DEQ	OFFICE OF WASTE MANAGEMENT AND RADIOLOGICAL PROTECTION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: February 7, 2000 **Revised Date:** July 25, 2002 **Reformatted Date:** November 30, 2012	**Subject:** Waste Pile Closure **Division/Office and Program Names:** OWMRP-Solid Waste Section		Category: ☐ Internal/Administrative ☐ External/Non-Interpretive ☒ 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:

This policy is to provide direction to staff in clarifying how waste piles that contain nonhazardous solid wastes and/or inert wastes are regulated under Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and to differentiate waste piles authorized by rule from open dumps. The obligations contained in this policy pertain to the current owner/operator of a waste pile even if they were not the party to place waste into the waste pile. How the waste may be used in the future, how and when it was placed on the ground, and under what conditions all play a part in determining how it is regulated under Part 115. The attached Figures 1, 2, and 3 illustrate how waste piles are regulated under Part 115.

AUTHORITY:

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

DEFINITIONS:

"Disposal" means any of the following:

(i) The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. Disposal includes the placement of solid waste in an open dump, landfill, or waste piles.
(ii) The open burning or incineration of solid waste.
(iii) The processing of solid waste.
(iv) The storage or handling of solid waste at a solid waste transfer facility.
(v) The abandonment of solid waste in place of other disposal.

"Open dump" means a disposal area which is not licensed under the act and which is not otherwise authorized by the director."

"Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage."

"Speculative accumulation" means the storage of material intended for recycling or reuse at a site for a period of over one year, or for low-hazard industrial waste accumulated at the site of generation, a period of three years. A material is not accumulated speculatively, however, if the person who accumulates it can show that the material can be recycled into marketable raw materials or new products and that, during the period, the amount of material that is recycled or that is transferred to a different site for recycling equals not less than 75 percent, by weight or volume, of the amount of material that was accumulated at the beginning of the period.

"Disposal area" means a solid waste transfer facility, incinerator, sanitary landfill, processing plant, or other solid waste handling or disposal facility utilized in the disposal of solid waste.

POLICY:

Piles of materials that meet the exemptions provided below are not required to be licensed or permitted under Part 115. Piles that cannot meet these exemptions are prohibited open dumps. To achieve compliance with Part 115, owners of prohibited open dumps should dispose of the waste in the piles at a facility licensed under Part 115.

Does the Waste Pile Contain Regulated Wastes?

The first step in determining the regulation of a pile of material is to determine if the material is regulated as a solid waste under Part 115. The flow chart in Figure 1 will aid staff in determining if the pile of material is regulated as a solid waste. It should be noted that numerous conditions are attached to the various exemptions (listed in Figure 1) that must be followed in order for a material to be exempt from regulation.

Does the Waste Pile Need a Permit or License?

The Part 115 Rules provide several exemptions for low-hazard industrial waste piles. To meet these exemptions, the design and management of the pile must prevent a nuisance, must not involve a discharge to the air and/or water that violates state law (see Figure 3), and must not result in environmental contamination after closure.

Pursuant to R 299.4129 and R 299.4130 of the Part 115 Rules, certain types of waste piles do not require a permit or license, including:

- Low-hazard industrial waste piles under certain circumstances: R 299.4129(2)(a) of the Part 115 Rules allows low-hazard industrial waste reused in an industrial process to be stored in an uncontained pile. However, owners/operators who seek exemption under the "reuse" provision of R 299.4129(2)(a) should keep records as required under R 299.4119 of the Part 115 Rules, which will demonstrate that the waste material is not speculatively accumulated. Waste piles are considered an open dump and are prohibited if the waste is being speculatively accumulated. To demonstrate that the waste is not being speculatively accumulated the owner or operator of the waste pile must be able to provide records showing that 75 percent of the waste put into the pile for each year of its existence was sent for recycling or reuse within that year pursuant to R 299.4105(1).

