the nature of that waste. The concerns are largely predicated on the potential for toxins to be released or to migrate during this activity (Note: comments on toxin exposure are addressed separately below). Approximately 10 comments were related to how adequately BRL waste has been or will be characterized and concerns about hazardous waste, respectively.*

**Response:** Prior to commencing exhumation of the existing BRL waste, WMWI would need to prepare a site-specific plan to uncover, manage, and dispose of the waste and surrounding soils in a manner that is protective of human health and the environment. This plan would be submitted with the plan of operation for the proposed expansion. Management of these materials would primarily involve disposal. For unearthed soils, management might include beneficial reuse on the WMWI property, as well as on-site treatment prior to reuse. Sampling procedures to characterize the materials along with health-and-safety protocols would be developed as part of the plan. The plan must describe air monitoring, including for particulate matter emissions, fugitive dust, friable asbestos, odor, and the potential release of hazardous air pollutant (HAP)/volatile organic compound (VOC) emissions from ruptured containers or other sources.

The details of the proposed waste excavation and relocation plan would also be reviewed by staff in the department's Remediation and Redevelopment Program and includes input from the EPA. Staff in the Remediation and Redevelopment Program have experience reviewing other waste excavation plans and contaminated site clean-up plans, which sometimes involves the removal of soil or waste contaminated with substances similar to those in the BRL.

There is a robust environmental monitoring network across the entire Orchard Ridge landfill complex, which includes the BRL. Additional groundwater monitoring wells were installed as part of the geotechnical investigation for the proposed expansion. The plan of operation for the proposed Southern Unit would include continued groundwater monitoring using the wells installed for the existing landfill as well as new monitoring wells installed for the expansion to meet the requirements of ch. NR 507, Wis. Adm. Code, for municipal solid waste (MSW) landfills. The groundwater monitoring data collected from the monitoring wells would continue to provide information about groundwater quality. The surface water

and groundwater monitoring needs will be further evaluated during the plan of operation, where the department's approval establishes specific monitoring requirements.

The requirements of ch. NR 507, Wis. Adm. Code, for MSW landfills include routine monitoring of landfill leachate, gas and groundwater for a large group of substances that have been identified as having the potential to be released from municipal solid waste. Department records show that the existing facility continues to submit its environmental monitoring data to the department in accordance with its approved plan of operation and ch. NR 507, Wis. Adm. Code.

### **3. Toxin Exposure, Air and Groundwater Quality**

***Comments:*** *More than half the comments submitted either explicitly or implicitly stated concerns about human and environmental exposure to toxins. Approximately 40 comments specifically cited concerns related to air quality; and about half as many comments were related to groundwater quality, including drinking water from private supply wells. In addition, about a dozen comments expressed concerns about the uncertainty of long-term exposure effects.*

#### **Response:**

The department would require WMWI's waste excavation and relocation plan to include air and groundwater quality monitoring to ensure detection of releases of hazardous emissions and to include a plan to address any releases at an early stage to prevent and minimize impacts. The plan would also need to implement protections during the excavation and relocation activities to proactively prevent and minimize releases. These protections would include having a good waste identification and management plan in place so waste can be managed in a timely manner.

The project activities would be limited to the Orchard Ridge RDF property and would be implemented in stages over a period of a few years. During this time, the excavated waste would be exposed for limited periods of time and once relocated to a lined landfill, would be covered quickly. Conducting the work during the cold weather months would limit volatile organic compound emissions since cold temperatures would slow down volatilization. Any hazardous waste encountered would have to be handled and disposed of or treated under the hazardous waste regulations.

The project is likely to bolster long-term protections to groundwater quality because the waste in the BRL is currently positioned below the water table and the BRL does not have a liner. Groundwater can mix with waste and flow freely into the aquifer. Relocating the waste into a new facility would prevent contact between the waste and groundwater and provide effective control of liquid levels in the waste into the future through leachate extraction.

The feasibility determination includes a condition that requires the plan of operation to provide a modified design to raise base grades on the east side of the landfill, from what WMWI proposed in the feasibility report to reduce the volume of new waste that would be located in the fully lined facility at elevations below the water table. This will ensure more protection for groundwater quality than the proposed design.

