

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

ENVIRONMENTAL QUALITY BOARD REGULATION NO. 7-340

MUNICIPAL WASTE REGULATIONS

NOVEMBER 25, 1998

We have reviewed this proposed regulation from the Environmental Quality Board (EQB) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to economic impact, protection of the public health and safety, need, reasonableness, and clarity of the regulation. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 271.1. Definitions. – Protection of the Public Health and Safety, Economic Impact, Reasonableness and Clarity

Clean Fill

We have several concerns with the proposed amendments to the definition of clean fill. First, we object to the reliance on the Clean Fill Guidance Document to determine what will be clean fill and what will be waste. The Preamble indicates: “The Department is developing a guidance document that identifies de minimis levels of contamination and criteria for the management of clean fill.” Commentators claim that the current version of the Clean Fill Guidance Document is unnecessarily restrictive and results in materials being classified as waste when they can be used safely as clean fill.

The specific standards that will be used to determine what will be clean fill and what will be a residual waste should be promulgated as regulations. A guidance document is not subject to the same level of legislative oversight or public notice and input as a regulation. The EQB should include the criteria for clean fill determinations in the regulation, with justification for their reasonableness. The Scientific Advisory Board and other affected groups may be helpful in developing these standards.

Second, the definition uses two undefined terms: “uncontaminated” and “de minimis contamination.” Because these terms are used to define clean fill, it creates confusion as to whether clean fill can contain any contaminants. The EQB needs to define these two terms in the regulation to resolve this inconsistency.

Finally, the last part of the definition provides that "A person using the material as clean fill has the burden of proof to demonstrate that the material is clean fill." The proposed shift in the burden of proof is inconsistent with rules and regulations of the Environmental Hearing Board found at 25 Pa Code Section 1021.101(b). The EQB should explain the basis for shifting the burden of proof in this instance.

Home Self-Care and Infectious Waste

The proposed definitions of "home self-care" and "infectious waste" exclude home self-care wastes from the requirements for the disposal of infectious waste. This would allow used sharps to enter the municipal waste stream, exposing waste collection personnel to the risk of being punctured or exposed to infectious disease. One commentator provided several examples of language used in other states to protect waste collection workers. The EQB should establish procedures for safe disposal of used sharps in the municipal waste stream.

Municipal-Like Residual Waste

The EQB is defining a new term, "municipal-like residual waste," because some residual waste does not need to go through the detailed chemical analysis process required in Section 287.132. Commentators expressed concern with the creation of this term. They believe it may allow waste containing hazardous material to be classified as residual waste.

There are four concerns with this definition. First, the term itself lacks clarity because it uses two distinct statutory classifications of waste. Introducing the term "municipal" into the term is confusing because the waste is still residual. Therefore, the EQB should avoid naming this type of waste by referencing "municipal" waste.

Second, the EQB should explain how municipal-like residual waste will be handled and disposed in a manner that will protect the public health and safety. Furthermore, the EQB should explain how the handling and disposal of the materials in this category differ from other residual waste.

Third, the regulation should contain the standards and process to determine that the waste "has the same physical and chemical characteristics as municipal waste."

Finally, the EQB should provide examples of materials that will meet this category of residual waste.

2. Section 271.2. Scope. – Clarity

We have two concerns with Section 271.2. First, Subsection (b)(3) has been amended to allow "*a small quantity of residual waste*" to be mixed with sewage sludge in order to be managed under the municipal waste regulations. There is no definition of what is considered a small quantity. Therefore, the EQB should define what it considers "a small quantity."

Second, the list in Subsection (c)(3) includes "auto fluff." It is not clear what specific waste would qualify as "auto fluff." The EQB should expand the description in Section 271.2 to

clarify the particular wastes which are "auto fluff," or define the term "auto fluff" in Section 271.1.

3. Section 271.127. Environmental assessment. – Need

Existing Section 271.127(a) requires the applicant to consider "prime farmland." The proposed amendment deletes the term "prime," so that all farmlands have to be considered. However, the EQB does not explain the reason for this amendment in the Preamble. The EQB should explain the need for the applicant to consider all farmlands and why the consideration of only "prime farmland" is no longer sufficient.

