

FROM :

FAX NO. : 4517089

Oct. 04 2000 01:35PM P3

**BOROUGH OF OLD FORGE  
TOWN HALL****310 SOUTH MAIN STREET  
OLD FORGE, PENNA. — 18218**

Phone 570 - 457-8862

Fax 570 - 457-8864

October 4, 2000

**Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 18701**

**Re: Final Rulemaking  
Environmental Quality Board  
25 Pa Code Chs. 271-273 and 277-285  
Municipal Waste**

**Dear Mr. Nyce:**

The Borough of Old Forge respectfully requests that the Independent Regulatory Review Commission approve the amendments to the above referenced municipal waste regulations that were adopted, virtually unanimously, as final rulemaking by the Environmental Quality Board on September 19, 2000.

Of particular concern to the Borough and its citizens are the amendments to Sections 271.127 and 271.201. These amendments represent long needed changes to the Department of Environmental Protection's permitting authority with regard to the harms and benefits of municipal waste landfills. Permit applicants for municipal waste landfills will be required to affirmatively demonstrate, for the first time, that the benefits of the project clearly outweigh known and potential harms of the project. In addition to being consistent with the Department's current municipal waste program, these changes are necessary for it to effectively carry out its obligations under the Solid Waste Management Act and Article I, Section 27 of the Pennsylvania Constitution, which mandate that the Commonwealth protect its public resources.

As I am sure you are aware, municipal waste landfills present a great threat of long-term harm to the environment and the communities near their location. This is especially true, as in the case of the Alliance Landfill, when the facility's location is highly visible, on the slope of a steep mountain and in extreme close proximity to

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2000 OCT 10 PM 12:22

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Oct. 04 2000 01:36PM P4

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residential neighborhoods. Under the current regulations, applicants for landfills are not required to meet this test and the Department is legally unable to deny a landfill permit if it presents potential harms to the environment and communities. These amendments are long overdue and are needed to protect our citizens, the environment and the long-term economic well being of our communities.

The balancing of interests required in the regulation, while new for landfills, is not a concept new to Pennsylvania environmental law. The test was recognized as appropriate by the Pennsylvania Supreme Court as far back as 1976 in the case of *Payne v. Kassab*, 361 A.2d. 263 (PA 1976). Also the test has been found appropriate for use in other Department of Environmental Protection regulations that were approved by the Commission. In Section 105.16 (b), a water obstruction or stream encroachment will not be approved unless the applicant demonstrates that the public benefits of the project outweigh the harm. If the balancing test is appropriate for applicants for stream projects, then it certainly is appropriate for landfills that pose much greater risk to the environment and our communities.

In closing the Borough of Old Forge again passionately and respectfully requests that the Commission approve this final regulation. It provided that the Department with the much needed authority to protect the citizens of Pennsylvania from the harms and potential harms of improper siting and location of landfills. The future and economic well being of Old Forge depends on it.

Sincerely,



Alan Heyen, Chairman  
Old Forge Borough Environmental  
Committee

**BOROUGH OF OLD FORGE  
TOWN HALL**



**310 SOUTH MAIN STREET  
OLD FORGE, PENNA. — 18518**

Phone 870 - 457-8852 Fax 870 - 457-8884

**RESOLUTION 2000-17**

**WHEREAS**, municipal waste landfills can present a great threat of long term harm to the public health, safety, welfare and the environment; and

**WHEREAS**, municipal waste landfills, especially when improperly located near residential neighborhoods can present a great threat of long term harm to quality of life and the economic well being of the communities near their location; and

**WHEREAS**, municipal waste landfills consume natural lands, thereby impinging on wildlife habitat and the public's use and enjoyment of the natural resources, including air, water and natural scenic, historic and aesthetic values of the environment; and

**WHEREAS**, communities located near and along the approach routes to municipal waste landfills experience traffic problems, litter, odors, noise, dust and other nuisances from the operation of landfills; and

**WHEREAS**, the Pennsylvania Department of Environmental Protection (DEP) currently lacks the authority to deny a permit application for a municipal waste landfill if the harms and potential harms of the facility outweigh the public benefits; and

**WHEREAS**, on September 19, 2000, the environmental Quality Board (EQB) adopted final regulations amending the DEP's municipal waste regulations to require permit applicants for municipal waste landfills to, as a prerequisite to obtaining a permit, affirmatively demonstrate that the benefits of the facility clearly outweigh the known and potential harms; and

**WHEREAS**, October 19, 2000, the Independent Regulatory Review Commission (IRRC) is scheduled to consider for approval the regulations adopted by the EQB on September 19, 2000, including the requirement that permit applications must affirmatively demonstrate that the benefits of the facility clearly outweigh the known and potential harms.

