



west virginia department of environmental protection


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Earl Ray Tomblin, Governor
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MEMORANDUM

TO: Solid Waste Landfill Owners and Operators

CC: Mark D. Holstine, Executive Director, Solid Waste Management Board
Michael A. Albert, Chairman, Public Service Commission

FROM: Randy C. Huffman, Cabinet Secretary 

RE: Amendment to Memorandum dated February 21, 2013 Regarding the Disposal of Oil and Gas Drilling Waste in Solid Waste Landfills

DATE: **July 26, 2013**

This memorandum serves as an amendment to the memorandum dated February 21, 2013 regarding the disposal of oil and gas drilling waste in solid waste landfills.

On December 14, 2011, the Legislature passed House Bill 401, the Natural Gas Horizontal Well Control Act, which, among other things, requires the disposal of drill cuttings and associated drilling mud (hereinafter “drilling waste”) generated from any horizontal natural gas well to be disposed of “in an approved solid waste facility.” *See*, W. Va. Code § 22-6A-8(g)(2). Thus, drilling waste from horizontal wells is now being disposed of in West Virginia’s landfills.

As you are aware, many of your facilities are reaching your monthly tonnage limits earlier in the month because of the extra tonnage generated by the disposal of drilling waste. The purpose of this memo is to detail DEP’s policy with regard to this disposal, especially in regard to monthly tonnage limits.

There are two options a landfill can pursue in order to address the tonnage issues created by the new Legislative mandate: (1) a Class B facility can apply to expand to a Class A facility in order to increase its monthly tonnage limit from 9,999 tons to 30,000 tons, or (2) either a Class A or a Class B facility can construct a cell separate from the municipal solid waste (“MSW”)

cells to be dedicated solely to the disposal of drilling waste; disposal of drilling waste into this separate cell will not count toward a facility's monthly tonnage limits.

In weighing these two options, a landfill should consider that the Public Service Commission (PSC) advises that the two options involve two significantly different processes. Option One, proposing to change from a Class B to a Class A landfill, would involve following the complete application process to obtain a Certificate of Need (CON) that is set forth in W. Va. Code § 24-2-1c and the PSC's *Rules of Practice and Procedure*, 150 C.S.R. 1 § 10.3.f. That process necessarily involves the potential for uncertain results. On the other hand, Option Two, proposing to construct a cell separate from MSW cells, would usually involve a more simple, streamlined application for an amendment of an existing CON, as provided in the PSC's *Rules of Practice and Procedure* at 150 C.S.R. 1 §§ 10.3.f.2 and 10.3.f.3.

Those facilities that are actively pursuing a permit modification to change from a Class B to a Class A facility and those facilities that apply for approval to construct a special waste cell will be eligible to exceed their monthly tonnage limits until June 1, 2014. This will allow the landfills sufficient capacity to properly manage their current waste streams while simultaneously developing a more permanent capacity for the disposal of drilling waste in accordance with the new law. ***However, landfills that accept drilling waste must have enough capacity each month to provide the services outlined in their landfill permits and CON from the PSC. The collection and disposal of MSW must continue as contemplated by those documents.***

All solid waste facilities pursuing Option Two (construction of a separate cell) must conform to the following compliance schedule:

1. By June 11, 2013 the permittee must apply to the PSC to amend its Certificate of Need ("CON") for the construction of a special waste cell for the disposal of drilling waste only.
2. By December 31, 2013 the permittee must submit an administratively complete application for a minor modification of its permit in order to obtain approval from the DEP for the construction of a special waste cell for the disposal of drilling waste only.
3. By September 30, 2014, the permittee must have completed construction of the special waste cell and submitted to the DEP a final Quality Assurance/Quality Control ("QA/QC") Report. The QA/QC Report must be certified by a professional engineer registered in the State of West Virginia. Once the permittee receives final approval for the special waste cell, any and all drilling waste must be placed into the special waste cell; any drilling waste placed in the MSW cell will count toward the facility's monthly tonnage capacity.
4. All waste accepted for disposal at the landfill, whether into the special cell or the MSW cell, is subject to all applicable assessment fees.

5. Federal regulations exempt drilling waste from regulation as hazardous waste. *See*, 40 C.F.R. § 261.4(b)(5). However, all information (including analytical results, copies of monthly special waste disposal reports, and generator identification information) concerning the receipt, handling, and disposal of the waste must be kept on file at the solid waste facility for a period of at least two years.
6. The drilling waste disposed of in the special cell must be reported on the facility's monthly tonnage report, but will not count toward the monthly tonnage limits.
7. The leachate generated in the special waste cell must be separated from any and all existing leachate collection systems, analyzed and treated according to the facility's NPDES permit requirements or any other requirements outlined by the DEP.
8. Liner construction in the special waste cell must meet or exceed the requirements outlined in the permit.
9. No waste disposed of in the special waste cell is permitted to be used as alternate daily cover unless approved by the DEP's Environmental Inspector.

Finally, please be advised that the purpose of this policy is to detail the steps necessary for a facility to take in order to be able to accept drilling waste in accordance with the Natural Gas Horizontal Well Control Act and still meet the requirements of MSW collection and disposal contemplated by the CON issued by the PSC. If a facility does not choose to construct and operate a separate cell, but instead chooses to dispose of drilling waste in the MSW cells, such waste will count toward that facility's monthly tonnage limits.