4. Section 271.144. Public notice and public hearings for permit modifications. – Need

Subsections (a)(2) and (b)(7) include changes in the average or maximum daily waste volume as items that require a major permit modification. Several commentators oppose this provision. One commentator stated that since impacts are based upon the maximum daily tonnage, changes in average daily volumes should not be considered major permit modifications. The EQB should explain the need to classify changes in average daily waste volumes as major permit modifications.

5. Section 271.202. Completeness review. – Clarity

Subsection (a)(2) states that if the parties are unable to reach agreement on an alternative timeline, the Department will determine an appropriate timeline. This requirement is vague. It is not clear who makes the decision that the parties are unable to reach agreement, or what parameters would be used in making the decision. The EQB should clarify Subsection (a)(2) to allow either party to request that the Department impose a timeline.

6. Section 271.211. Term of permits. – Clarity

The proposed amendments to Subsection (c), as published in the *Pennsylvania Bulletin*, delete the prohibition on disposing after a permit expires. This appears to be a typographical error. The EQB should review the amendments to Subsection (c) to clarify that operations may not continue after a permit expires.

7. Section 271.222. Permit modification. – Clarity

The proposed amendments to Subsection (c) would allow the Department to approve a minor modification "onsite." The regulation does not specify how an onsite determination is documented. This may result in later disagreements over what specific modification was approved, or the extent of the modification. The regulation should require an onsite modification to be followed up in writing within a short time period, such as one day.

8. Section 271.413. Assessment of penalties - minimum penalties. – Clarity

The first sentence of Subsection (j) lacks clarity. It is not clear whether an "administrative order," or "another abatement order" would provide the "abatement period *set in the order.*" The EQB should amend this provision for clarity.

9. Section 272.251. Submission of revisions. – Clarity

Subsection (a), as printed in the *Pennsylvania Bulletin*, has what appears to be a typographical error. It does not have a Paragraph (2). The EQB should review this Subsection and make the appropriate correction in the final-form regulation.

10. Section 272.322. Scope of grant. – Need

Subsection (b)(4) excludes indirect costs as defined in Office of Management and Budget Circular A-87. Several commentators expressed concern that this provision would exclude legitimately incurred costs. The EQB explained that this restriction is intended to reduce or eliminate requests for duplicate reimbursements. The EQB also explained that it is implementing a recommendation from the Department's Comptroller's Office based upon past audits. The EQB should further justify the need to use Office of Management and Budget Circular A-87 and respond to the claim that it will result in lower reimbursements.

11. Section 272.364. Maintaining certification; decertification; recertification. – Need and Reasonableness

There are four concerns with Section 272.364. First, under Subsection (a)(2), an inspector must conduct at least one inspection per calendar year, or be decertified. Why is certification dependent upon the frequency of inspections performed? How would a violation of Subsection (a)(2) seriously diminish the qualifications of the inspector who meets the training requirements of Subsection (a)(1)? The EQB should justify the need for this provision.

Second, decertification for violating Subsection (a)(2) is the same penalty given for far more serious infractions, such as submitting false information to DEP. Why is the inspector required to wait two years before the inspector can be recertified? The commentator's request for an inactive status appears to be more reasonable. The EQB should amend the penalty for violating Subsection (a)(2), or justify why the penalty is reasonable.

Third, this section should indicate that decertification actions are subject to appeal before the Environmental Hearing Board. Likewise, Subsection (c) should specify that the Department will not send out a notice of decertification until the order becomes final.

Finally, the regulation will require a host municipality inspector to complete a Department sponsored course and retake the examination for certification every three years. Why is testing needed every three years?

