

**Part 115 Inert and Compost Rules
Meeting Summary
May 6, 2009**

Participants		
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1. Handouts:
 - Agenda
 - Compost-Inert Ad Hoc Committee Members List
 - Draft Part 115 Meeting Summary from April 17, 2009
 - Industrial By-Product Categories
 - Yard Clippings (Section 21 of Part 115 Statute)
 - General Provisions

2. Previous Meeting Summary approved – remove draft watermark.
Redraft of Rules posted in track changes format.

3. Generator/Broker/End-User Obligations/Liability Under NREPA:
Frank Ruswick (the DEQ's Policy Advisor) led a discussion related to liability and obligations under the Part 115 rules. The generators have an interest in limiting liability as means of promoting beneficial reuse. What the DEQ can or cannot do? We cannot do anything under Part 115 to limit tort liability for three reasons: 1) lack of legal authority to private property right; 2) DEQ role in complete transaction (from generator to end-user) would need to be more pervasive with more highly structured involvement (don't have resources to provide level of assurance that is needed); 3) role of government once it authorizes an activity (assuring accountability) and not to intrude on current nuisance law that applies to the activity mechanisms that can be used to make sure material is used appropriately. We can only address the Part 115 liability structure. Liability under other statutes is not affected by the Part 115 rules.

We want to ensure that the beneficial use of wastes do not create nuisance conditions under the Part 115 authorization. Need to define "nuisance" like in air act (done under 104(i)). End-use liability – some cases where Part 115 liability should remain and others where it is more like a product. What assurances need to be in place to ensure material is used and placed appropriately? Making generator the one to "police" the beneficial use may be the best one to ensure proper use of material. According to the workgroup the generator should be responsible for communicating conditions proper use and this should be the end of general liability. The generator/manufacture tells what the material is and conditions for proper use. Should there be notification to the DEQ of each step down the line? Use as fertilizer, soil conditioner, or liming material all require a license for MDA. If a problem arises in the future the DEQ is concerned with who will be responsible if there are problems? Who has the money? Who has the ability to ensure appropriate use? The product liability – liability we are discussing is that which accrues under Part 115. Where does Part 115 come into play? Waste to product to waste. How does the line get drawn? At some point we won't know it was a waste material being beneficially reused (bagged product) as Part 115 fades away. Identify specific obligations of generator, put into rules, characterize material, notify of use conditions, and user seek separate authorization from the DEQ. Some places notification of use might be warranted:

Characterizations/Test: already covered in Rule.

Notification: degree of notification diminishes further down the chain.

Label: test data use toxicity (for consumer – health risks or restrictions).

Documentation – record keeping

Generator to DEQ

Broker

Processor

End-user

Transporter

DEQ will attempt to draft what they think are the appropriate obligation

related to the generator, broker, processor, and end user.

4. Alternate Daily Cover (ADC) Rule 120b(1)(c)
Margie Ring (Solid Waste Program lead engineer) discussed the issue of alternate daily cover use at licensed landfills. She talked about how many landfills use ADC, the types of materials used, and the volume used. It was estimated that between 5 and 10% of the daily waste disposed is used for daily cover. How exact do we need to be? Why put a limit on? Landfills have to meet a minimum amount according to the rules, but not a maximum amount. ADC is under proposed rules not subject to surcharge/Plan restrictions. The question is how deep should limit be? The group discussed if an upper limited with an average of no less than 6" and no more than 12" would work. The workgroup questioned why there should be a limit in rule? The DEQ estimated that they would lose approximately \$200,000/year from the surcharge. Reasonable alternative is the status quo. Limit in other beneficial reuses run by MWIA technical standard. Question if we should be considered as a beneficial reuse? It was pointed out that many states do not consider the use of a waste material as ADC to be recycling.

5. Compost Rules – proceed with issue-by-issue through Rules (Matt's presentation). Issues laid out in spreadsheet for definitions, Rule 121a-121c. Yard clippings and composting rules allow for 5,000yd³ on any acre is very low according to the workgroup. Biosolids composting – R121d – Class 2 Compostable Material was discussed. It was suggested that a pilot be done first to determine if Class 2 material could be handled to designate the material as a Class 1 or Class 2 Compostable Material. Water Management – NPDES permit or liner have to comply with the Act. General permit – WQD permits some sites "if required" – add to Rule. Water Bureau should be invited to the next meeting to discuss rule 121c(3)(d-f) – how to manage runoff in accordance with Part 31 and/or the need for a liner? One workgroup member said that a properly managed compost site shouldn't have a discharge. If facility takes anything other than yard clippings, then a liner is needed. The group discussed the liner requirements. The purpose of the rules is to increase the interest in composting food waste and other organic materials. Need to address the portion of the rules regarding blending containment. We discussed the foreign matter content in the proposed rules (1% maximum) and compared this to the requirements per U.S. Compost Council (USCC). It was determined that the USCC requirements were more restrictive. The group discussed the question about what to do with existing facilities and a timeframe to come into compliance. The DEQ is still formatting errors in the table – see Farms (121a(3) & (4) to make sure farms can compost other materials off-farm. Came out that no changes are needed under (3). Discussion of Bodies of Dead Animals Act concerns – either normal daily mortality or other things approved by the Department of Agriculture Director should be considered. Mike Czuprenski's suggested change add's in a requirement for size reduction for Class 1 and Class 2 compostable material

reduced 4" or less in a certain timeframe (30 days)?

DEQ will attempt to have staff from the storm water program and groundwater program present at the next meeting.

6. Next Meetings – Part 115 Proposed Agenda (Rules are listed in order of importance):
 - May 29 – Rules 110, 113, 114, 126, 127, 129, 103 m and q
 - June 10 – 10 am to 3:30 pm
 - June 26 – Possible Meeting
 - July 17 – Possible Meeting
 - July 31 – Possible Meeting