### **4. Superfund Status**

***Comments:*** *Roughly half the comments submitted either explicitly or implicitly stated concerns about the BRL as a federal Superfund site. A handful of comments (approximately 5) questioned the ability to maintain environmental monitoring during the construction process.*

**Response:** The BRL is a federal Superfund site; that is, it is on the federal National Priorities List (NPL) administered by the EPA under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Institutional controls were required by the 1996 Record of Decision (ROD) as part of the remedy for the BRL facility. These exist in the form of a deed restriction placed on the property in 2007 and restrict certain actions on the site without the prior approval of the department. WMWI will need to review the existing deed restriction, and request department approval prior to taking any actions that are prohibited in the deed restriction, such as alterations to the landfill cap. The department's Remediation and Redevelopment Program anticipates the decision document required to document the new approach would be an Explanation of Significant Differences (ESD). The ESD process can be concurrent with the design and construction of the landfill expansion. The project would not interfere with environmental monitoring requirements.

## 5. Siting Process and Public Involvement

**Comments:** *Approximately 40 comments submitted either explicitly or implicitly stated concerns about the limited time and lack of opportunities for public input or influence on the siting process. About half as many comments requested the department delay or halt its review of the proposed expansion, and not rush ahead with its review until more information or expertise is available, respectively. Approximately 10 comments were critical of the role of local/municipal officials. In addition, approximately a dozen requested a public hearing be held.*

**Response:** The department follows the landfill siting process prescribed in ch. 289, Wis. Stats. and in chs. NR 500-538, Wis. Adm. Code. The statutory process was designed to protect and balance the rights of the public with the rights of a property owner wishing to develop a waste disposal facility. These rules mandate a detailed process with multiple stages and time-lines for the department's review of landfill proposals. The department must have the authority in statute or administrative code and be able to justify each action and decision it makes during the process. The department is not empowered to delay or halt the process at will.

The stages to landfill siting in Wisconsin include the initial site inspection, the initial site report, the feasibility report, the plan of operation report, the first phase liner construction documentation report and the issuance of an operating license. Completing the multiple stages of the landfill siting process typically takes years. In this case the siting process for the proposed Southern Unit started in 2018. The process also involves input from staff in other department programs who have expertise on specific subjects that are related to the proposal.

The siting process includes a public input component during the feasibility review stage which includes a 30-day public comment period and may include an informational hearing or a contested case hearing if one is requested. In this instance, an informational hearing was requested. The department held a public informational hearing on May 18, 2021. The department followed the required public input process during the feasibility review stage. The feasibility review stage only determines if the proposed location and the proposed conceptual design for a landfill are feasible. It does not guarantee approval of the proposed landfill.

If the department determines that all of the procedures and requirements are met and that the landfill can be constructed and operated in an environmentally sound manner, contingent upon complying with any conditions in the feasibility determination, then the department may not deny the proposed landfill or delay issuing the feasibility determination.

The local negotiation process under s. 289.33, Wis. Stats. is a separate process that parallels the landfill siting process the department oversees. The department does not have the authority to become involved

in the local negotiation process for a host agreement between participating municipalities and the landfill applicant. The Waste Facility Siting Board may be called upon to provide some guidance and arbitration over this process; however, for the most part the local negotiation process is handled by the parties involved in accordance with the statutory siting law.

## 6. Financial Impacts

***Comments:*** The department received roughly a dozen comments that provided explicit concerns about the effects of the proposed landfill on the local economy. Most of the comments cited concerns that the project would be detrimental to local businesses and to property values. Additional comments cited concerns of long-term taxpayer liability for issues that could arise from the landfill.

***Response:*** Local economic concerns can be addressed by participating municipalities as part of the negotiated host agreement. Some municipalities have negotiated property value guarantees and financial compensation to local governments in their host agreement.

The landfill provides an economic service in the form of waste disposal to businesses and industry in the immediate area. In addition, the Orchard Ridge facility contributes to servicing greater waste disposal needs of southeast Wisconsin.

