



Amy Loudenbeck

REPRESENTING WISCONSIN'S 31ST ASSEMBLY DISTRICT

**Testimony before Assembly Committee on Environment & Forestry
Assembly Bill 494
Rep. Amy Loudenbeck
November 7, 2013**

Thank you, Mr. Chairman, Representatives, for the opportunity to speak on this bill that would provide the Wisconsin DNR with the ability to state waive tipping fees for waste disposal under a very limited set of circumstances.

Under the bill, waiver could be provided by the DNR in order to mitigate potential environmental impacts and related liability at the Department's request.

There is a construction and demolition waste facility in my Assembly District that has been referred to the Wisconsin Department of Justice for alleged violations of the State's solid waste laws.

The Department has been working with haulers that brought waste into the facility, but were not a part of the ownership or operation of the facility, to structure a voluntary removal of the tonnage brought in by each hauler in exchange for a release of liability from future enforcement actions.

The haulers have asked if there is a way to have the tipping fee waived by the Department, to help offset the costs they are being asked to voluntarily incur for loading, hauling, equipment time, operator wages and regular disposal fees.

This bill would provide the DNR with the ability to waive the tipping fee for this limited type of voluntary cleanup.

Thank you for your time.



April 4, 2013

2nd Notification

As you may know, the Department of Natural Resources (DNR) has referred Bedrock Grinding, LLC, (1105 East LaPrairie, Turtle Townline Road, Town of LaPrairie, Rock County) to the Wisconsin Department of Justice for alleged violations of the State's solid waste laws, including violations of Bedrock Grinding's approved construction and demolition processing facility plan of operation. In February, the Town of LaPrairie revoked Bedrock Grinding's conditional use permit.

Bedrock Grinding's records indicate that your company hauled waste to this facility. DNR estimates that approximately 30,000 tons of construction and demolition waste currently remain on site. DNR is concerned that the waste could cause groundwater contamination and other environmental problems at the site. If environmental problems are documented in the future, entities that brought waste to the facility may have responsibility under state cleanup laws or US EPA regulations.

Enclosed is a list of the companies that are receiving this same letter. DNR has scheduled a meeting for 1:00 PM on Thursday April 11th at its Janesville Service Center located at 2514 Morse Street in Janesville. At the meeting, we will provide an overview of the situation at Bedrock Grinding and hope to explore with you and the other companies ways to mitigate potential environmental problems and subsequent liability. Please contact me at 608-275-3466 or dennis.mack@wisconsin.gov by March 27th regarding whether your company will participate in this meeting. Thank you.

Dennis Mack, P.E.,
Waste Management Supervisor
South Central Region

Cc: Allan Arndt – Town of LaPrairie
Bradley Motl - DOJ
Ann Coakley - WMM Director
Mark Aquino – SCR Director

Steve Meade – Bedrock Grinding
Butch Luety – Bedrock Grinding
Cheryl Heilman – Legal Services



April 30, 2013

Below are our answers to the questions raised at the April 11th Bedrock Grinding Haulers' Meeting. Please respond in writing (letter or email) no later than May 13th indicating whether your company intends to participate in voluntary removal of the construction and demolition waste at Bedrock Grinding. The Department will then schedule a meeting of those companies responding affirmatively.

Questions and Answers from April 11th Bedrock Grinding Haulers' Meeting

1. Can DNR provide a release of liability to those who remove and properly dispose of at least the number of tons of C&D waste that BG records indicate they brought to the site?

For haulers who document the lawful disposal of an agreed upon tonnage of construction and demolition waste from the Bedrock Grinding site, DNR will agree not to initiate legal action to recover any further costs, penalties, or additional requirements for clean up or remediation of the Bedrock Grinding site. Bedrock Grinding has signed an access agreement that would allow this to occur.

2. Can DNR waive part or all of the \$13/ton state tipping fee?

Because these fees are contained in Wisconsin statutes, we cannot. State agencies do not have discretion in applying statutes.

3. No groundwater assessment was done prior to approving C&D processing at Bedrock Grinding. If C&D waste isn't cleaned up and contamination is found in the future, how will DNR know it's from C&D waste versus some activity that predated it?

State and federal solid waste management regulations require only landfills to determine existing groundwater quality prior to operation. This is the case because of the permanence of landfills, and the larger scale of impacts that might be caused by a malfunctioning landfill. Requiring this step for all solid waste facilities would in most cases result in unnecessary expense to the owner and consequently to the individuals that utilize the site.

In nearly all groundwater investigations, background water quality is unknown. However, the sources of contamination can often be determined by looking at both the contaminants present in the groundwater and their concentrations and comparing this information to that from the waste believed to be the source of the contamination.