- Low-hazard industrial waste in an existing (on October 8, 1993) pile, and that does not expand horizontally: R 299.4129(2)(b) of the Part 115 Rules exempts low-hazard industrial waste stored in an "existing pile." An existing pile is one that existed on October 8, 1993. The owner of a pile that is an "existing pile" may continue to add waste to the pile provided that the footprint of the pile does not grow and such placement does not violate other state laws. Pursuant to R 299.4129(2)(b), the placement of waste beyond the boundary of the pile, as it existed on October 8, 1993, is NOT authorized. Such an expansion beyond the existing boundary would constitute a "new disposal area" requiring a construction permit. The definition of "new disposal area" in R 299.4104(e) of the Part 115 Rules specifies that a new disposal area include a "disposal area, other than an existing disposal area, that is proposed for construction." In this case, only that area in existence as a pile on October 8, 1993, qualifies as an existing disposal area. The owner/operator of a waste pile that was in existence on October 8, 1993, must provide proof that the waste pile existed on that date by providing a survey, aerial photograph, or other proof acceptable to the DEQ that shows the footprint of the waste pile on or close to that date. To ensure statewide consistency in approving alternative proofs, Office of Waste Management and Radiological Protection (OWMRP) district staff should consult with the appropriate Storage Tank and Solid Waste Program staff in the OWMRP central office in Lansing.

- Low-hazard industrial waste stored at the site of generation for less than 60 days: R 299.4129(2)(c) of the Part 115 Rules allows low-hazard industrial waste to be stored in an uncontained pile up to 60 days prior to disposal. Since new waste may be generated during this 60-day period, R 299.4129(2)(c) effectively allows a pile of low-hazard industrial waste to be maintained continuously, provided the volume of the pile does not exceed the amount of waste generated over 60 days. To be able to show this exemption is being met, owners or operators of a facility storing the low-hazard waste must be able to demonstrate that the waste pile does not contain more waste than the amount generated in the last 60 days, for example by keeping records of when and how

much waste is added to the pile and when, where, and how much waste is sent for disposal.

- Construction and demolition waste piles at the site of generation for less than one year: R 299.4129(2)(d) of the Part 115 Rules allows construction and demolition waste to remain at the site where it is generated for up to one year before it must be removed from the site for disposal. To be able to show this exemption is being met, owners or operators of a facility storing construction and demolition waste must be able to demonstrate the waste was generated at the site and has not been stored for more than one year, for example by keeping records of when and how much waste is added to the pile and when, where, and how much waste is sent for disposal.

- Contained piles: Generally, waste stored for reuse or temporary disposal in piles that are contained, as specified in the provisions of R 299.4130, are not disposal areas and, therefore, are not subject to the permit and license requirements of the NREPA. Such containment provides for protection of the environment by use of liners, collection and control of water into and out of the pile, and removal of waste and decontamination of the site at closure.

The provisions of R 299.4129(3) (Items 1 through 4 above) require that owners and operators of uncontained waste piles ensure that the piles do not violate air and/or water quality requirements, do not create a nuisance, and do not result in environmental contamination after closure, i.e., owners and operators of waste piles must ensure that the operation of the waste pile does not create a "facility" as defined under Part 201, Environmental Remediation, of the NREPA. Although a monitoring program may be useful to determine whether a pile is discharging contaminants to the environment in violation of these requirements, R 299.4129(3) does not obligate the owner/operator of a waste pile to conduct such a program or to seek approval from the DEQ. However, owners and operators should take steps to prevent fugitive dust, prevent possible groundwater degradation from waste leachate, and control surface water runoff.

Surface water runoff from any waste pile may be subject to a storm water permit under Part 31, Water Resources Protection, of the NREPA. Since piles that violate the conditions of R 299.4129(3) lose their exemption, are subject to regulation as open dumps, and are prohibited, the DEQ recommends that owners and operators otherwise exempt under R 299.4129(2) consult with the DEQ District Office regarding conditions at the subject facility and the potential need for a storm water permit

Waste Pile Closures

For the closure of a prohibited waste pile, or an exempted waste pile that will not be used in the future, any remaining waste, including waste residues, shall be disposed in a solid waste landfill licensed under Part 115 or be processed for an approved use by a licensed solid waste processing facility. After removal of all the waste and any waste residues, the owner/operator must ensure that the storage of waste has not released any contaminants above the Part 201

generic residential criteria. If contamination above Part 201 criteria is discovered, the site may have to be remediated to applicable standards. In some instances, this can be accomplished by removal of the soils directly underlying a waste pile to a Part 115 licensed landfill. To ensure that no contamination exists at the site, verification sampling of the underlying soils should be undertaken following approved DEQ protocols. If the verification sampling indicates that the soils have been impacted, the owner or operator must also determine if the groundwater has been impacted by performing a hydrogeological investigation. Certain site (e.g., shallow groundwater or highly permeable soils) characteristics may warrant a hydrogeological investigation even if the underlying soils are determined to be uncontaminated.

