

## **Chapter 102 Permit Amendments**

### **Frequently Asked Questions (FAQ) Final, October 19, 2018**

#### **Background**

Erosion and Sediment Control (E&S) Plans and Post Construction Stormwater Management (PCSM) Plans must be developed and implemented for permits issued under Chapter 102. The Department of Environmental Protection (DEP) recognizes that these plans could change during or following earth disturbance activities, or that errors may be discovered in the Plans or permit documents following permit issuance. When such changes or errors are identified, corresponding changes are generally needed to the permit coverage or the documents that supported the original permit issuance through an amendment to the permit coverage. All such changes should be approved by DEP or delegated county conservation district (CCD) staff in writing prior to implementing the changes.

There are two categories of permit amendments: Major Amendments and Minor Amendments. Within the category of Minor Amendments there is a subcategory called Field Changes. The purpose of this FAQ is to explain each type of permit amendment and provide examples to improve understanding on the part of DEP/CCD staff and the regulated community.

The nature of stormwater management from construction activities is highly variable based upon site conditions and the type of project. This FAQ describes the criteria generally applied, based upon programmatic experience, to determine the type of permit amendment necessary when changes are proposed.

The information outlined in this document is intended to supplement existing requirements. Nothing in this document affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this document that weight or deference. This document provides a framework within which DEP and CCDs will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this document if circumstances warrant.

The terms, “Major Modification” and “Minor Modification” are synonymous with the terms, “Major Amendment” and “Minor Amendment”, respectively, as used in this FAQ document.

## **FIELD CHANGES**

### **FAQ #1: What is a Field Change?**

A Field Change is generally a minor change to an approved E&S or PCSM Plan. A Field Change is a type of change that does not increase earth disturbance or does not have an effect on the approach to stormwater management, and may be approved by DEP/CCD without the submission of an application or Notice of Intent (NOI) to amend permit coverage. These approvals generally occur in the field, at the project site, during an inspection or a meeting. In the past these approvals have been described as “red-line changes.” Field Changes are Minor Amendments to permit coverage that do not require submission of an application or NOI, and typically involve limited modifications to the approved E&S or PCSM Plan.

### **FAQ #2: What are some examples of Field Changes?**

The following types of changes are considered Field Changes:

- A. Changes to the type or location of a rock construction entrance (which would not otherwise affect the design of the E&S Plan).

**NOTE 2.A.1** – If the earth disturbance were to increase due to changing the location of a rock construction entrance, then the change would be considered a **Major** or **Minor** Amendment (as outlined later in this document).

- B. Minor changes to construction sequencing (which would not otherwise affect the design or implementation of the E&S or PCSM Plan).
- C. Changing from a non-Antidegradation Best Available Combination of Technologies (ABACT) best management practice (BMP) to an ABACT BMP.

**EXAMPLE 2.C.1** – The E&S Plan calls for silt fence to be used as the perimeter BMP; however, the contractor has a ready supply of compost filter sock.

- D. Changing from an ABACT BMP to a non-ABACT BMP, unless the project is required to utilize an ABACT BMP (e.g., discharges to special protection surface waters, discharges to siltation impaired streams, etc.).
- E. Changes to the location of a stockpile within the permitted limit of disturbance.
- F. Minor shifts to the location of an E&S or PCSM BMP.

**EXAMPLE 2.F.1** – A rock outcropping was not identified in the field survey, which interferes with the installation of the silt fence. The silt fence is shifted 5 feet downslope in order to properly install the silt fence.

- G. Minor revision(s) to the outlet/design of an E&S or PCSM BMP that in the judgment of DEP/CCD do not require detailed review.

**EXAMPLE 2.G.1** – The location of the outlet structure is moved during construction, but discharges to the same flow path.

H. Other minor changes may be approved as Field Changes at the discretion of DEP/CCD.

**FAQ #3: Can changes to a PCSM Plan be approved with a Field Change?**

Yes, changes to PCSM Plans could be approved as Field Changes. However, the changes to the PCSM Plan would have to be minor and not affect the function or operation of the PCSM BMP.