With respect to long-term taxpayer liability, under ch. 289, Wis. Stats. and ch. NR 520, Wis. Adm. Code, WMWI must provide proof of owner financial responsibility for closure and for long-term care for at least 40 years after site closure. Even though the code requires owner financial assurance for only 40 years after closure, WMWI will be legally responsible for the long-term care of, and for addressing any detrimental environmental impacts caused by the landfill, in perpetuity.

## 7. Public Nuisance

***Comments:*** The vast majority of comments that expressed nuisance concerns were related to unpleasant odors attributed to the existing landfill(s). Approximately 20 comments cited malodors as a concern. A handful of comments (approximately 5 or less) were related to the aesthetic impacts (e.g., windblown litter), as well as the noise (e.g., backup alarms) and vehicular traffic associated with landfill operations.

***Response:*** The department's project summary and environmental analysis recognizes that some landfill-related nuisances such as unpleasant odors may result from landfilling at times, especially if it involves uncovering old waste. Odors can come from the waste mass itself and from the landfill gas generated by decomposition of organic material in the waste. Methane gas is generated during the anaerobic decomposition of organic waste, which is odorless. However other non-methane organic compounds, some of which contain sulfur, have an unpleasant odor.

While odors do occur at times, landfill operators are required to take measures to control and minimize the release of odors. These measures include restricting the active waste filling operation to as small an area as practical, covering the waste with soil or other suitable cover at the end of each day, implementing intermediate cover over the waste if an area remains inactive for 6 months, installing active gas extraction wells to remove landfill gas, capping landfill structures such as leachate cleanout pipes, manholes or sections of drainage blanket, that may be conduits for gas and actively checking for odors around the landfill on a daily basis. The landfill would be required to have an odor control plan and a windblown waste control and clean-up plan.

In addition, the department conducts periodic compliance inspections and follows-up on any complaints received regarding nuisances from the landfill.

To some degree noise from vehicles and truck traffic is unavoidable; however, the landfill would have restrictions on operational hours. Therefore, noise nuisances should not occur during evening hours. Operating hours and vehicle issues are subjects which can be negotiated in the local host agreement.

## 8. Need and Alternatives

***Comments:*** *The department received numerous comments that explicitly or implicitly stated concerns about the motivation for and the location of the proposed landfill. Approximately 10 comments expressed the belief that the proposal is largely or entirely profit-driven. Other commenters questioned the appropriateness of siting a new landfill in this area, near residences and businesses.*

***Response:*** Landfills serve a purpose and a need in today's society because our current society generates large volumes of waste. Landfilling currently remains the most common method used by society to manage waste. Landfills may not always be the preferred or chosen method for handling and disposing of waste as technology and management options change and evolve. The department has the ability to provide education on minimizing waste and reusing and recycling products; however, the department does not have the authority under Wisconsin law to dictate waste disposal methods. Waste disposal service is a business and private corporations that operate waste disposal services must make money in order to stay in business. The profit a company may make from its landfilling operations is not a criterion the department may consider when making a feasibility determination.

In order to be effective, landfills need to be within a reasonable distance from the area they are intended to serve. Otherwise, the service becomes unaffordable and impractical. It also creates other potential environmental impacts if waste needs to be hauled great distances for proper management. If a property has been approved and developed for landfilling use, then most of the time it makes sense for the landfill owner to maximize the use of the property and continue using as much as is feasible for landfilling. If the proposed Southern Unit is not developed, then a new landfill would need to be constructed sooner at a different location, with the risk to the landfill applicant of potentially encountering other constraints to site development that may be equally or more significant than the constraints identified for the Southern Unit. The decision on whether to propose an expansion of an existing landfill on the same property or to look for a new property to develop is one for the landfill applicant and not the department.

There are very few (if any) perfect places for a landfill, necessitating compromises among landfill proponents, local residents, municipalities, and the department as long as the compromises would not prevent the performance standards in s. NR 504.04 (4), Wis. Adm. Code from being met.

Citizens can influence future landfill sites by working through the local political process to establish zoning regulations and other local ordinances that protect valuable natural resources and provide for orderly industrial development including solid waste management. Citizens can also participate in government decision-making regarding zoning variances and conditional use permits that may affect landfill locations. On a larger scale, citizens can participate in the legislative process to promote new or preferred waste management options that reduce the need for landfilling and the generation of waste.

