



# ARM Group Inc.

Earth Resource Engineers and Consultants

RECEIVED

2000 SEP - 6 AM 8-42

INDEPENDENT REGULATORY  
REVIEW COMMISSION

September 1, 2000

Original: 1974

Mr. Robert J. Harbison, III  
Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Subject: PADEP Municipal Waste Regulations;  
Request of Lancaster County Solid Waste Management Authority;  
ARM Project 99186

Dear Mr. Harbison:

Attached please find a copy of a letter that was sent to Mr. William Pounds of the Pennsylvania Department of Environmental Protection. The attached letter was prepared by ARM Group Inc. (ARM) on behalf of the Lancaster County Solid Waste Management Authority (LCSWMA). We respectfully request that the Independent Regulatory Review Commission (IRRC) review the concerns of LCSWMA with respect to Section 273.202 (a)(9) of the proposed Municipal Waste Regulations (Title 25, Pennsylvania Code, Chapter 273).

The proposed final-form regulations are moving toward consideration by the Environmental Quality Board on September 19, 2000. The referenced section of these regulations may impose an inappropriate and undue burden upon the citizens of Lancaster County, and the Commonwealth, as described within the attached letter. The issue relates to the potential prohibition of the reuse of a currently inactive landfill that the LCSWMA intends to reactivate on its property in the future. The LCSWMA has invested many millions of dollars in site development and infrastructure, and opposes a measure that may diminish the value of a large portion of its investment.

You will find that the attached letter offers very modest changes to the proposed language of the referenced regulations. The requested changes would accommodate the concerns of the LCSWMA, and they would not impose any new or inappropriate burdens on the community. Moreover, from a statewide land use management perspective, the requested changes would promote the efficient reuse of inactive landfills, thereby diminishing the taking of "greenfields" for future landfill purposes. Would you please have one of your analysts evaluate this issue, and consider acting on behalf of the LCSWMA and in the interests of the Commonwealth with respect to this matter. Thank you very much for your timely attention to this request.

Sincerely yours,

ARM Group Inc.

Ned E. Wehler, P.G.  
President

NEW/sld  
Enclosure

cc: Mr. James Warner, Executive Director, Lancaster County Solid Waste Management Authority  
(LCSWMA)  
Mr. George H. Brubaker, Hartman, Underhill & Brubaker, LCSWMA Solicitor  
Mr. James M. Smith, Senior Analyst, IRRC  
Mr. John H. Jewett, Senior Analyst, IRRC



# ARM Group Inc.

Earth Resource Engineers and Consultants

---

August 28, 2000

Mr. William Pounds  
Chief, Division of Municipal and Residual Waste  
Bureau of Land Recycling and Waste Management  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
P.O. Box 8471  
Harrisburg, PA. 17105-8471

Subject: Request for Determination: Eligibility of Lancaster County Solid Waste Management Authority for the Expansion Provisions of Section 273.202(a)(9) of the Proposed Revisions to the Department's Chapter 273 Municipal Waste Regulations; File 99186

Dear Mr. Pounds:

This letter is a follow-up to our telephone conversation of Wednesday, August 23, 2000 concerning the interests of the Lancaster County Solid Waste Management Authority (LCSWMA) with respect to Section 273.202(a)(9) of the Proposed Revisions to the Department of Environmental Protection's (the Department's) Chapter 273 Municipal Waste Regulations. ARM Group Inc. (ARM) has been engaged by LCSWMA to assist it in addressing the matters set forth in this letter.

Of concern to the LCSWMA is language contained in the landfill expansion provisions of Section 273.202(a)(9) of the proposed revisions to the Department's Chapter 273 Municipal Waste Regulations. These provisions are part of extensive proposed changes to the Title 25, Pennsylvania Code Subpart D, Article VIII, Chapters 271-273 and 277-285 regulations that appear on the Department's internet web site as of August 2000. LCSWMA is requesting that the Department review this matter and confirm, in writing, that property currently owned by LCSWMA, or property that is subject to an enforceable option contract to purchase by LCSWMA, is eligible for the landfill expansion provisions of Section 273.202(a)(9) of the proposed revisions to the Department's Chapter 273 Municipal Waste Regulations.

The reason that the LCSWMA has this concern is due to its interest in the future implementation of existing conceptual plans for the expansion of its combined Frey Farm and Creswell Landfill facility, located in Manor Township, near Creswell, Lancaster County, Pennsylvania. These conceptual plans may involve an expansion that includes adjacent property that the LCSWMA expects to have under an enforceable purchase option agreement before the effective date of the aforementioned proposed regulations. As currently written, the proposed regulations [(Section 273.202(a)(9))] imply that any former landfill, cell or aggregation of cells that are no longer

accepting waste are therefore “not operating and closed”, and thereby not eligible for the provisions of Section 273.202(a)(9). If they are interpreted this way, then the LCSWMA’s conceptual expansion plans would be no longer valid, nor would an expansion be financially viable. This would be very harmful to the interests of LCSWMA and the citizens of Lancaster County.

### **Proposed Regulations: Section 273.202(a)(9); Occupied Dwelling-Expansion**

LCSWMA interprets the subject section of the proposed regulations as allowing future expansion(s) of the LCSWMA’s permitted landfills at Creswell. This section of the proposed regulations allows “a permitted municipal waste landfill that was operating and not closed” as of the date that the new regulation(s) takes effect, to make an expansion, under the overall provisions of the whole set of controlling regulations, on property owned by LCSWMA and/or property on which the LCSWMA holds “an enforceable option contract to purchase”, and still holds those same rights or option rights “when the expansion permit is issued” in a manner that permits the following minimum buffer distance requirements with respect to an occupied dwelling: “300 feet measured horizontally from an occupied dwelling” for the landfill’s operations, and “500 feet measured horizontally from an occupied dwelling” for the disposal area.