**NOW THEREFORE**, in consideration of the foregoing and in order to protect its citizens, property and the future economic well being of the community, it is hereby resolved that the Borough of Old Forge requires the Independent Regulatory Review Commission approve the final municipal waste regulations adopted by they EQB on September 19, 2000.

# PWIA

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

October 2, 2000

Original: 1974

Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown 2  
333 Market Street  
Harrisburg, PA 17101

**Re: Environmental Quality Board Municipal Waste Regulations, Title 25,  
Chapters 271-285, dated September 19, 2000**

Dear Mr. Nyce:

The Pennsylvania Waste Industry Association (PWIA) appreciates the opportunity to provide comment to the Independent Regulatory Review Commission on the Environmental Quality Board's regulation package entitled "Final Rulemaking, Municipal Waste Amendments (Chapters 271-285)" for consideration at the Commission's October 19, 2000 meeting. The regulation package suffers from several substantial problems. As discussed below, the environmental assessment provisions at Section 271.127 incorporated into the regulation package violate the Solid Waste Management Act and the Commerce Clause, and are bad public policy. PWIA respectfully requests the Commission disapprove this regulation pursuant to Sections 745.5(g) and 745.5a(h) and 745.5a(i)(3) of the Pennsylvania Regulatory Review Act, 71 P.S. §§ 745.5(g), 745.5a (h) and 745.5a(i)(3). In addition, portions of the regulation package were not previously published in proposed form and are defective pursuant to 71 P.S. §§ 745.5a(h) and 745.5a(i)(3).

PWIA requests that the environmental assessment provisions and the new regulations identified in this comment be withdrawn and returned to DEP.

**A. THE ENVIRONMENTAL ASSESSMENT PROVISIONS ARE  
CONTRARY TO LAW**

The proposed environmental assessment provisions of 25 Pa. Code 271.127 require an applicant for a permit to demonstrate that the benefit to the public will "clearly" outweigh the harm; otherwise the permit is denied. DEP does not have authority to engage in such a case-by-case balancing of harms and benefits under the Solid Waste Management Act or under the Pennsylvania Constitution. Further, the regulation seeks to restrict the flow of interstate commerce and violates the Commerce Clause. Finally, the regulation is so vague as to be arbitrary and unconstitutional.

Robert E. Nyce, Executive Director

October 2, 2000

Page 2

**1. The adoption of Section 271.127 exceeds the regulatory power of the Environmental Quality Board as it establishes a legislative policy that is solely within the power of the General Assembly**

In determining whether to approve or disapprove a final-form regulation, the Commission shall determine whether the agency has statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based. 71 P.S. § 745.5a (h). Section 271.127(c), Environmental Assessment, would require an applicant for a municipal waste permit to demonstrate that the "benefits of the project to the public clearly outweigh the known and potential environmental harms." This standard imposes a burden on an applicant which exceeds the regulatory power of the EQB under the Solid Waste Management Act (Act 97 of 1980) and the Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101 of 1988).

The power of an administrative agency to prescribe rules and regulations under a statute is not the power to make law, but only the power to adopt regulations to carry into effect the will of the legislature as expressed by statute. Volunteer Firemen's Relief Ass'n v. Minehart, 227 A.2d 632, 635-636 (Pa. 1967). That principle derives from the rule that "the basic policy choices be made by the General Assembly." National Solid Wastes Mgt. Ass'n v. Casey, 600 A.2d 260, 264 (Pa. Cmwlth. 1991). Thus, the rulemaking power of an agency is limited by statutory grant of authority and can only be conferred by clear and unmistakable language setting the exact boundaries of the statutory grant. Campo v. State Real Estate Comm'n., 723 A.2d 260, 262 (Pa. Cmwlth. 1998). The regulatory action must be within the strict and exact limits defined by the statute." Pennsylvania Med. Soc. v. Com., State Bd. of Med., 546 A.2d 720, 722 (Pa. Cmwlth. 1988).