**EXAMPLE 3.1** – An infiltration basin needs to shift by 20 feet to accommodate the relocation of a sanitary sewer main; the shifted location of the infiltration basin is still within 25 feet of the performed infiltration test and soil pit locations.

**NOTE 3.1** – Any Field Changes to the PCSM Plan would be included as part of the record drawings with the Notice of Termination.

**FAQ #4: How is a Field Change handled?**

Field Changes should be documented on the approved E&S Plan or PCSM Plan that is maintained on-site and should be initialed by the permittee and a representative of DEP/CCD. The copy of the approved E&S Plan or PCSM Plan held by DEP/CCD will also document the field change; however, this copy of the plan is not required to be initialed. The representative of DEP/CCD will also note the discussion and approval/denial of a Field Change in their Earth Disturbance Inspection Report or other written correspondence (e.g., letter or e-mail).

**NOTE 4.1** – In some circumstances, DEP/CCD may request that a Field Change be made to the actual plan drawing (e.g., adding additional notes or to avoid cluttering the plans). These revised plan drawings would be submitted to DEP/CCD via paper submission (2 copies required). DEP/CCD would follow the above approval/denial process when this occurs.

**NOTE 4.2** – Field Changes do not always have to be done “in the field”. Field Changes can be requested by the permittee or co-permittee through e-mail, and followed up with a paper submission (2 copies required) to DEP/CCD. DEP/CCD would follow the above approval/denial process when this occurs.

**NOTE 4.3** – An Operator (i.e., Co-Permittee), can request a Field Change without the notification or consent of the Permittee because an Operator (per 25 Pa. Code § 102.1) has the ability to make modifications to the E&S Plan, PCSM Plan and/or site specifications.

**NOTE 4.4** – CCDs may approve Field Changes to PCSM Plans regardless of whether the CCD has delegation for PCSM Plan reviews. Where there is any doubt that a change to a PCSM Plan would not constitute a Field Change, the CCD should contact the appropriate DEP regional office for guidance.

## **MINOR AMENDMENTS**

### **FAQ #5: What kinds of changes require a Minor Amendment to permit coverage?**

The following types of changes are considered *Minor Amendments* and require a permittee to submit an application or NOI to DEP/CCD.

- A. For projects where the original permitted limit of disturbance is less than 25 acres, an increase in the area of earth disturbance less than 10% of the original permitted limit of disturbance is considered a Minor Amendment, as long as 1) the increased disturbance continues to meet the eligibility requirements of the permit; 2) appropriate E&S controls (both existing and proposed) are provided; and 3) PCSM BMPs identified in the original PCSM Plan will be adequate to control volume, rate, and water quality for the increased disturbance. The increased area of disturbance may include the identification and utilization of off-site support facilities (part of the common plan of development or sale, i.e., within ¼ mile of the project site).
- B. For projects where the original permitted limit of disturbance is 25 acres or greater, an increase in the area of earth disturbance less than 2.5 acres compared to the original permitted limit of disturbance is considered a Minor Amendment, as long as 1) the increased disturbance continues to meet the eligibility requirements of the permit; 2) appropriate E&S controls (both existing and proposed) are provided; and 3) PCSM BMPs identified in the original PCSM will be adequate to control volume, rate, and water quality for the increased disturbance. The increased area of disturbance may include the identification and utilization of off-site support facilities (part of the common plan of development or sale/project, i.e., within ¼ mile of the project site).
- C. A partial termination of an existing permit is considered a Minor Amendment.

**NOTE 5.C.1** - Upon submission of a Notice of Termination form to request the termination of permit coverage on a portion of a site, an application for Minor Amendment must be submitted to amend the permit boundary to encompass only the area of the site remaining under permit coverage. Thus, the application must include the associated E&S and PCSM Plans to represent continued coverage of the remaining project area. A red-line drawing showing the area of the site remaining under permit coverage is sufficient.