### **Relevant Information-Existing LCSWMA Creswell Property**

LCSWMA operates two permitted landfill facilities on its Creswell property (see Figure 1); these are known as the Creswell Landfill (DEP Permit No. 100008) and the Frey Farm Landfill (DEP Permit No.101389). The Creswell Landfill was last active in 1990-1991, when it completed construction of an interim landfill cover (cap) on its Ravine Cell. This construction was documented by LCSWMA’s submission of Form 37, Certification of Facility Construction Activity, to the Department on March 14, 1991. Since then, it has remained in a state of suspended operation, while the LCSWMA has conducted active filling of the Frey Farm Landfill segment of the overall property. The Frey Farm Landfill is the currently active part of the overall landfill facility. The Creswell portion of the landfill facility has not been permanently closed, as the LCSWMA has had the intent of seeking its future expansion under a major permit modification for Creswell, to be submitted to the Department for its review and approval at some future date.

### **LCSWMA Request(s)**

As set forth earlier in this letter, LCSWMA interprets Section 273.202(a)(9) of the proposed revisions to the Department’s Chapter 273 Municipal Waste Regulations as allowing the LCSWMA’s Creswell property (i.e. existing Creswell and Frey Farm Landfills) to qualify for its provisions, in entirety. Based on the preceding discussion, and the information presented in this letter, LCSWMA requests that the Department confirm this interpretation made by LCSWMA, and moreover, that the Department confirm that this interpretation applies not only to its owned land at Creswell, but also to any abutting and otherwise contiguous properties that LCSWMA may have acquired or have under an enforceable option contract to purchase before the date that the new regulation(s) takes effect [i.e. aforementioned Section 273.202(a)(9)].



In addition, the LCSWMA makes the additional, following requests:

1. That the Department amend the Preamble of the subject Article VIII. Municipal Waste Regulations, Section 273.202, "Areas where municipal waste landfills are prohibited", to include the following language: "The final rulemaking does not apply the 900-foot isolation distance from occupied dwellings to the expansion of existing permitted municipal waste landfills, that were operating and not closed as of the effective date of this final rulemaking, onto lands owned by the applicant as of the effective date of the final rulemaking. Nor does the 900-foot isolation distance apply if the applicant entered into an enforceable option contract on or before the effective date of the final rulemaking to purchase the land and the applicant either exercised its option rights and purchased the land or the applicant continues to hold the option rights." (Note: This is approximately the same as language taken from the Department's Response to the Public Comments). To this language, the LCSWMA requests that the Department add the following language: "As a point of clarification, the 900-foot isolation distance in the preceding case has been set in the final rulemaking as 300 feet measured horizontally from an occupied dwelling for the landfill's operations, and 500 feet measured horizontally from an occupied dwelling for the disposal area. Also, the phrase "landfill that was operating and not closed" includes those municipal solid waste landfills that are under a valid permit, but may be inactive due to the existence of another active landfill on the applicant's property." This amendment would give LCSWMA the added reassurance that its inactive, but not closed, Creswell Landfill would qualify for the Section 273.202(a)(9) provisions.
2. That the Department supplement its response to the Public Comments concerning Section 273.202(a)(6)(ii), Setback Requirements, to clarify that a permitted municipal landfill that is no longer accepting municipal waste, but is in a state of suspension (i.e. has not filed a final closure certification), would qualify for the "expansion of a permitted municipal waste landfill that was operating and not closed" provisions of the final form regulation [(i.e. Section 273.202(a)(9)]. This supplemental response by the Department would give LCSWMA the added reassurance that its inactive, but not closed, Creswell Landfill would qualify for the Section 273.202(a)(9) provisions.
3. That the Department add a new, clarifying response that addresses the meaning of the phrase of Section 273.202(a)(9), "operating and not closed" to mean a permitted municipal landfill that has not permanently closed, with permanent closure being defined as a facility that has filed its Final Closure Certification, pursuant to the provisions of Section 273.322 and related sections and subsections of the Department's Chapter 273 regulations. This clarification would give LCSWMA the added reassurance that its inactive, but not closed, Creswell Landfill would qualify for the Section 273.202(a)(9) provisions.



**Time of the Essence**

With the final form regulations moving toward consideration for approval by the Environmental Quality Board on September 19, 2000 and further consideration by the Independent Regulatory Review Commission and the Attorney General, for effective implementation in late October, 2000, we ask that you respond to the request of this letter by not later than September 1, 2000. We cannot overemphasize how important and how sensitive this issue is to the LCSWMA, and even more so, to the citizens of Lancaster County and their elected officials. Lancaster County's Official Solid Waste Management Plan provides for a continuation of landfill disposal of incinerator ash, non-combustible municipal waste, construction demolition debris, and bypass waste until at least the year 2040. Guided by this Plan, the LCSWMA has made a huge investment in its Creswell facility. Thus, the LCSWMA and the citizens of Lancaster County should not bear the encumbrance of identifying and developing a "greenfield" site as an alternative to its investment in property, facilities, and infrastructure at its Creswell property. Therefore, we respectfully request your favorable assistance with respect to the matters set forth herein. Thank you very much for your prompt attention to this request.

Very truly yours,

ARM Group Inc.



Ned E. Wehler, P.G.  
President

- cc: 1) Mr. James Warner, Executive Director, Lancaster County Solid Waste Management Authority (LCSWMA);  
2) Mr. George H. Brubaker, Hartman, Underhill & Brubaker, LCSWMA Solicitor;  
3) Independent Regulatory Review Commission; Attn: Mr. Robert J. Harbison, III, Chairman  
4) Mr. David Hess, Executive Deputy Secretary, Pennsylvania Department of Environmental Protection