APPENDICES: Figures 1 through 3

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November 1, 2012.
Date

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Figure 1

Does the Waste Pile Contain Regulated Wastes?

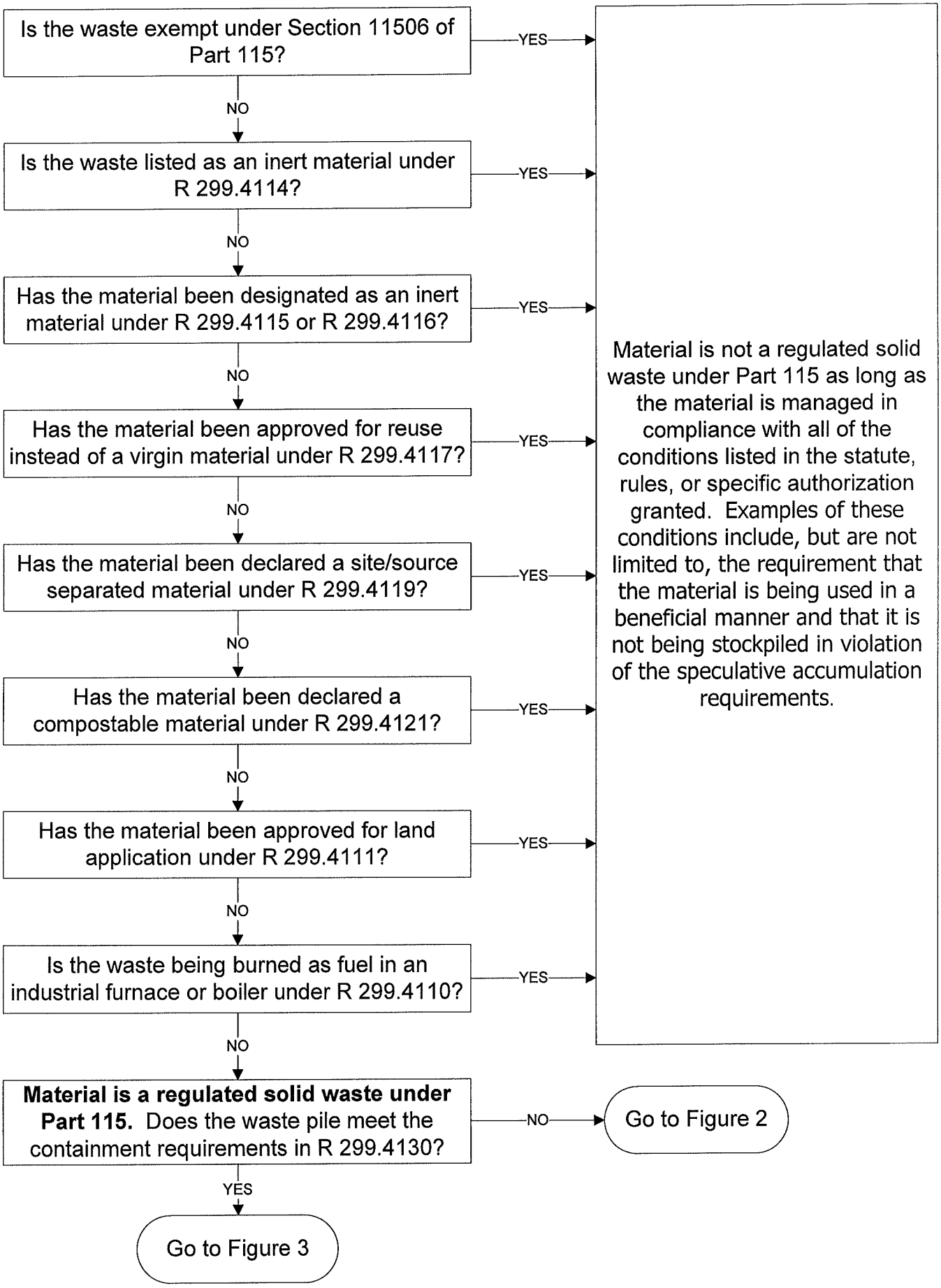


Figure 2

Does the Uncontained Waste Pile Need a Permit or License?