- D. Realignment or relocation of a PCSM BMP or structure that does not affect calculations related to stormwater volume, rate, or water quality is considered a Minor Amendment, if DEP/CCD determines that the change would not result in significant changes. DEP/CCD may require calculations to be submitted that support a permittee's assertion that the change is minor.

**EXAMPLE 5.D.1** – An applicant proposes to move a road from its originally proposed location in order to satisfy the requirements of a PennDOT-issued highway occupancy permit. The original permitted earth disturbance was 10.5 acres, and the relocation results in a change of 0.8 acres to the limit of disturbance.

**EXAMPLE 5.D.2** – A residential subdivision plan was permitted, which included an infiltration trench on each lot, fed by the house's downspouts. The homebuyer wants

to move the house to a different location on the lot, which results in the infiltration trench relocating from the permitted location. Infiltration appears feasible at the new location for the infiltration trench, as determined through testing. No changes to the size of the house or infiltration trench are proposed.

- E. Substitution of structural or non-structural E&S and/or PCSM BMPs planned for in the original design that will still meet regulatory requirements, or a reduction in the dimensions and/or capacities of structural BMPs that does not affect performance of those BMPs, is considered a Minor Amendment. DEP/CCD may require calculations to be submitted that support a permittee's assertion that the change is minor.

**EXAMPLE 5.E.1** – A rock construction entrance cannot be made as wide as originally planned, and a determination is made by the DEP/CCD that this change would not result in an increased risk of erosion and sedimentation.

**EXAMPLE 5.E.2** – Substituting an erosion control blanket from a different manufacturer for lining of a channel.

**EXAMPLE 5.E.3** – An approved PCSM Plan called for an infiltration basin. However, the permittee desires a more aesthetic BMP, and wants to substitute a bio-retention basin for the infiltration basin. The bio-retention basin is proposed in the same location, has the same outlet configuration, and the same stage-storage configuration as the infiltration basin.

- F. The addition of a structural or non-structural E&S or PCSM BMP, the increase in the dimensions and/or capacities of a planned BMP, or other minor alteration that will not negatively affect BMP design, performance, function, or operation is considered a Minor Amendment. DEP/CCD may require calculations to be submitted that support a permittee's assertion that the change is minor.

**EXAMPLE 5.F.1** – A proposal to increase the height of an infiltration basin embankment.

**EXAMPLE 5.F.2** – Adjustments to a BMP outlet structure that in the judgment of DEP/CCD would not require a re-design of the BMP.

**EXAMPLE 5.F.3** – Modifications to the planting specifications for a rain garden.

- G. An increase or decrease to the Project Site, while there is no increase to the earth disturbance.

**EXAMPLE 5.G.1** – A permittee holds a permit on their 100-acre property, which only authorizes an earth disturbance of 25 acres. The permittee decides to sell 15 acres of land that was not included in the earth disturbance authorization, and the permittee wants to remove that 15 acres from coverage under the permit.

- H. The correction of a change in an individual permittee/client name, permittee/client address, or facility address or a correction of a substantial typographical error is considered a Minor Amendment.

**EXAMPLE 5.H.1** – Permittee’s name changes due to marriage.

**EXAMPLE 5.H.2** – Permittee’s office moves.

**EXAMPLE 5.H.3** – Facility address changes due to 911 readdressing.

**NOTE 5.H.1** – Changes in ownership or operational control are considered Minor Amendments under 25 Pa. Code § 92a.2; however, current and proposed permittees are asked to complete the Transfer Application (3150-PM-BWEW0228) rather than apply for a Minor Amendment. For example, if a permittee who is not an individual (such as a corporation, LLC, or LP) has a change of name and/or organization type, such as changing from a corporation to a LLC, this change would constitute a permit transfer; thus, a Transfer Application would be completed in lieu of an Application for Minor Amendment.

## **MAJOR AMENDMENTS**

### **FAQ #6: What kinds of changes require a Major Amendment to permit coverage?**

The following types of changes are considered *Major Amendments* and require a permittee to submit a permit amendment application package to DEP/CCD. If any one of the criteria listed below apply, then a Major Amendment to permit coverage would be required.

