FIELD CHANGE MINOR MODIFICATION REQUEST GUIDANCE
(September 2023)

I. Purpose and Applicability

The Office of Renewable Energy Siting (ORES or Office) hereby issues this Field Change Minor Modification Request Guidance (Guidance) in accordance with the requirements of section 94-c of the New York State Executive Law and its implementing regulations (title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York [19 NYCRR] part 900 [Part 900]).

The purpose of this Guidance is to provide major renewable energy facility permit holders (Permittees) with recommendations to comply with the Office's review and approval process pursuant to 19 NYCRR § 900-11.1 ("Permit modifications requested by Permittee") for proposed changes to projects already under construction which Permittees consider to be "minor."[1] Section 900-11.1 requires the Office to make a determination as to whether any proposed change to a permit (including an approved compliance filing) is either "minor" or "major."[2] The Office recognizes that unforeseeable circumstances can arise during construction which may warrant a change to the permit (including an approved compliance filing) and that a timely and efficient process to address those circumstances is in the interest of both Permittees and the Office.

This Guidance is based on the regulations at 19 NYCRR Part 900. It is not a substitute for the regulations; does not create legally binding requirements on the Office, Permittees, or the public; and may not apply to every situation. The Office retains the discretion to adopt approaches on a case-by-case basis that differ from this Guidance, as appropriate and consistent with the Office's statutory and regulatory authority.

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[1] 19 NYCRR § 900-1.2(ai) ("*Minor modification* means a change in an existing permit condition or an approved compliance filing that is not a major modification.")

[2] 19 NYCRR § 900-1.2(af) ("*Major modification* means a change to an existing permit standard or condition likely to result in any material increase in any identified adverse environmental impact or any significant adverse environmental impact not previously addressed by uniform or site-specific standards or conditions or otherwise involves a substantial change to an existing permit standard or condition.")

II. Guidance

Upon a Permittee's identification of the need for a facility design change during construction, the Office recommends all parties adhere to the following procedure as closely as possible to assist with efficient and accurate review:

Step 1. Field Review

The Permittee discusses the proposed change with the project Environmental Monitor and the New York State Department of Public Service (NYSDPS) field representative at the site. The Permittee and/or the Environmental Monitor gives advance notice to each of the ORES Staff Members listed in **Attachment A** of this meeting to allow for ORES Staff participation whenever feasible.[3]

The field review should include a discussion of reports, memos, drawing revisions, and site visits that the parties determine are appropriate for the changes proposed.

Step 2. Permittee Prepares Field Change Form or Letter

The Permittee will then prepare a field change form[4] or letter which includes all supporting information recommended below.

Introductory information should include:

a. A sequential request number.
b. Request Date.
c. Title and description of the permit condition(s) or approved compliance filing(s) (e.g., drawings) that would be changed.

The above information should be followed by supporting information, including:

[3] The Permittee may wish to invite to this meeting NYS Department of Agriculture and Markets (NYSDAM) and/or NYS Department of Environmental Conservation (NYSDEC) representatives, depending on the nature of the proposed change(s).
[4] Prior to construction, Permittees are encouraged to consult with the Office regarding any "Field Change" forms they plan to use.