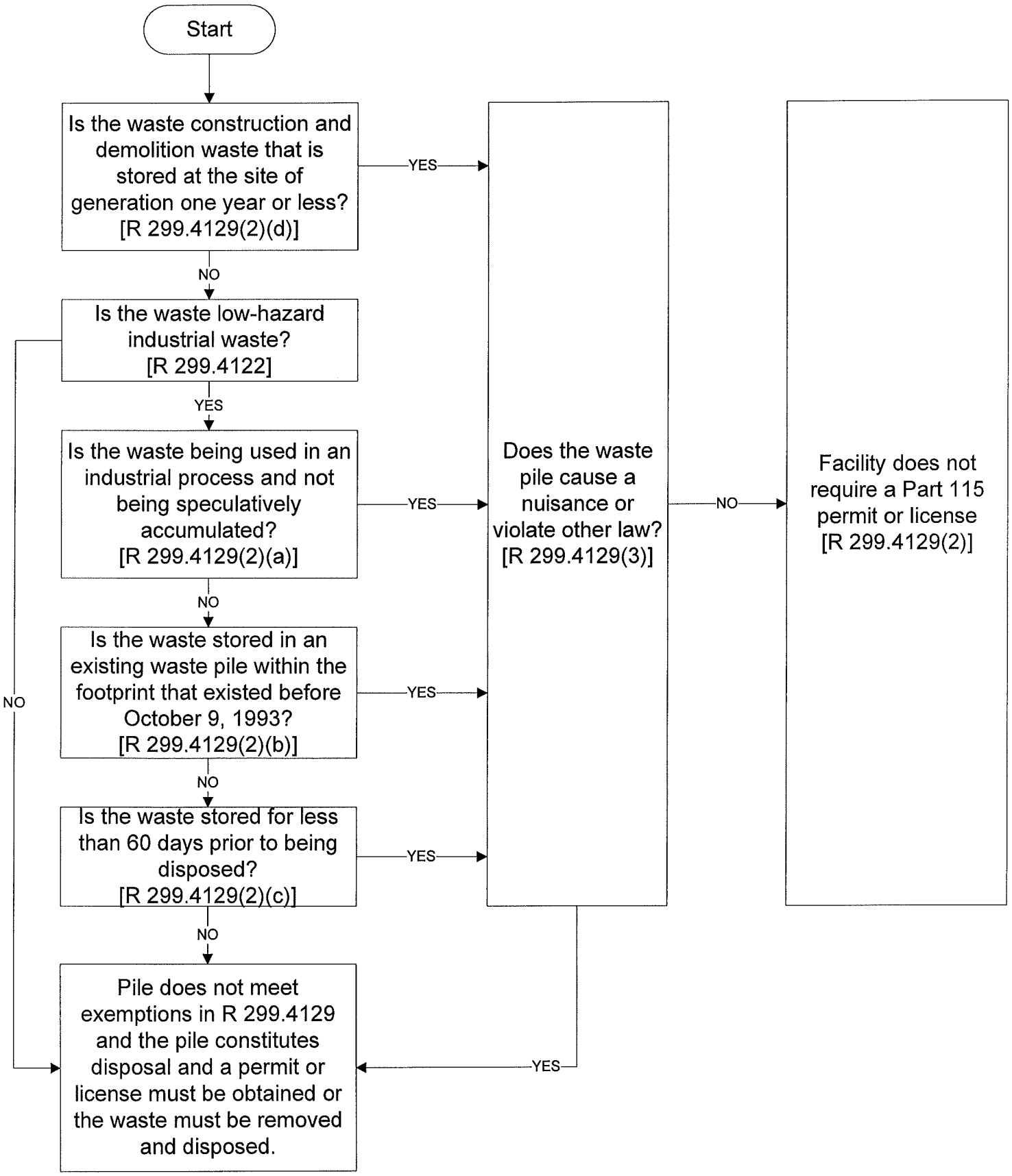
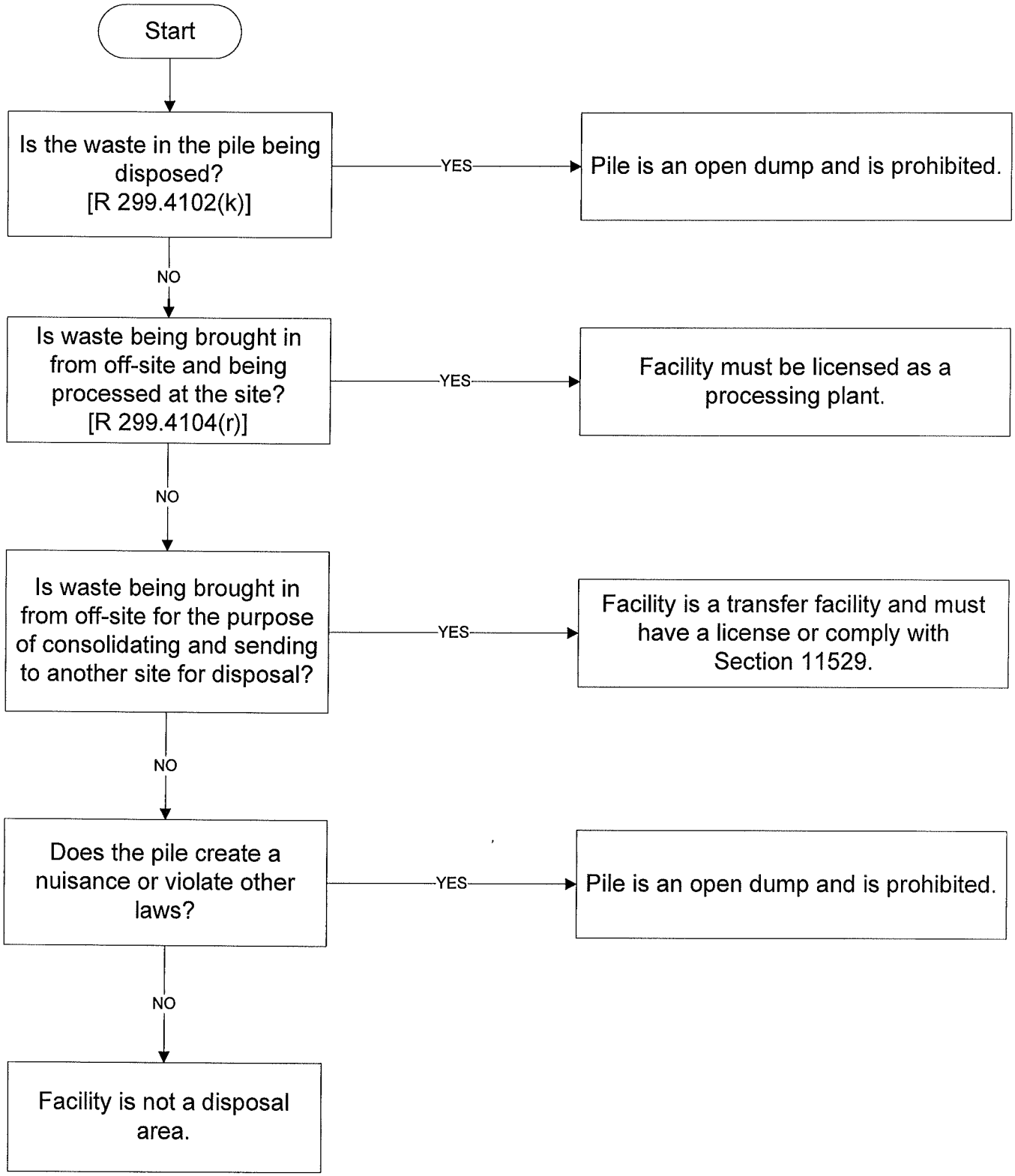


Figure 3

Does the Contained Waste Pile Need a Permit or License?