12. Section 273.134. Plan for access roads. - Clarity

We have two concerns with the proposed addition to Section 273.134. First, Section 273.134 describes the content of an application concerning access roads. Whereas, Section 273.213 provides the actual specifications an access road must meet. The proposed addition to Section 273.134 describes a specification for access roads. Therefore, the EQB should move this provision to Section 273.213. We suggest the following language for Section 273.134: "The application shall contain designs, cross sections, and specifications for access roads in accordance with Section 273.213 (relating to access roads)."

Second, the phrase "adequately handle" is vague. It is not clear what standards the design is expected to meet or what would constitute a violation of this provision. The regulation should describe a standard the design is expected to meet.

13. Section 273.161. Liner system and leachate control plan. – Need

Subsection (d)(19) requires the application to include the percent of recycled material in the description of the liner. The EQB did not provide a sufficient explanation of why the percent of recycled material in a liner is relevant and needed. For example, would the Department disapprove a liner on the basis of the percent of recycled material? The EQB should delete the requirement for percent of recyclable material unless the EQB can demonstrate this information is relevant and needed.

14. Section 273.192. Closure plan. – Clarity

In Subsection (a), the phrase "toward and after closure" lacks clarity. It may be clearer to describe the activities that are proposed to occur "prior to closure" and after closure. We have the same concern with Subsection (b)(4). The EQB should replace the word "toward" with clearer language.

15. Section 273.211. Signs and markers. – Clarity

The EQB is deleting prescriptive requirements for the posting of a facility sign. There is merit in making sign requirements less prescriptive, but the EQB may be deleting information that is important to the public, such as the name, address, and phone number of the organization operating the facility. The EQB should consider if the public interest would be better served by maintaining this information on the sign.

16. Section 273.214. Measurement and inspection of waste. – Implementation and Clarity

This section requires an operator to inspect the incoming waste to assure it is consistent with the facility's permit. As part of this requirement, the operator must include screening of waste for radioactive isotopes. Commentators expressed concern with the level of inspection that will be required and the costs involved with testing for radioactive isotopes. The EQB needs to address three aspects of this new provision.

First, the EQB should clarify what amount of inspection is necessary for the operator to determine the characteristics of the incoming waste.

Second, with respect to testing for radioactive isotopes, the regulation does not indicate a specific level of radiation which would trigger the rejection of the incoming waste. This specific standard for radioactivity should be included in this section.

Finally, the EQB should examine the costs and capital necessary to complete this inspection, including the inspection of radioactive isotopes. If the costs are significant, the EQB should consider establishing a reasonable timeframe for operators to implement this provision.

17. Section 273.234. Final cover and grading. - Clarity

Subsection (a)(1)(i) requires the cap to limit the migration of precipitation "to the greatest degree that is technically possible." Paragraph (a)(1) specifies the permeability of the cap may be no more than 1.0×10^{-7} cm/sec. It is not clear which requirement the material would be required to meet. Further, a material may be technologically superior, but cost prohibitive. The EQB should delete the requirement in Subsection (a)(1)(i).

18. Section 273.251. Scope and requirements. and Section 273.254. Secondary liner. - Need and Economic impact

The EQB is proposing to add Section 273.251(c) which requires either the primary or secondary liner to be constructed as a composite liner. Section 273.254 provides the specifications for the secondary liner. One commentator states that double synthetic liner systems have proven to be effective. The commentator sees no need for the proposed enhanced liner system design which would exceed federal requirements.

The EQB explains in the Preamble that the federal regulations only require a single composite liner. The EQB believes the proposed requirement will result in extraordinary protection against leaks at a reasonable cost. However, the EQB has not provided any information to demonstrate that existing requirements are not sufficient, or any reference to problems that have occurred. Therefore, the EQB should delete this requirement. Alternatively, the EQB should explain the need to exceed federal requirements and estimate its economic impact.

19. Section 273.287. Abatement plan. - Clarity

Subsections (c)(2) and (c)(3) discuss "background standards." The EQB should explain whether the term "background standard" is the same as used in 25 Pa. Code Chapter 250.

20. Chapter 273, Table 1. Minimum liner design standards. - Reasonableness

One commentator stated that natural and remolded clay should be an allowable material as a composite component. The EQB should either include this material or explain why this material would not function properly as a composite component.