The regulation of solid waste is governed by the Solid Waste Management Act ("SWMA"), 35 P.S. §6018.101 et seq., and the Municipal Waste Planning, Recycling and Reduction Act ("Act 101"), 53 P.S. §4000.101 et seq. These statutes constitute plenary regulation of the field of solid waste by the General Assembly. Concerned Residents v. DER, 639 A.2d 1265, 1275 (Pa. Cmwlth. 1994), *aff'd*, 670 A.2d 1120 (Pa. 1995). There is nothing in the SWMA that suggests that an applicant for a municipal waste landfill permit is required to establish that the benefits of the project clearly outweigh the harms. Rather, the applicant is required to comply with regulations concerning environmental protection.

Similarly, there is no mention of a harms versus benefits analysis in Act 101. Section 4000.507, entitled Relationship Between Plans and Permits, sets forth the

Robert E. Nyce, Executive Director  
October 2, 2000  
Page 3

General Assembly's statement of conditions for the issuance of municipal waste landfill permits. Under that section, DEP may not issue any permit unless the applicant demonstrates that the proposed facility: (1) is provided for in the plan for the county; or (2) meets four requirements, including that the facility will not interfere with implementation of the county waste plan.

Neither the SWMA nor Act 101 contain any language requiring an applicant for a permit to establish that the benefits of the project clearly outweigh the harms to the public as a condition of doing business. That condition represents the establishment of a basic policy choice which is only within the power of the General Assembly to establish.

**2. DEP does not have the constitutional authority to engage in case-by-case balancing of harms and benefits.**

A case-by-case balancing of harms and benefits by DEP is not required to satisfy Article I Section 27. The necessary balancing was performed by the legislature in enacting the Solid Waste Management Act. In Concerned Residents of the Yough v Department of Natural Resources, 639 A.2d 1265 (Pa. Cmwlth. 1994), the Commonwealth Court cited National Waste Association v Casey, 600 A.2d 260 (Pa. Cmwlth. 1991), for the proposition that the "SWMA, and the regulations promulgated pursuant thereto, indicate the General Assembly's clear intent to regulate in a plenary fashion every aspect of the disposal of solid waste, consequently, the balancing of environmental concerns mandated by Article I, Section 27 has been achieved through the legislative process." In short, the General Assembly engaged in the balancing of environmental harms required to satisfy Article I Section 27 by enacting the Solid Waste Management Act, and no independent balancing by DEP is required or authorized.

**3. DEP's abrogation of discretion and refusal to issue permits violates its statutory obligation to consider applications and issue permits.**

DEP's promulgation of the harms and benefits test, first by policy and now in regulation, is yet another chapter in the Department's continuing attempt to restrict interstate commerce. As set forth in National Solid Waste Association v Casey, 600 A.2d 260 (Pa. Cmwlth. 1991), the solid waste industry is pervasively regulated by the Solid Waste Management Act. Under Casey, DEP has the statutory obligation to regulate the solid waste industry through the issuance of permits and cannot refuse to issue permits that otherwise meet the requirements of the Solid Waste Management Act. DEP's abrogation of its statutory responsibility to consider applications and issue permits is a violation of DEP's statutory mandate. DEP's proposed regulation is contrary to the Solid Waste Management Act.

Robert E. Nyce, Executive Director  
October 2, 2000  
Page 4

**4. DEP's regulation violates the commerce clause.**

DEP's harms and benefits regulation at Section 271.127 implements Executive Order 1996-5.<sup>1</sup> The Executive Order, like the Governor's recent public pronouncements calling for a statewide moratorium on new landfill permits, was issued with the stated purpose of limiting the importation of municipal waste.

State regulation which restricts the free flow of interstate commerce is prohibited by the United States Constitution. Beginning in 1978 with the seminal Supreme Court decision in Philadelphia v. New Jersey, the free flow of waste in interstate commerce has been constitutionally protected.

The harms and benefits regulation at Section 271.127 is DEP's latest attempt to prevent the importation of municipal waste and violates the Commerce Clause.