- A. For projects where the original permitted limit of disturbance is less than 25 acres, an increase in the area of earth disturbance by 10% or more compared, on a cumulative basis, to the original permitted limit of disturbance is considered a Major Amendment. The increased area of disturbance may include the identification and utilization of off-site support facilities that are considered part of the project for permitting purposes (part of the common plan of development or sale, i.e., within ¼ mile of the project site).

**EXAMPLE 6.A.1** – A proposal that increases the earth disturbance area by 5% that meets all other criteria for a Minor Amendment can be treated as a Minor Amendment. If a second proposal involves an increase in the earth disturbance area of 5% or more (compared to the original, permitted earth disturbance area), a Major Amendment will be necessary and shall include all increases. The disturbed acreage fee will be based on the cumulative additional acres of earth disturbance.

**NOTE 6.A.1** – Where the term “increase” is used with respect to the area of earth disturbance, the term refers to new area to be disturbed rather than the net change of disturbance. For example, if a permit was issued for an original earth disturbance of 5.0 acres, and an amendment is submitted to disturb a new area of 2.0 acres and to eliminate 1.5 acres (for a total earth disturbance of 5.5 acres after the amendment), the increase in earth disturbance would be the 2.0 acres of new area, not the 0.5-acre net change.

- B. For projects where the original permitted limit of disturbance is 25 acres or greater, an increase in the area of earth disturbance by 2.5 acres or more compared, on a cumulative basis, to the original permitted limit of disturbance is considered a Major Amendment, unless agreed to in

writing by DEP. The increased area of disturbance may include the identification and utilization of off-site support facilities (that are considered part of the project for permitting purposes (part of the common plan of development or sale/project, i.e., within ¼ mile of the project site).

**EXAMPLE 6.B.1** – A proposal increases the original permitted 50-acre limit of earth disturbance area by 2.5 acres.

- C. A revision that results in earth disturbance activities that may adversely affect a Pennsylvania or federal endangered or threatened species or its critical habitat is considered a Major Amendment.

**EXAMPLE 6.C.1** – As a result of a proposed increase in earth disturbance, a PNDI search and/or agency consultation identifies that the proposed activity would adversely affect a critical habitat for the bog turtle.

- D. A change to the E&S and/or PCSM design standards identified in the original application or NOI is considered a Major Amendment.

**NOTE 6.D.1** – For E&S BMPs, the design standards are contained in the E&S Manual; for PCSM BMPs, the design standards are identified in 25 Pa. Code § 102.8(g).

**EXAMPLE 6.D.1** – An applicant submits an E&S Plan with the design of BMPs consistent with the E&S Manual. Then, after permit coverage is approved, the applicant decides to change the design standards of the E&S BMP in a way that is inconsistent with the E&S Manual.

**EXAMPLE 6.D.2** – An applicant initially proposes the design of PCSM BMPs based on managing the net change for storms up to and including the 2-year/24-hour storm event solely through infiltration; however, field conditions during construction lead to a determination that implementation of this design is infeasible and other approaches must be pursued.

**EXAMPLE 6.D.3** – An applicant uses the PCSM design standards identified in 25 Pa. Code §§ 102.8(g)(2) and (3), but later revises the standard to be consistent with a newly-approved Act 167 Plan.

- E. A new point of discharge or an increased discharge of stormwater is considered a Major Amendment.

**EXAMPLE 6.E.1** – A project is originally permitted to only discharge to the main stem of Black Run; however, the amendment proposes a new point of discharge to an Unnamed Tributary to Black Run.

**EXAMPLE 6.E.2** – The original design had a pre-construction runoff volume of 45,000 CF and the post-construction runoff volume (with planned PCSM BMPs) was 43,000 CF. However, due to unforeseen groundwater being encountered, the proposed infiltration basin (volume reducing) was re-designed to a constructed wetland (not volume reducing).

The resulting re-design now has a post-construction runoff volume (with planned PCSM BMPs) of 57,000 CF.

- F. The elimination of structural or non-structural E&S and/or PCSM BMPs planned for in the original design, or a reduction in the dimensions and/or capacities of structural BMPs that may affect performance of those BMPs, is considered a Major Amendment.