21. Section 273.282. Number, location and depth of monitoring points. - Clarity

One commentator stated that the requirement to be within 200 feet may not be compatible with the requirement to be located at the points of compliance. The EQB should more clearly explain how an operator should comply with this requirement.

22. Section 273.513. Sewage sludge. - Clarity

The first sentence of proposed Section 273.513 is vague. It is not clear how the sludge must be stabilized "to meet processes to significantly reduce pathogens or processes to further reduce pathogens." The EQB should clarify this section by including standards in this section or by referencing the appropriate standards in Chapter 271.

23. Section 277.134. Plans for access roads. – Clarity

We have two concerns with the proposed addition to Section 277.134. First, Section 277.134 describes the content of an application concerning access roads. Whereas, Section 277.213 provides the actual specifications an access road must meet. The proposed addition to Section 277.134 describes a specification for access roads. Therefore, the EQB should move this provision to Section 277.213. We suggest the following language for Section 277.134: "The application shall contain designs, cross sections, and specifications for access roads in accordance with Section 277.213 (relating to access roads)."

Second, the phrase "adequately handle" is vague. It is not clear what standards the design is expected to meet or what would constitute a violation of this provision. The regulation should describe a standard the design is expected to meet.

24. Section 277.161. Liner system and leachate control plan. – Clarity

Subsection (d)(19) requires an application to include the percent of recycled material in the liner. The EQB did not provide a sufficient explanation of why the percent of recycled material in a liner is relevant and needed. The EQB should delete the requirement for percent of recyclable material unless the EQB can demonstrate this information is relevant and needed.

25. Section 277.202. Areas where construction/demolition waste landfills are prohibited. - Clarity and Need

Subsection (a)(3)(ii) is being added to prohibit construction/demolition landfills in areas underlain by mineable minerals after the effective date of the regulation. This prohibition would not apply if the operator owns the underlying mineral rights. If the landfill operator obtains consent from the owner of the mineral rights that no mining will occur and the owner guarantees no mining will occur, does this prohibition still apply?

Furthermore, it is not clear what standard will apply for the expansion of landfills underlain by minerals permitted prior to the effective date of the regulation. Subsection (a)(3)(i) describes the limitations for mineable coal, but it does not include any standard for other minerals. Therefore, the EQB should clarify if the same limitations will exist for landfill expansions over mineable minerals.

26. Section 277.211. Signs and markers. - Reasonableness

The EQB is deleting prescriptive requirements for the posting of a facility sign to make the requirement more performance based. There is merit in making the sign requirements less prescriptive, but the EQB may be deleting information that is of importance to the general public. Specifically, we question the deletion of the name, address, and phone number of the organization operating the facility. The EQB should consider if the public interest would be better served by maintaining this information on the sign.

27. Section 277.217. Air resource protection. – Clarity

Subsection (b) has been added to require compliance with the terms and conditions of the “air quality plan” and “air quality operating permit” issued to the facility. The “air quality plan” and the “air quality operating permit” appear to be requirements of Pennsylvania’s Air Pollution Control Act and associated regulations. Why is it necessary to reference these two requirements in this rulemaking? If a reference is necessary, specific citations to the regulations defining the air quality plan and air quality operating permit should be included.

28. Section 277.233. Final covering and grading. - Reasonableness and Clarity

Subsection (a)(1)(i) requires the cap to limit the migration of precipitation into the landfill “to the greatest degree that is technologically possible.” Section (a)(1) specifies the permeability of the cap may be no more than 1.0×10^{-7} cm/sec. It is not clear which requirement the material would be required to meet. Further, a material may be technologically superior, but cost prohibitive. The EQB should delete the vague requirement in Subsection (a)(1)(i).

29. Section 277.251. Scope and requirements. – Need and Reasonableness

Subsection (a) is being amended to require a liner for all construction/demolition landfills, except for existing landfills constructed with attenuating soil. The EQB should explain the need and justification for this change.