**5. DEP's case-by-case balancing of harms and benefits is so vague as to be arbitrary and unconstitutional.**

DEP's case-by-case balancing of harms and benefits in 25 Pa. Code § 271.127(c) lacks any standard at all to guide and to limit the agency in its decision making. 71 P.S. §745.5a(i)(3)(ii). The inquiry is so indefinite that any decision by DEP will be inherently arbitrary. Decisions made by DEP using such a vague, ill-defined limitation are unconstitutionally arbitrary and void for vagueness. See Watkins v Board of Dentistry, 627 A.2d 261 (Pa. Cmwlth. Ct. 1999).

DEP's application of a case-by-case balancing of harms and benefits also is inherently arbitrary. There is nothing to provide guidance as to how any given harm and any given benefit will be weighted in the balance. Such a case-by-case agency determination is void for vagueness. See Salada v Commonwealth, 627 A.2d 760 (Pa. Cmwlth. 1993), holding that a case-by-case determination of whether a sewer was "available" was unconstitutionally arbitrary and void for vagueness. See, also, State Board of Pharmacy v. Cohen, 292 A.2d 277 (Pa. 1972).

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1. The Department of Environmental Protection first implemented the Executive Order by guidance. This guidance recently was ruled illegal and unenforceable by the Environmental Hearing Board. *Dauphin Meadows, Inc. v. Commonwealth of Pennsylvania, Department of Environmental Protection, et al.*, EHB Docket No. 99-190-L (Opinion and Order on Motion for Summary Judgment, issued April 27, 2000).

Robert E. Nyce, Executive Director  
October 2, 2000  
Page 5

**B. PORTIONS OF THE REGULATION PACKAGE WERE NOT PREVIOUSLY PUBLISHED IN PROPOSED FORM, EXCEED STATUTORY AUTHORITY AND ARE UNREASONABLE.**

The final rulemaking stems from a proposal adopted by the Environmental Quality Board more than two years ago on June 16, 1998 and published in the Pennsylvania Bulletin on August 29, 1998. Several new programs incorporated into the final rulemaking were not included in or contemplated by the proposal and no notice or opportunity for public comment was provided concerning the new programs.

These new programs exceed DEP's statutory authority and are unreasonable. 71 P.S. §§ 745.5a(h) and 745.5a(i)(3).

1. **Radiological Waste** - The final rulemaking includes a major new radiological waste program that was not part of the initial proposal. The new program is incorporated into many sections of the regulations, including 25 Pa. Code §§ 273.133, 279.103(a)(18), 281.112(a)(20), 283.103(20), 273.140(a), 279.110, 281.119, 283.113, 273.214(c), 279.215(f), 273.201(l-n), 277.201(m-p), 279.201(i-k), 281.201(g-i), 283.201(k-m), 271.613, 273.223, 273.140a, 277.222, 279.222, 281.221, 283.220, 273.313, 277.312, 279.252, 281.272, and 283.262. Among other things, the new program requires radiation monitoring of incoming waste by waste facility operators. The facility operator is required to fulfill the police function of impounding vehicles and preventing vehicles from leaving if the operator suspects that a vehicle may contain radiological waste. No such program currently exists and the new requirements exceed statutory authority and are unlawful. Facility operators have no inherent police powers and should not be compelled to perform a police power function. These provisions, which were not included in the notice of proposed rulemaking and for which no public comments were solicited, should be deleted from the regulations.

2. **Traffic Enforcement** - The final rulemaking includes a new regulatory program to transfer highway traffic enforcement functions from the police to landfill owners and operators, at 25 Pa. Code § 273.311. The owners and operators are delegated the authority and duty to enforce police restrictions on weight of trucks. This new program exceeds statutory authority and is unlawful. Landfill owners and operators have no inherent police powers and should not be compelled to perform a police power function. The collection of such information and making the information available to state officials also may expose landfill operators to civil liability to the extent the information is incorrect or inaccurate. These provisions, which were not included in the notice of proposed rulemaking and for which no public comments were solicited, should be deleted from the regulations.



