



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

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OFFICE OF THE  
SECRETARY

**Secretary's Order No. 2012-A-0010**

**Re: Application of Delaware Solid Waste Authority for a Major Modification to the Solid Waste Management Post-closure Permit for the Pigeon Point Landfill, New Castle, New Castle County**

**Date of Issuance: April 13, 2012**

**Effective Date: April 13, 2012**

The Secretary of the Department of Natural Resources and Environmental Control (Department) issues the following findings, reasons and conclusions as an Order of the Secretary upon consideration of a Report from the Department's hearing officer following a public hearing on a permit application.

**Background and Procedural History**

On January 10, 2010, Delaware Solid Waste Authority (DSWA or Applicant) requested a major permit modification to the post closure solid waste management permit for the Pigeon Point Landfill (PPL), which is a closed sanitary landfill located on approximately 239 acres at 1101 Lambson Lane, New Castle, New Castle County. The Department issued a post-closure permit to DSWA and the City of Wilmington as co-permittees, and DSWA appealed the permit the Environmental Appeals Board. DSWA and the Department agreed to settle the EAB appeal based upon a permit modification.

The Department's Solid and Hazardous Waste Management Section (SHWMS) within the Division of Waste and Hazardous Substances determined the application was complete and provided public notice of the application. The Department provided public

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notice, and received requests for a public hearing, which was held May 23, 2011. In a January 23, 2012 Hearing Officer's Report (Report), the Department's presiding hearing officer recommends issuance of the permit modification consistent with the recommendation of the Department's experts in SHWMS.

### **Findings and Reasons**

The Report reviews an administrative record, including the technical response memorandum from SHWMS, and recommends a finding that the record supports issuance of the permit modification. The Report is accepted to the extent it is consistent with this Order.

The permit modification was sought to settle DSWA's appeal of the PPL permit. The permit modification clarifies the PPL permit in a reasonable and acceptable manner based upon SHWMS' recommended changes. The changes will improve the Department's regulatory oversight of PPL.

The City presented comments as a co-permittee. The City seeks to remove itself from Department regulation as a joint permittee, or to have the Department deny the application because the application was submitted without the City's consent. The Department finds that the PPL permit should continue to have both DSWA and the City as co-permittee at this time. The joint permittee regulation is based upon the circumstances in which both the City and DSWA have responsibilities for PPL under the 1980 Tri-partite Agreement, which resulted in DSWA assuming the managerial operation of PPL as an active landfill that received the City's municipal waste. The Department does not consider that removal of the City as a permittee is appropriate, particularly when

both filed to obtain the post-closure permit and the City has failed to convince the Department why it should no longer be regulated as co-permittee.

The Department suggests that the City and DSWA resolve their contractual relationships before seeking to change the regulatory status as the named permittee. The Department does not want to intrude into the contractual relationships in this case absent some compelling reason that is not in this record. The Department also considers the application properly before the Department even if submitted without City's consent. As noted by the Report, the modification is to settle the EAB appeal. The application is allowed under the Regulations and the Department could have commenced the permit modification without any application by DSWA or City's consent. Thus, the City's claims that the application should be denied or that it should be removed as permittee are rejected.

The Department finds that regulation of PPL should continue with the City and DSWA as co-permittees. The Department encourages the City and DSWA to agree on a change to the regulatory responsibilities for PPL. If such an agreement is reached, then DSWA and City could seek Department change of the PPL permit consistent with such an agreement. The record does not present sufficient support for the City's request to remove itself as a co-permittee and consequently the modified permit will be issued to both.

### **Conclusions**

In sum, as more fully described in the reasons and findings above and in the Report, I adopt and direct the following as a final order of the Department:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

2. The Department provided adequate public notice of the proceeding and the public hearing, and held the public hearing in a manner required by the law and its regulations;

3. The Department considered all timely and relevant public comments in making its determination;

4. The record supports the issuance of a permit as substantially drafted by SHWMS; and that

5. The Department shall publish this Order on its web site and shall provide such other notice as required by the law or regulation.



Collin P. O'Mara  
Secretary