

COMMENT/RESPONSE DOCUMENT

ON THE

PROPOSED AMENDMENTS

TO THE

MUNICIPAL AND RESIDUAL WASTE REGULATIONS

REGARDING NOTIFICATION OF PROXIMITY TO AIRPORTS

**INDIVIDUALS OR ORGANIZATIONS THAT COMMENTED ON
THE PROPOSED REGULATIONS REGARDING
NOTIFICATION OF PROXIMITY TO AIRPORTS**

1. Tim O'Donnell, President
Pennsylvania Waste Industries Association
York, PA 17402-8240
2. Elam M. Herr, Assistant Executive Director
Pennsylvania State Association of Township Supervisors
Enola, PA 17025-1291
3. Independent Regulatory Review Commission
Harrisburg, PA 17101

Comment: 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. (1)

We do question the rationale for notification of any airport if the proposed or expansion of a transfer facility is totally enclosed. We would contend that there is a difference between an open-air and an enclosed facility. (2)

Response: The notification requirement for transfer facilities is appropriate. Although municipal and residual waste transfer operations are primarily conducted in enclosed structures, some waste transfer activities still occur outside of an enclosed building and attract birds, which potentially pose a risk to aircraft approaching or departing from nearby airports.

As mentioned in part by commentator (1), the Department of Environmental Protection (Department) may permit non-enclosed operations in accordance with the regulatory provisions of 25 Pa. Code, §279.215(a) and §293.215(a). The complete regulatory citations referenced by commentator (1) read as follows: “(a) Loading, unloading, storage, compaction and related activities shall be conducted in an enclosed building, unless otherwise approved by the Department in the permit.” While the Department acknowledges they constitute a small number of facilities, there are transfer stations in the Commonwealth that operate in non-enclosed structures and accordingly pose the risks that the notification will address.

Comment: Since most municipal recycling centers are areas where recyclable material is sorted and transferred to other vehicles, could one argue that it is a transfer station and needs to comply with the proposed regulations? (2)

Response: The definition of *transfer facility* in the Solid Waste Management Act, 35 P.S. §6018.103, and the Department’s municipal and residual waste regulations specifically exempts a collecting or processing center that is only for source-separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper and plastics.

Comment: The commentator 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, 23 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. The commentator 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. (1)

Will this notification requirement for existing facilities result in setback restrictions or "confiscatory scenarios" on those facilities? Will existing permitted municipal waste landfills be grandfathered from these requirements? These questions also apply to Section 287.1. (3)

Response: Based on the Department's review of available information, there are no existing military airports either within or outside the borders of the Commonwealth that would trigger the existing setback criteria for municipal waste landfills, residual waste landfills, or residual waste disposal impoundments. The proposed regulation does not create any potential for confiscatory scenarios and therefore does not need to be amended to include only prospective provisions or grandfathering provisions for existing facilities.

Comment: 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 commentator 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. (1)

Response: At this time, no new information has been provided to substantiate the claim that transfer station operations do not pose an increased risk to aircraft from nearby airports as a result of bird strikes. Accordingly, the Department believes it is appropriate to move forward with the final rulemaking. This action does not preclude the Department from making further regulatory changes in the future as a result of the FAA study.

Comment: The proposed language in this section does not adequately guide waste transfer facilities. It imposes notification requirements for new proposed waste transfer facilities or for existing facilities that wish to expand their operation. The facility is required to notify the Bureau of Aviation of the

Department of Transportation, the Federal Aviation Administration (FAA) and the airport if the facility is, or will be, within six miles of an airport. However, the section fails to set forth the required notification, the timeframe under which this notification must be delivered or how long the notified parties have to respond. These provisions should be added to the final-form regulation. (3)

Response: As part of the environmental assessment process for landfills and transfer facilities, applicants are currently required to contact a number of agencies to determine the impact the operation of the facility may have on human health and the environment. Those agencies are listed on the Department's Form D, Environmental Assessment for Municipal and Residual Waste Management Facilities. Permit applicants for municipal waste landfills, for example, are currently required to notify the PA Bureau of Aviation, the Federal Aviation Administration, and the airport if the proposed facility is located within six miles of a public airport and to provide copies of any comments received. The permit applicant typically sends the notice to the agencies or airport with a response request of 30-60 days. If there is no response, the permit applicant can solicit the assistance of the Department to verify that the agency or airport has no comment.

Comment: The commentator stated that FAA studies have shown that birds are not attracted to facilities that do not accept "putrescible waste". The Board should consider adding an exemption for these facilities. (3)

Response: The Department has considered this suggestion and determined that notification will be required because there is no certainty that the waste will not attract birds or that putrescible waste will not be accepted sometime during the operational life of the facility.