Robert E. Nyce, Executive Director  
October 2, 2000  
Page 6

3. **FAA Regulation** - The final rulemaking at 25 Pa. Code § 273.202(a)(16) creates an entirely new provision seeking to enforce federal regulation 14 CFR § 77.23(a)(5) administered by the Federal Aeronautics Administration ("FAA") relating to air traffic. The final rulemaking misinterprets and misapplies the federal air traffic regulation. Under the federal regulation, the FAA must investigate any proposed structure that meets the criteria of 14 CFR § 77.23(a)(5) and determine whether the structure actually poses a hazard to air navigation. The final rulemaking skips this step and excludes landfill operations in areas in which the federal FAA would allow such operations. DEP's application of 24 CFR § 77.23(a)(5) is erroneous.

In addition, the regulation package at 25 Pa. Code § 271.201(b)(9) appears to adopt limitations with respect to location of landfills in the vicinity of airports. The regulations misinterpret federal law and exceed statutory authority.

#### C. CONCLUSION.

PWIA requests that the environmental assessment provisions of 25 Pa. Code § 271.127 be withdrawn and returned to DEP. PWIA further requests that the procedurally defective portions of the regulation package be withdrawn and returned to DEP. PWIA will be happy to supply any additional information that the Commission may require.

Respectfully submitted,

*Harry Smith, Chair*  
*(mw)*

Pennsylvania Waste Industries  
Association

Original: Original: 1974

# WEBBER ASSOCIATES

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Government Affairs Consulting

2000 OCT -3 AM 8:51

ONE WESTWIND

LEMOYNE, PENNSYLVANIA 17043

LEGISLATIVE HISTORY  
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(717) 731-6057

FAX (717) 731-6058

MaryWebber@aol.com

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Original: 1974

October 4, 2000

Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 18701

Re: Final Rulemaking  
Environmental Quality Board  
25 Pa Code Chs. 271-273 and 277-285  
Municipal Waste

Dear Mr. Nyce:

The Borough of Old Forge respectfully requests that the Independent Regulatory Review Commission approve the amendments to the above referenced municipal waste regulations that were adopted, virtually unanimously, as final rulemaking by the Environmental Quality Board on September 19, 2000.

Of particular concern to the Borough and its citizens are the amendments to Sections 271.127 and 271.201. These amendments represent long needed changes to the Department of Environmental Protection's permitting authority with regard to the harms and benefits of municipal waste landfills. Permit applicants for municipal waste landfills will be required to affirmatively demonstrate, for the first time, that the benefits of the project clearly outweigh known and potential harms of the project. In addition to being consistent with the Department's current municipal waste program, these changes are necessary for it to effectively carry out its obligations under the Solid Waste Management Act and Article I, Section 27 of the Pennsylvania Constitution, which mandate that the Commonwealth protect its public resources.

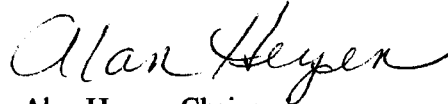
As I am sure you are aware, municipal waste landfills present a great threat of long-term harm to the environment and the communities near their location. This is especially true, as in the case of the Alliance Landfill, when the facility's location is highly visible, on the slope of a steep mountain and in extreme close proximity to

residential neighborhoods. Under the current regulations, applicants for landfills are not required to meet this test and the Department is legally unable to deny a landfill permit if it presents potential harms to the environment and communities. These amendments are long overdue and are needed to protect our citizens, the environment and the long-term economic well being of our communities.

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In closing the Borough of Old Forge again passionately and respectfully requests that the Commission approve this final regulation. It provided that the Department with the much needed authority to protect the citizens of Pennsylvania from the harms and potential harms of improper siting and location of landfills. The future and economic well being of Old Forge depends on it.

Sincerely,

A handwritten signature in cursive script that reads "Alan Heyen".

Alan Heyen, Chairman  
Old Forge Borough Environmental  
Committee

Original: 1974

## IRRC

---

**From:** joe r mozeleski [joemozeleski@juno.com]  
**Sent:** Sunday, October 15, 2000 9:05 PM  
**To:** IRRC@irrc.state.pa.us  
**Subject:** DEP

IRRC members,

Please vote for giving DEP the power to reject a landfill permit when the harms outweigh the benefits. This protection is needed to stop Pa. from being the dumping ground of the US. We have proved that Alliance landfill in Taylor Pa. has a history of violations and non compliance but

yet DEP MUST give them an expansion if they meet all the technical requirements. This is wrong! This dump takes in 95% out of state garbage and is destroying the well being and property values of all the area surrounding it. In a meeting with DEP our town had over 1000 people in attendance and gave statistical facts as to why this expansion should be denied. We urge you to put some teeth in Gov. Ridge's decree and give the

DEP the power to reject on harms outweighing the benefits. If not, our state will continue to be the garbage pit of the US. There are 30 applications for new or expansions with DEP that need answers in a few month's. We have 11 years capacity for our garbage and states that don't want to handle their own are taking advantage of us. Your passage of this

valuable tool for DEP will be the first step in stemming the tide.