**EXAMPLE 6.F.1** – An applicant proposes to not implement the use of a sediment trap that was approved in the E&S Plan or an infiltration basin that was approved in the PCSM Plan.

**EXAMPLE 6.F.2** – An approved E&S Plan called for a rock construction entrance with a wash rack, but the applicant proposes to not install a wash rack and cannot meet applicable antidegradation regulations.

**EXAMPLE 6.F.3** – The proposed sediment trap cannot be constructed as designed, due to a previously unidentified existing utility. The sediment trap will have to be reconfigured (elevations and surface area) to accommodate the existing utility.

**EXAMPLE 6.F.4** – During the construction of an infiltration basin a rock outcropping is encountered within the basin footprint. The plan revisions call for the infiltration basin footprint to be reduced, which result in the orifice and grate elevations needing to be raised (in order to properly manage stormwater).

- G. The construction of additional impervious or non-pervious surfaces not reported in the application or NOI is considered a Major Amendment unless the proposed PCSM BMPs in the PCSM Plan are capable of managing the increase in stormwater runoff without modification to the BMPs.

**EXAMPLE 6.G.1** – An applicant proposes to convert an area designated for open space to additional impervious for parking. The applicant is responsible under the permit to notify the permitting authority. If PCSM BMPs in the current PCSM Plan will not adequately manage the increase in stormwater runoff, the change will be considered a Major Amendment.

**NOTE 6.G.1** – If an application for a Minor Amendment to permit coverage is submitted for an increase to the previously reported impervious or non-pervious surfaces and DEP/CCD determines that the PCSM BMPs will not manage the increase in stormwater runoff, the application for a Minor Amendment will be denied and an application for a Major Amendment will need to be submitted.

- H. A proposed site alteration that would allow new stormwater flows from off-site to flow onto the site is considered a Major Amendment unless the proposed E&S and/or PCSM BMPs in the E&S and/or PCSM Plan(s) are capable of managing the increase in stormwater runoff without modification to the BMPs.

**EXAMPLE 6.H.1** – If a decision is made, during construction, to reroute off-site municipal stormwater flows onto the project site, and the E&S and/or PCSM BMPs in the

original E&S and/or PCSM Plan will not appropriately manage the increased runoff, this change would be considered a Major Amendment.

**NOTE 6.H.1** – If an application for a Minor Amendment to permit coverage is submitted to allow off-site stormwater to flow through the site and DEP/CCD determines that the BMPs will not manage the increase in stormwater runoff, the application for a Minor Amendment will be denied and an application for a Major Amendment will need to be submitted.

- I. A Phased Permit, where the initial application or NOI did not address all phases of a project is considered a Major Amendment when subsequent phases are submitted for approval.

**EXAMPLE 6.I.1** – A Permittee proposes a new phase of a project that was not included in the conceptual plan for the Phased Permit application.

**OTHER FAQs**

**FAQ #7: When there is an increase in earth disturbance, is a Pennsylvania Natural Diversity Inventory (PNDI) search required as part of an application for a permit amendment?**

Any permittee proposing new areas of earth disturbance must ensure that there are no State or Federal threatened or endangered species that could be affected in those areas. Therefore, PNDI clearances are required with any application for a permit amendment that includes new areas of earth disturbance.

**NOTE 7.1** – If the increased earth disturbance activity was included in the original PNDI search and the PNDI search and any clearances are still valid, then a new PNDI search will not be required.

**FAQ #8: What fees are required with an application or NOI for a permit amendment?**

The chart below presents fees that are required for applications or NOIs for permit amendments. Fees are to be paid to the same entity as for the original permit application.

Permit Type	Amendment Type	Administrative Filing Fee	Disturbed Acreage Fee
Individual Permit	Minor Amendment	\$0	\$100 per acre (new disturbance only)
	Major Amendment	\$1,500	
General Permit	Minor Amendment	\$0	\$100 per acre (new disturbance only)
	Major Amendment	\$500	
All Types	Field Changes	\$0	Not Applicable

**NOTE 8.1** – If a permit amendment is required to implement cumulative increases in the amount of earth disturbance, the Disturbed Acreage Fee required would be based upon the total increase in earth disturbance compared to the originally permitted amount.

