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PWIA

Pennsylvania Waste Industries Association
A Chapter of the National Solid Waste Management Association

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INDEPENDENT REGULATORY
REVIEW COMMISSION

January 19, 2007

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

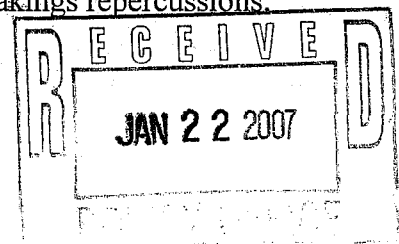
Re: Comments to 12/23/2006 Proposed Rulemaking
Notification of Proximity to Airports
25 Pa. Code Chapters 271, 279, 287 and 293

Dear Board Members:

On behalf of the Pennsylvania Waste Industries Association and its members, please accept and consider the following comments to the proposed rulemaking published on December 23, 2006 at 36 Pa. Bulletin 7867, titled "Notification of Proximity to Airports." That rulemaking proposes to: (1) include military airports within the definition of "airport" in the solid waste regulations so as to require notice to military airports of applications for new or expanded waste disposal facilities within six (6) miles of the airport runway; and (2) extend the airport notice provision to new or expanded municipal and residual waste transfer facilities within the same six (6) mile radius.

The Pennsylvania Waste Industries Association ("PWIA") represents private-sector waste haulers and landfill operators in Pennsylvania and is affiliated with the National Solid Wastes Management Association. As such, it is the principal voice of the waste industry in Pennsylvania. Initially, please be advised that PWIA fully supports the inclusion of military airports within the definition of airports, as that term is defined in the solid waste regulations. To the extent it is appropriate to provide notice to public airports of new or expanded municipal or residual waste facilities, PWIA believes that notification would be similarly appropriate for military airports. Conceptually, PWIA contends that airport notice should be provided to the extent the potential for bird strikes associated with a proposed new or expanded facility presents a realistic increase in risk.

At the same time, however, PWIA objects to the retroactive application of the airport exclusionary criteria that would result from the proposed definitional change. Specifically, while the new notice provisions in the rulemaking are limited to new or expanded operations, the Department's solid waste regulations establish the airport exclusionary criteria as operational limitations. See, for example, 25 Pa. Code §273.202(a)(14)-(16). Inclusion of military airports within the definition of airport retroactively imposes such setback restrictions on existing, permitted facilities, and raises the potential for a confiscatory scenario. PWIA recommends that the rulemaking provide appropriate prospective-only provisions in the relevant exclusionary criteria sections of the Department's regulations to avoid unintended takings repercussions.



PWIA also objects to the blanket extension of the airport notice provision to all transfer facilities. In this regard, it is important to understand that the solid waste regulations specifically require that a waste transfer operation occur within an enclosed building – i.e., “Loading, unloading, storage, compaction and related activities shall be conducted in an enclosed building...” (emphasis added.) See, 25 Pa. Code §279.215(a) and §293.215(a), for municipal waste and residual waste transfer facility requirements, respectively. Conventional wisdom readily supports the conclusion that waste transfer operations conducted within an enclosed building do not present a realistic increase in risk of bird strikes. As such, if a new or expanded transfer operation is proposed to be conducted within an enclosed building in conformance with the Department’s regulations, there is no logical reason to require notice to any airport - public or military.

PWIA acknowledges that the Department’s rules do provide the potential for a deviation from the regulatory mandate of conducting transfer activities within an enclosed building. However, in this Commonwealth, that exception is expressly limited to those rare circumstances where the applicant actually requests the exception and the Department, even more rarely, actually grants that specific approval. It is only in such unusual circumstances that notice should even be considered appropriate. As such, PWIA contends that the airport notice requirement for new or expanded transfer stations should be imposed, if at all, only where the applicant seeks to invoke the exception to the rule that the operation be conducted in an enclosed building.

Even if a transfer facility does propose operations outside of an enclosed building, the proposed airport notice provision should not automatically apply. In the first instance, Pennsylvania’s residual waste rules do not require notice to airports for landfill applications where the facility is not planning to receive putrescible wastes. This is certainly appropriate in that FAA studies conclude that birds are not attracted to a waste facility, unless that facility is handling putrescible materials. Requiring airport notice for a residual waste transfer station that does not plan to receive putrescible wastes makes no sense. As such, PWIA contends that the airport notice requirement should not be imposed where the applicant seeks to receive only non-putrescible wastes.

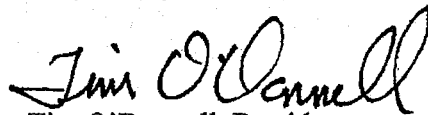
In addition, the Board should understand that imposing the airport notice requirement for landfills to transfer station applications ignores the differences between these two types of operations relative to the potential for increased bird presence. In this regard, the Board should note that the FAA is currently undertaking an in-depth study of bird presence associated with putrescible waste transfer stations across the country, examining everything from chicken wire fenced transfer operations to those enclosed in buildings. The goal of the study is an effort to understand whether and/or under what circumstances such transfer facilities present an increased risk to aviation due to bird strikes, and to develop design parameters that may be appropriate for

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transfer stations handling putrescible wastes – such as enclosed buildings – when located within range of airports. According to Mr. Ed Cleary, FAA Staff Wildlife Biologist heading this investigation, the results are expected to be available in a published report within a few months, and suggests that the findings, following peer review, will be incorporated into FAA guidance. PWIA contends that the Board should refrain from enacting regulatory changes to the transfer station rules until the results of this study are available and the Department and interested stakeholders have the opportunity to consider these findings and recommendations and, thereby, obtain some level of objective intelligence about whether and if so, under what circumstances there exists a realistic increase in potential for bird strikes associated with transfer facilities. This logical approach is particularly appropriate in this instance, in light of the existing Pennsylvania regulations governing waste transfer stations and the recommendation against the proposed rulemaking from the Pennsylvania Solid Waste Advisory Council.

The Pennsylvania Waste Industries Association appreciates the opportunity to provide these comments on the proposed rulemaking, and would welcome the opportunity to provide clarification or additional information as the Board considers this significant issue.

Very truly yours,



Tim O'Donnell, President
Pennsylvania Waste Industries Association