Please

vote for the citizens of Pa. and not the interests of a few greedy outsiders that are ruining our state.

Thank You,

Joe Mozeleski  
559 Winter St.  
Old Forge Pa. 18518  
Ph. 570 562 1575

---

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October 5, 2000  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Superior Greentree Landfill, Inc.  
635 Toby Road  
Kersey, PA 15846  
(814) 265-1744  
Fax (814) 265-8745

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown 2  
333 Market Street  
Harrisburg, PA 17101

RE: Environmental Quality Board Municipal Waste Regulations, Title 25, Chapters 271-285, dated September 19, 2000

Dear Mr. Nyce:

I have worked in the waste industry for 13 years. In that time I have seen many changes. Landfill regulations have brought about many significant technological safeguards that ensure the safety of the environment and the people. The PaDEP monitors these regulations very well.

In order to maintain these environmental safeguards, there are millions of dollars of stockholders' money invested in building, maintaining, closing, and monitoring landfills. There is not enough local waste to sustain the high cost of operation, so we must market for other waste streams.

In almost any industry, the market is not just in the local area. If the State Government cuts off our markets, we will not be able to operate profitably while maintaining the essential environmental safeguards. I am confident that the Superior Greentree Landfill, Inc. is contributing to the local, state, and federal economies while protecting the environment and the community.

Please consider the views of the Pennsylvania Waste Industries Association. It is essential that our rights to free flow of interstate commerce are protected and upheld. If you would like, you are welcome to come and tour our facility. If you have any questions or comments, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald J. Henrichs".

Donald J. Henrichs  
Eastern Region Landfill Manager

lmh

Original: 1974

10/16/00

To: The Independent Regulation Review Commission

From: Philip Reviello  
802 Main St.  
Moosic Pa, 18507  
570-457-5654

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2000 OCT 16 PM 2:41

INDEPENDENT REGULATORY  
REVIEW COMMISSION



Re: The municipal waste regulations that were adopted by the Environmental Quality Board on Sept. 19<sup>th</sup> 2000 requiring landfills to show that the benefits to a community outweigh the harms before a permit is approved.

Please do not allow landfills [such as the Alliance Landfill in the Taylor, Old Forge, Moosic area of Northeastern, Pa.] to continue to destroy our environment and compromise the safety and welfare of those living in the area.

It is not fair to subject the citizens and their children to the hazards and the ridicule of being the trash capitol of the country.

The harms to the community far outweigh the benefits, and these regulations will help to reverse this terrible situation in our area. The expansion permit for the Alliance Landfill should never be granted.

Sincerely,

Philip Reviello

# FAX COVER SHEET

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ATTN: Bob NYCE  
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THE INDEPENDENT REGULATION REVIEW COMMISSION

FAX #: 717-783-2664

FROM: P. REVIELLO

SUBJECT: REGULATION REVIEW

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RE: REGULATIONS REVIEW OF  
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**IRRC**

---

**From:** Dasco210@aol.com  
**Sent:** Sunday, October 15, 2000 11:07 AM  
**To:** IRRC@irc.state.pa.us  
**Subject:** No. 1074 Environmental Quality Board #7-340: Municipal Waste

Mr. Aurthur Coccodrilli  
IRRC member

Dear Mr. Coccodrilli:

I am a member of the Old Forge Environmental Committee. We plan on being present and comment at your Oct. 19, 2000 meeting on the above referenced.

As a lifetime resident of Lackawanna County and Old Forge in particular, I was very pleased at the attendance of Senator Mellow at our recent meeting concerning the Expansion of Alliance Landfill.

Senator Mellow gave a comforting speech on his backing of the Borough to prevent this expansion from overwhelming our Borough. A copy of the transcript will be available for your Oct. 19 meeting. The concerns are many, the violations are extravagant, and the only way to prevent such an tragedy is to give the DEP the ability to deny a landfill permit based on the harmful effects outweighing the benefits.