## 9. Ecological Impacts

***Comments:*** *The department received numerous comments that explicitly or implicitly stated concerns about deleterious effects on the natural landscape surrounding and downstream of the proposed expansion site. Approximately 15 to 20 comments were related to impacts on local waterways and wetlands, respectively. A handful of comments (approximately 5 or fewer) were related to the well-being of wildlife, as well as runoff/discharges from the landfill.*

**Response:** Under s. NR504.09(1)(a), Wis. Adm. Code storm water drainage ditches, structures and sedimentation basins are designed to control rainfall runoff and limit entrained sediment from reaching surface water bodies. The site has an existing industrial storm water permit. An updated Storm Water Pollution Prevention Plan would be submitted for department review prior to beginning activity related to the proposed expansion.

Before any wetland excavation or filling could occur, WMWI would need to obtain a Wisconsin wetland individual permit under s. 281.36, Wis. Stats. This permit is handled by the department's Wetland and Waterways Management Program, and that process has its own provisions for public involvement. In addition, and before any wetland excavation or filling could occur, WMWI would need to obtain a wetland impact permit from the U.S. Army Corps of Engineers (U.S. ACE) under Sections 401 and 404 of the federal Clean Water Act, if the U.S. ACE determines it has jurisdiction. For the purpose of its feasibility review, the department's Waste and Materials Management Program generally defers to the specialists in the Wetland and Waterways Management Program and the U.S. ACE on these matters. The U.S. ACE is a federal agency with its own jurisdiction. If a wetland permit is issued direct wetland impacts would be offset with wetland mitigation.

In addition, WMWI has submitted an application for a stream realignment permit under s. 30.195, Wis. Stats. If a stream realignment permit is issued, the proposed plan includes enhancements to the stream such as adding some sinuosity into the flow to improve stream quality.

## 10. WMWI Compliance

**Comments:** *The department received approximately 15 comments that explicitly or implicitly stated concerns about compliance history (e.g., at its Metro Landfill) or lack of disclosure during the siting process.*

**Response:** The feasibility report included a review of the Eastern Expansion's compliance status and environmental performance in accordance with s. NR 512.13(4), Wis. Adm. Code. Also, prior to issuance of a feasibility determination, the department conducts a review of all other solid or hazardous waste facilities owned by WMWI to determine compliance with conditions of approval or orders, if applicable, in accordance with s. 289.34, Wis. Stats. The compliance status of other facilities was solicited from other department staff assigned to those facilities. No new non-compliance items were identified that would preclude the department from issuing a favorable feasibility determination.

11. **Comments:** *The department received 2 comments regarding the following statement in the May 4, 2011 notification letter from WMWI to affected municipalities for the Eastern Expansion. The proposed expansion is on the property described below which has not previously been landfilled and will be located entirely within the Village of Menomonee Falls, Waukesha County, Wisconsin, East of the current Orchard Ridge RDF." The letter includes a map showing the outline of the proposed expansion, which includes the area of the Southern Unit, but the map does not label the BRL. The comments are that this statement is an error and not accurate because the BRL is located in the area of the proposed Southern Unit.*

**Response:** The department agrees that the application from 2011 is inaccurate in its statement that the proposed expansion is on property which has not previously been landfilled. This statement is inaccurate because of the known presence of the BRL Superfund site within the footprint of the proposed expansion. However, in issuing its determination of completeness, the department determined that the notice met the intent of the statutory requirement and the error did not serve to mislead the affected municipalities. Although the existence of the Boundary Road Landfill Superfund site is common knowledge, this facility



has not previously been subject to the landfill siting process outlined in ch. 289 Wis. Stats. The application submitted in 2011 serves notice to all affected municipalities of the proposed expansion on land which has not previously gone through this process irrespective of prior or current land use. For this reason, the department determined this was not an issue which prevented the Feasibility Report from being determined to be complete.

The feasibility determination will be posted for at least 30 days on the department's website at <https://dnr.wi.gov/topic/Waste/Comment.html>.

Sincerely,



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