If DNR wants haulers to remove and properly dispose of the C&D waste at Bedrock Grinding, will they first do a survey in order to provide an accurate estimate of the amount of C&D waste on site?

We do not believe that a survey would provide a significantly better volume estimate than the tape measuring that we previously performed. A survey also would not determine the loose volume of waste to be hauled or the weight of waste to be disposed.

5. How does DNR know that Bedrock Grinding themselves didn't haul C&D waste to the site?

We don't know this with certainty. However, Bedrock Grinding staff indicated that they hauled only wood to the site, and we've received no information from other parties contradicting this.

6. Why isn't the bank that holds the mortgage for the Bedrock Grinding property in the mix? They have a lot to be gained financially if the site is suddenly cleaned up.

We agree that cleanup of the site would likely increase the value of the property from its current level. However, our efforts here are focused on eliminating environmental degradation from the construction and demolition waste at the site, enlisting the help of those entities that brought this waste to the site.

7. Does Bedrock Grinding have insurance? If so, their insurance company should pay for the cleanup.

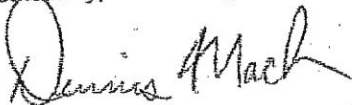
Bedrock Grinding has indicated to us that they do not. Given their financial difficulties, even if they did have insurance, we believe it's unlikely that premiums continued to be paid.

8. Which landfills would be available, and are there any volume discounts available from normal tipping fees?

The closest landfills would be the City of Janesville Landfill, Advanced Disposal's Mallard Ridge Landfill near Delavan, and the Waste Management Deer Track Park Landfill in Johnson Creek. In Illinois, there are also two active landfills just south of Rockford off of Highway 251.

Janesville has informed us that they do not provide volume discounts. Representatives from the Advanced Disposal Mallard Ridge Landfill have indicated that they would provide volume discounts. An advantage with Illinois landfills is that their state tipping fees (and therefore their total tipping fees) are lower than in Wisconsin. This lower tipping fee may offset longer hauling distances.

Sincerely,



Dennis Mack, P.E.
Waste Management Supervisor
South Central Region



**Testimony of DNR on AB 494
Assembly Environment and Forestry Committee
November 7, 2013**

Good morning, Mr. Chairman and committee members. My name is Brad Wolbert and I am the DNR section chief in charge of recycling and solid waste. Thank you for this opportunity to testify, for information only, on Assembly Bill 494, relating to waiving the environmental fees on certain solid waste landfilled in Wisconsin.

The bill would allow the DNR to waive the state's landfill environmental fees for solid waste removed from a property where the DNR has requested the removal of that waste to mitigate potential environmental contamination. The idea is that by waiving these fees, the DNR might reduce some of the barriers for someone to respond to a DNR request to remove the waste and reduce the potential for a more expensive cleanup to have to be carried out later.

The bill contains provisions that would prevent the fee waiver from being used by someone who has knowingly violated the law by putting the waste on the property in the first place, or who knew or should have known that they were creating the need for a waste removal action. And the bill spells out the mechanics of how the fee waiver would be implemented, with the DNR providing the waste hauler with a written document certifying that the fees are waived for the material in question.

We don't interpret this bill as applying to the far more typical environmental cleanup case where we inform a responsible party of his or her obligations under the state Spills law to investigate and clean up environmental contamination. This bill would apply to cases where waste needs to be removed to a licensed disposal facility to prevent environmental impacts and we have asked some other party, not the responsible party, to remove the waste voluntarily. The situations for which this fee waiver would apply appear to be somewhat limited, but they can be challenging cases for the Department and for local governments and property owners to deal with, and having discretion to waive state tipping fees might be helpful in some cases. It's only the state portion of the total landfill fee that would be waived – the landfill would presumably still charge its fee for accepting the waste material.

Thank you, and I'd be happy to answer any questions you may have.

Fiscal Estimate Narratives

DNR 11/7/2013

LRB Number 13-2333/1	Introduction Number AB-0494	Estimate Type Original
Description Waiver of fees imposed on waste disposed of at a solid or hazardous waste disposal facility		

Assumptions Used in Arriving at Fiscal Estimate

The bill authorizes the Department to waive tipping fees, which are based on the weight of solid or hazardous waste disposed of at a landfill or other waste disposal site, in order to provide an incentive for participation in waste removal activities at the Department's request.

State tipping fees range anywhere from \$0.497/ton to \$12.997/ton, depending upon the category of waste being disposed. The Department assumes that the proposed exemption in the bill applies to very unusual situations where solid waste needs to be removed from a property to prevent environmental contamination, the waste is not subject to a landfill ban, the waste is voluntarily being removed from a property, and the waste is being removed by a third party and not the person who created the improper disposal.

The Department considers the impact of the proposed exemption on tipping fee revenues to be indeterminate.

Long-Range Fiscal Implications