The county owned landfills in our Commonwealth will have no problem proving the benefits will outweigh the harms. But in the case of Alliance Landfill, this is a private company looking a the almighty dollar, the harms clearly and overwhelmingly outweigh any possible benefits it may have. Also, the track record of Alliance is far from even bad. If Alliance was a race horse it would be glue many years ago.

Given your past record on the Lackawanna County Solid Waste Committee and words from Senator Mellow, we feel comfortable in your judgement and look forward to speak to you at the Oct. 19 meeting.

Sincerely,  
David Scarnato

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REVIEW COMMISSION

2000 OCT 16 AM 8:00

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October 16, 2000

Pennsylvania Department of Environmental Protection  
Interim Land Use Policy Office  
Department of Environmental Protection  
P.O. Box 2063  
Harrisburg, PA 17105-2063

2000 OCT 27 AM 8:52  
LABORATORY  
REVIEW COMMISSION

**RE: DEP IMPLEMENTATION OF ACTS 67/68 - CONSISTENCY OF PERMIT ISSUANCE  
TAKING INTO ACCOUNT LAND USE**

To Whom It May Concern:

I would like to submit the following comments for the Department's consideration, regarding the implementation of Acts 67 and 68, particularly in regard to recycling and industrial facilities in the Commonwealth. As I have commented to the Department previously on the issue of confusing waste definitions, and use of permit by rule provisions which leave many materials questionable as to whether they are or are not waste. Because of this, recycling facilities operating in the Commonwealth cannot tell whether they are or are not in compliance with local zoning, particularly when a "individual permit" is called in at a facility previously covered under permit by rule.

The problem is caused because Pennsylvania does not have "bright line" waste definitions as to what is and is not waste, like surrounding states. Waste and beneficial use materials in Pennsylvania are defined in a very complex manner, yet, most local ordinances and zoning regulations assume that a "bright line" waste definition actually exists in the Commonwealth.

The central issue is that recycling facilities, in particular, when they seek to expand, will in many instances, be found to be not in compliance with local land use, principally due to the complex nature of the Department's own waste management regulations.

At a minimum, the Department needs to develop detailed guidance for these and industrial facilities clarifying that:

- ▶ Recycling facilities are not actually "waste" facilities, and, materials properly recycled are not wastes.
- ▶ Clarifying that managing waste incidental to industrial or recycling activities does not cause land use to be considered that of a waste management facility.
- ▶ Clarifying that all facilities in existence, or for which permits have been issued, prior to Acts 67 and 68 coming into effect, are considered to be in conformance with local land use (or otherwise "grandfathered"), and have a reasonable right to expansion and continued operation, including issuance of permits for continued operation, if a local land use conflict is caused by the definition of what is and is not waste in Pennsylvania.

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Waste management activities at industrial facilities and in particular, recycling facilities, provide substantial benefit, minimize consumption of landfill space, maximize sound use of resources, and minimize energy consumption. Recycling facilities are subject to market fluctuation, and the Department needs to be very careful to make sure any permits needed for continued operation and expansion are not held up, or unnecessarily withheld, due to perceived conflicts with local land use, caused by the DEP's failure to have a "bright line", for what are and are not wastes in Pennsylvania.

Because this issue is not going to go away, and, because the public and regulated community expect a clear definition of what is and is not waste, I would urge the Department to adopt a timetable to end the confusing array of:


- permits by rule
- general permits
- coproduct approvals
- "like" wastes

At a minimum, it is imperative that the Department, in its guidance, state clearly that a call-in of an individual permit at a former permit by rule facility shall not make a recycling or industrial facility a "waste" facility, thereby causing a land use conflict.

I appreciate the opportunity to comment; I would urge the Department to give this issue careful attention, because a sound recycled materials management system is in everybody's best interest.