30. Section 277.312. Closure. – Clarity

Subsection (c)(2) allows the operator to “select one or more remediation standards” to address groundwater degradation. The EQB should explain and clarify what remediation standards are available and if they include the standards and process detailed in Chapter 250 (relating to the administration of the land recycling program).

31. Section 279.202. Areas where transfer facilities are prohibited. – Reasonableness and Clarity

The amendments to Subsection (a)(5) will prohibit a transfer facility from being located within 50 feet of a property line. The current regulation provides clarification that the limitation does not apply if the operator can demonstrate that processing of waste is not occurring within the distance. We question why this clarifying language is being deleted. Furthermore, it is not clear if the 50 feet distance will apply to access roads.

32. Section 279.211. Signs and markers. - Reasonableness

The EQB is deleting prescriptive requirements for the posting of a facility sign to make the requirement more performance based. There is merit in making the sign requirements less prescriptive, but the EQB may be deleting information that is of importance to the general public. Specifically, we question the deletion of the name, address, and phone number of the organization operating the facility. The EQB should consider if the public interest would be better served by maintaining this information on the sign.

33. Section 279.215. Operations and equipment. – Reasonableness and Clarity

This section requires an operator to inspect the incoming waste to assure it is consistent with the facility's permit. As part of this requirement, the operator must include screening of waste for radioactive isotopes. Commentators expressed concern with the level of inspection that will be required and the costs involved with testing for radioactive isotopes. The EQB needs to address three aspects of this new provision.

First, the EQB should clarify what amount of inspection is necessary for the operator to determine the characteristics of the incoming waste.

Second, with respect to testing for radioactive isotopes, the regulation does not indicate a specific level of radiation which results in the rejection of the incoming waste. This specific standard for radioactivity should be included in this section.

Finally, the EQB should examine the costs and capital necessary to complete this inspection, including the inspection of radioactive isotopes. If the costs are significant, the EQB should consider establishing a reasonable timeframe for operators to implement this provision.

34. Section 281.115. Plans for access roads. – Clarity

We have two concerns with the proposed addition to Section 281.134. First, Section 281.115 describes the content of an application concerning access roads. Whereas, Section 281.212 provides the actual specifications an access road must meet. The proposed addition to Section 281.115 describes a specification for access roads. Therefore, the EQB should move this provision to Section 281.212. We suggest the following language for Section 281.134: "The application shall contain designs, cross sections, and specifications for access roads in accordance with Section 281.212 (relating to access roads)."

Second, the phrase "adequately handle" is vague. It is not clear what standards the design is expected to meet or what would constitute a violation of this provision. The regulation should describe a standard the design is expected to meet.

35. Section 281.211. Signs and markers. - Reasonableness

The EQB is deleting prescriptive requirements for the posting of a facility sign to make the requirement more performance based. There is merit in making the sign requirements less prescriptive, but the EQB may be deleting information that is of importance to the general public. Specifically, we question the deletion of the name, address, and phone number of the organization operating the facility. The EQB should consider if the public interest would be better served by maintaining this information on the sign.

36. Section 283.218. Air resource protection. – Need and Clarity

This section currently requires operators of a resource recovery facility to meet the requirements of the Air Pollution Control Act. The section is being amended to require the operator to follow the most recent edition of the Department's criteria for best available

technology, if applicable. Commentators express concern that the Department's guidance document being referenced is inconsistent with federal regulations.

There are two concerns with this section. First, the EQB should explain the need to reference the guidance document since resource recovery facilities must already meet the requirements contained in Pennsylvania's Air Pollution Control Act and the federal Clean Air Act. Second, if the EQB finds a need to reference the guidance document in this rulemaking, it needs to assure that the document is consistent with the federal regulations.

37. Section 285.116. Surface and groundwater protection. – Reasonableness

Subsection (3) requires the facility to submit a permit modification within five days of the emergency storage of waste at a permitted facility. We question if five days is a reasonable time period for a facility to submit a permit modification.