a. A detailed description of the change(s), including photographs and updated spatial data if applicable.
b. A detailed justification for the change(s).
c. Description of any new impacts, noting if they are within or outside of the currently authorized limit of disturbance (LOD) and/or previously defined study areas. Include relevant photographs.
d. A list of entities consulted and/or briefed on the proposed changes (e.g., NYSDPS; NYSDAM; NYSDEC; NYS Office of Parks, Recreation and Historic Preservation; US Army Corps of Engineers; and US Fish and Wildlife Service) and a summary of the substance of these discussions.
e. New or reduced impacts to wetlands/streams.
f. New or reduced impacts to Special Concern, Threatened, or Endangered Species.
g. New or reduced impacts to cultural resources (including any proposed change in the horizontal footprint of the LOD and proposed changes within the LOD resulting in new disturbances greater than 6 inches deep). Include a statement as to whether any new areas proposed for disturbance were previously surveyed during a Phase IB or Phase II archeological survey.
h. New or reduced impacts to agricultural resources. Describe impacts to proposed agricultural co-utilization if applicable. Provide the following, as applicable: updated quantification of Mineral Soil Groups (MSG) 1 through 4 impact, active agricultural lands impact, and impacts to active agricultural lands within MSG 1 through 4.
i. Any resulting impacts requiring changes to the Visual Impacts Minimization and Mitigation Plan, including changes to vegetation used (i.e., either new plantings to be installed, existing vegetation to be removed, and/or removal of planned planting areas) for screening.
j. A statement regarding whether or not the change will require an amendment to the approved Stormwater Pollution Prevention Plan (SWPPP) and/or is a change resulting from changes to the SWPPP.
k. A statement regarding whether or not the change is within the activities currently permitted under any

applicable Nationwide Permit(s) (NWPs) under Section 404 of the Clean Water Act and/or avoidance measures related to Waters of the United States.

l. A list of all relevant ORES Compliance Filings and ORES Siting Permit language that will need to be changed. This list should include the details that need to be changed in related appendices and drawings. Some changes may involve alterations to multiple documents.

m. A statement confirming that the proposed changes maintain facility compliance with all applicable substantive local requirements for which relief was not approved. ORES Staff may request a list of applicable substantive local requirements (for which relief was not approved) pertinent to the change and a demonstration of compliance.

n. An analysis demonstrating that the change is within the scope and limitations of any applicable substantive local requirements as modified by any relief approved in the permit.

o. A description of any changes that could be characterized as requiring review by a licensed professional engineer to determine, without limitation, continued compliance with the New York State Uniform Fire Prevention and Building Code and any State Pollutant Discharge Elimination System (SPDES) permit(s).

Step 3. Permittee Provides Draft Modification Request to ORES Staff

The Permittee should provide a Draft Minor Modification Request (Draft Request) – including the supporting information identified above under Step 2 – to each of the ORES Staff Members listed in **Attachment A**.

Step 4. ORES Staff Reviews and Provides Feedback on Draft Modification Request

ORES Staff will review the Draft Request (including the supporting information) for adequacy and may consult with relevant agencies as needed. ORES Staff will then respond to the Permittee with either (1) comments on the Draft Request, (2) initial concurrence that the changes

are "minor," or (3) an explanation of why the proposed change may not constitute a "minor" modification. The Office will work to provide this feedback as expeditiously as possible.

Step 5. Permittee Files Modification Request with ORES

Once a Permittee receives from ORES Staff verbal or written (1) comments requesting revisions to the Draft Request or (2) initial concurrence that the changes are "minor," the Permittee may file its Minor Modification Request. The Permittee will include – pursuant to 19 NYCRR § 900-11.1(a) – the following in the Request:

a. A statement, including supporting information, setting forth the proposed permit or approved compliance filing modifications, identifying the existing condition(s) the Permittee is requesting to be modified and whether the Permittee considers such change to be a minor or major modification.[5]

The supporting information should include the information provided above under Step 2 and may be summarized in a main Request/Application narrative document with the details included as a separate Attachment/Exhibit [e.g., "see attached Exhibit A (Field Change Form)"].

b. A statement that there are no outstanding permit violations at the facility.[6]

Step 6. ORES Issues Formal Determination on Modification Request

Pursuant to 19 NYCRR § 900-11.1(b), ORES must review and inform the Permittee within thirty (30) days as to its determination regarding whether the change constitutes a minor modification or a major modification subject to 19 NYCRR § 900-11.1(c). ORES will make every effort to accomplish its review as soon as possible and within a time frame that will not unreasonably delay project construction activities.

[5] 19 NYCRR § 900-11.1(a)(1).
[6] 19 NYCRR § 900-11.1(a)(2).

ATTACHMENT A

ORES Staff Contact Information for
Field Change Minor Modification Request

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