Very truly yours,

**RT ENVIRONMENTAL SERVICES, INC.**

  
Gary R. Brown, P.E.  
President

GRB/hrj

C: Mr. William Pounds, PA DEP  
Independent Regulatory Review Commission

## IRRC

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**From:** Dasco210@aol.com  
**Sent:** Sunday, October 22, 2000 8:46 PM  
**To:** IRRC@irrc.state.pa.us  
**Subject:** No. 1074 Environmental Quality Board #7-340: Municipal Waste

All IRRC members: Original: 1974

I want to "Thank You" and all the members of the Board at the recent Oct. 19, 2000 meeting. Rest assured, the vote for No. 1074 Environmental Quality Board #7-340: Municipal Waste was a good vote which will give the policing agency (DEP) some teeth.

We know this will be a long fight for us in Lackawanna County. Alliance have the backing of a billion dollar world company.

Sincerely,  
David Scarnato

Original: 1974

*City of Scranton*

**EMBARGOED MATERIAL**

*Department of Community  
Development*



340 N. Washington Avenue  
Scranton, PA 18503

570-348-4193

October 18, 2000

Chairman John R. McGinley  
Independent Regulatory Commission  
14<sup>th</sup> Floor Harrisstown #33  
333 Market St.  
Harrisburg, PA 17101

**RE: FINAL RULE MAKING  
ENVIRONMENTAL QUALITY BOARD  
25 PA CODE CHAPTER 271 THRU 273  
CHAPTERS 277 THRU 285**

Dear Mr. McGinley:

I would strongly urge the IRC to approve the amendments to the municipal waste act that were recently adopted by the Environmental Quality Board.

The Department of Environmental Protection, while trying to protect public health, has continued to lack the authority to deny an application for locating municipal waste landfills based on the applicant clearly demonstrating that the benefits to the community outweigh the known and potential harm to the public. I believe the amendments are long overdue.

Communities located along the routes to the landfills have had to suffer from litter, dust, noise, unsafe trucks, traffic problems and other nuisances.


I would like to point out that the Environmental Quality Board has already determined that the harm vs. the benefits test appears in other regulations (e.g. 25 PA Code, Chapter 105, yet this does not include landfills.)

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REVIEW COMMISSION

October 18, 2000  
Page Two.

The passage of this language is critical of the Commonwealth in leveling the playing field for all citizens of the Commonwealth. The public and businesses at large can only benefit from this regulation.

Sincerely,



Mary Alice Burke  
Director, Department of Community Development  
Former C.A.C. Member

cc: Senator Robert Mellow  
Mr. Allan Heyen, Councilman, Old Forge  
Representative Gaynor Cawley  
Congressman Donald Sherwood  
Mayor James Connors

# City of Scranton

Department of Community  
Development



340 N. Washington Avenue  
Scranton, PA 18503

(717) 348-4193

|                       |          |         |
|-----------------------|----------|---------|
| Director              | 348-4193 | ext. 23 |
| Receptionist          | 348-4193 | ext. 10 |
| Master Code Official  | 348-4193 | ext. 15 |
| Electrical Inspector  | 348-4193 | ext. 16 |
| Asst. Bldg/Zoning     | 348-4193 | ext. 18 |
| Plumbing Inspector    | 348-4193 | ext. 19 |
| Signs                 | 348-4193 | ext. 20 |
| Permits               | 348-4193 | ext. 21 |
| Secretary to Director | 348-4193 | ext. 22 |
| Housing Inspectors    | 348-4193 | ext. 23 |
| Planning              | 348-4180 |         |
| FAX NUMBER            | 348-4171 |         |

TO: Chairman McEnley, IRC FAX NO. 717-783-2664

FROM: MARY Alice Burke FAX NO. (570) 348-4171

RE: FINAL Rule Making

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET 3

SHOULD THIS TRANSMISSION BE UNCLEAR, PLEASE CONTACT:

Carol

NAME OF SENDER

PHONE: (570) 348-4193

MUNICIPAL BLDG.  
340 N. WASHINGTON AVENUE  
SCRANTON, PA. 18503

x28

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# INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** Shirley Hartman  
or Cindy Lauderbach  
or Denise Henke  
**Agency:** Department of Environmental Protection  
**Phone:** 7-2814  
**Fax:** 705-4980

**From:** Kristine M. Shomper  
Deputy Director for Administration  
**Company:** Independent Regulatory Review  
Commission  
**Phone:** (717) 783-5419 or (717) 783-5417  
**Fax:** (717) 783-2664

**Date:** October 18, 2000  
**# of Pages:** 4

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