DEQ	RESOURCE MANAGEMENT DIVISION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: November 22, 1994 **Revised Date:** August 17, 2007 **Reformatted Date:** July 11, 2012	**Subject:** Construction Permit Modifications and Changes **Division/Office and Program Names:** RMD-Solid Waste and Land Application Section		**Category:** ☒ Internal/Administrative ☐ External/Noninterpretive ☐ External/Interpretive
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A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

INTRODUCTION, PURPOSE, OR ISSUE:

The purpose of this policy/procedure is to specify the policy for staff for the review and approval of modifications to a disposal area that vary from the original construction permit. Attached is a flow chart that shows how such modifications are to be processed. The basis for the flow chart is provided below.

AUTHORITY:

Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

POLICY:

Changes That Require a New Construction Permit

Section 11510(2)(d) of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, specifies in part, "... Except as otherwise provided in Section 11542, an expansion of the area of a disposal area, an enlargement in capacity of a disposal area, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application, constitutes a new proposal for which a new construction permit is required...."

Changes to a disposal area that constitute an expansion, enlargement, or alteration in type constitute a "new disposal area." Such changes require a new construction permit and are subject to all requirements for a new construction permit and new disposal areas (including all county plan reviews). An application and fee for a new permit must be submitted.

Modifications That Require Revision of a Final Order

Section 11512(2) of Part 115 specifies in part that, "...a person shall not conduct, manage, maintain, or operate, a disposal area contrary to an approved solid waste management plan, or

contrary to a permit, license, or final order issued under this Part." Design requirements at some landfills were established by order. Proposals to modify a design established by an order may require a revision to the order. If the design established by order was included in lieu of monetary penalties, then an alternative penalty must be included in the revised order. A new construction permit or permit modification may be needed if the design modification is an upgrade or a change to a construction permit.

Upgrading That Does Not Require Department of Environmental Quality (DEQ) Pre-Approval

Section 11510(2)(d) of Part 115 specifies in part that, "...the upgrading of a disposal area type required by the department to comply with this part, or the rules promulgated under this part or to comply with a consent order does not require a new construction permit." In addition, R 299.4303(3) of the administrative rules implementing Part 115 specifies that "the owner and operator of an existing construction and demolition waste landfill are not required to submit revised engineering plans to the director, but shall submit as-built plans as part of the construction certification pursuant to the provisions of R 299.4921."

R 299.4421(5) of Part 115, applicable to Type II landfills, states that, "the upgrading of an existing disposal area in accordance with the provisions of subrules (1) and (2) of this rule does not require department approval. Construction of the landfill shall be certified in accordance with the provisions of R 299.4921 and the certification shall be submitted with as-built plans with the operating license application for the upgraded units."

The exemption from plan approval specified above is limited to "upgrading" as defined in R 299.4106a(l) of Part 115. R 299.4106a(l) of Part 115 states that an "Upgrading" as used in Section 11510 of Part 115, means any of the following:

i. The installation of thicker or additional liners in the bottom or final cover of a landfill.
ii. The installation of gas recovery systems at a landfill.
iii. The installation of equipment to separate recyclable material at a landfill.
iv. A restriction in the type of waste that is received at a landfill beyond that previously approved.
v. Other improvements to a disposal area that are approved by the director."

Upgrading That Requires DEQ Approval

Modifications which may meet the definition of an "upgrading," as defined above, but which are not specifically required by rule, are not subject to a new construction permit or permit amendment, but require pre-approval by the DEQ through the submission and approval of amended engineering plans.

Minor plan modifications requested by an applicant, which provide equivalent protection to previously approved plans, may be approved by DEQ staff as an "improvement" under R 299.4106a(l)(v) of Part 115.

Any upgrading of an area not yet licensed, including unspecified "improvements," shall be approved by the Chief of the Solid Waste and Land Application Section (SWLAS). Any upgrading of an area already licensed, including modifications to final cover, gas recovery systems, or other "improvements," shall be approved by the Resource Management Division District Supervisor. Amended engineering plans submitted for review shall be approved or denied within 120 days of receipt, if possible.

Modifications Which Require an Amended Construction Permit

Modifications to a disposal area that do not involve an upgrading or an expansion, alteration, or enlargement, but which vary from plans approved as part of the construction permit for the disposal area, shall require an amendment of that construction permit.

The latest update to the Part 115 Delegation Letter specifies that the issuance of construction permits under Part 115 be delegated to the Chief of the SWLAS for solid waste disposal areas other than a landfill. The DEQ Director issues construction permits for sanitary landfills.

In addition, construction permit modifications shall be approved accordingly. An application for such a modification requires revised engineering plans that comply with R 299.4910 of Part 115 Rules. However, applications for a modification that involve only a change in design do not constitute a new disposal area and, therefore, are not subject to the location restrictions or other rule requirements applicable to new disposal areas. Modifications are subject to county plan reviews.

Construction permit modifications shall be processed in accordance with the same procedure that is used for a new construction permit and require the submittal of an application and modification fee of $250, per Section 11509(5). Amended engineering plans submitted for review shall be approved or denied within 120 days of receipt.

Modifications That Do Not Vary From a Permit

Modifications that do not vary from a prior construction permit, if any, do not require a permit modification but shall be approved by the DEQ.

In some cases, the "approved plans" for a disposal area were not approved as part of a construction permit. This may occur because (1) engineering plans were approved prior to the effective date of Part 115 or (2) engineering plans were upgraded after issuance of the permit. In either case, the DEQ staff may also approve modifications to such plans with no permit modification.

Similarly, when a construction permit allows certain modifications to be made to a disposal area, either through a permit condition or by reference to approved plans that provide for alternate options, such modifications may be made with DEQ approval without a construction permit amendment if the modification does not violate the permit or the plans are approved as part of the permit. As with an application for an upgrade, engineering plan modification requests that do not require a permit amendment shall be approved or denied within 120 days of receipt, if possible.

ATTACHMENT:

Flow chart for construction permit amendments.

DIVISION CHIEF APPROVAL:

Liane J. Shekter Smith, Chief
Resource Management Division

7/11/2012
Date