Based upon their fee schedule, CCDs may charge additional fees to review an application or NOI for a permit application. It is recommended to consult with the appropriate CCD to determine if any additional fees apply.

**FAQ #9: To whom is an application or NOI for a permit amendment submitted?**

Any application or NOI for a permit amendment (Major or Minor) is submitted to the same entity in which the original permit application was submitted to. DEP/CCD will publish notice of the receipt of applications/NOIs for Major Amendments and actions taken on these applications/NOIs in the *Pennsylvania Bulletin*. Public notice is not necessary for Minor Amendments, including Field Changes.

**FAQ #10: What information is required with an application or NOI for a permit amendment?**

Refer to Attachment A of this FAQ document for what is required to be included with an application or NOI for a permit amendment.

**FAQ #11: What form do I use for an application or NOI for a permit amendment?**

Permittees must utilize the most current version of the NOI/Application form for the appropriate type of permit (NPDES, E&S, or ESCGP) or, when available, an electronic application through an online system.

Submission of an application or NOI is required for Major Amendments and Minor Amendments that are not considered Field Changes. The submission of an application or NOI is not required when it is determined that the change constitutes a Field Change.

**FAQ #12: How do I complete an application or NOI for a permit amendment?**

All fields in the application or NOI are to be completely filled out, even if the information has not changed. Any information that has changed should be highlighted, underlined, bolded, or otherwise easily identified as a change/revision.

For **Minor** Amendments, if there is a specific box to identify the type of application as a **Minor** Amendment, then that box should be checked. Otherwise, the box for **Major** Amendment should be checked, and the word “Major” should be struck through with a pen and “Minor” should be hand written.

To identify any increased Project Site area or Disturbed Area, the form should be filled out such that the original permitted area is identified and the increased area is separately identified.

**EXAMPLE 12.A** – An application is submitted for a Major Amendment for a project that was originally permitted with a Project Site area of 25 acres and a Disturbed Area of 10 acres. The amendment will not change the Project Site and will increase the disturbance by 2 acres. The application should list the Project Site and Disturbed Area as follows:

Project Site: “25 acres”

Disturbed Area: “10 acres + **2 acres**”

To identify what is included as part of the application or NOI for a permit amendment, the original permit Project Description should be provided, and the information to describe the purpose of the amendment should be included with bolded text.

## ATTACHMENT A

### APPLICATION/NOI REQUIREMENTS FOR MAJOR AND MINOR PERMIT AMENDMENTS

The chart below identifies the application requirements associated with Major and Minor Amendments, and provides guidance on completing the General Section of the COMPLETENESS REVIEW CHECKLIST contained in the NOI/Application (3800-PM-BCW0405b). The General Section of the COMPLETENESS REVIEW CHECKLIST should be completed and returned with the NOI/Application.

Requirement	Major Amendment	Minor Amendment
Fully completed and properly signed Application/NOI Form (1 original and 2 copies)	✓	✓
Administrative Filing Fee (\$500 for GP, \$1,500 for IP)	✓	
Disturbed Acreage Fee (new earth disturbance only)	✓	✓
Proof of Municipal and County Acts 14, 67, 68 & 127 Notifications (new earth disturbance only)	✓	✓
PNDI receipt and clearances (new earth disturbance only)	✓	✓
Revised E&S Plan (3 copies) (only when revisions to the E&S Plan are made)	✓	✓
Revised PCSM Plan (3 copies) (only when revisions to the PCSM Plan are made)	✓	✓
Appendix A Land Use Questions (new earth disturbance only)	✓	✓
PHMC Coordination Letter / Clearance (new earth disturbance associated with 1) a project with an individual permit with at least 10 acres of disturbance, and 2) any activity which may affect Historic Resources on the National Register of Historic Places, regardless of amount of earth disturbance)	✓	✓