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Senate of Pennsylvania

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STATE EMPLOYEES RETIREMENT BOARD
LUZERNE COUNTY RAILROAD AUTHORITY

ORIGINAL: 2245

April 22, 2002

David E. Hess, Chairman
Environmental Quality Board
15th Floor Rachel Carson Building
Harrisburg, PA 17105

RE: Reg. #7-371² – Safe Fill Regulations

Dear Chairman Hess:

We are writing on behalf of the Senate Environmental Resources and Energy Committee concerning the department's proposed Safe Fill Regulations (#7-372). The department has received many comments on the proposed regulation and the committee has reviewed them as well.

As members of the Environmental Quality Board, we will certainly work with the department to see that the necessary regulations for safe fill are in place. However, after reviewing the proposed regulations and comments, there are several concerns that the committee would like to express.

First, is the complexity of the regulations and this may lead to confusion for those who use these materials. The definition of "safe fill" alone exceeds two pages. Also, the requirements for the permit by rule (section 287.102) appear restrictive and cumbersome to the point where people may not want to bother using or receiving the material.

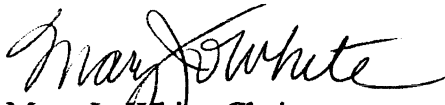
Cost is another issue. It appears that the proposed regulations will place significant costs on the regulated community and even state agencies. The sampling and administrative costs for materials that are suspected to be contaminated could be in the thousands of dollars. For an industry, utility, or state agency that moves millions of tons of material each year these costs could well be exorbitant.

This leads us to a third issue: more material, not less material, going to landfills. Several commentators expressed the fear that the cost of sampling, analysis, recordkeeping, and permitting will force contractors to send the material to a landfill because the disposal costs will be lower. Given the state's current concern over landfill disposal capacity, we are concerned that this might be an unintended consequence of the regulations.

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The proposed regulations are sweeping in their coverage and just about every construction and development project in Pennsylvania will be affected by them. This would include excavation along utility right-of-ways which we are sure are extensive throughout the state. Therefore, we urge the department to give due consideration to the many comments that were submitted on the proposed regulations.

Sincerely,


Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee


Raphael J. Musto, Democratic Chairman
Senate Environmental Resources
& Energy Committee

cc: Honorable Art Hershey
Robert E. Nyce, Executive Director
Independent Regulatory Review Commission



Senate Environmental Resources and Energy Committee

Senator Mary Jo White
Chairman

Patrick Henderson, Executive Director

Room 168 • State Capitol Building
Mailing address: Senate Box 203021 • Harrisburg, PA 17120-3021
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HOUSE OF REPRESENTATIVES
COMMISSION

August 5, 2003

The Honorable Kathleen A. McGinty, Chairwoman
Environmental Quality Board
15th Floor Rachel Carson Building
Harrisburg, PA 17105

RE: Advanced Notice of Final Rulemaking –
Provisions for the Management of Safe Fill

Dear Chairwoman McGinty:

We are writing in response to your request for comments on the Advanced Notice of Final Rulemaking for the Provisions for the Management of Safe Fill. This rulemaking package has been extensively commented on and we realize that there are outstanding issues that still remain.

Specifically, you asked us to comment on “the spill and release” provisions of the proposal. Many people have contacted us regarding the department’s proposal to regulate soil and other fill material that may have been affected by a spill or release as a waste. Given that a release is defined broadly under Pennsylvania environmental statutes, we are concerned that the definition of safe fill will be subject to a variety of interpretations and controversy.

Under the proposal, the materials would be regulated as a waste even if the residual contaminants are below statewide health standards. As a result, any soil remediated under Act 2, would have to be managed as a waste if it was removed from the property on which the release occurred. This seems contrary to the “risk-based approach” the department wants to take with this regulation.

With the spill and release language now in the regulations, it would seem to us that in many cases the regulated community would now run into “the buzz saw of the safe fill regulations” that you spoke of during the Senate Environmental Resources and Energy Committee’s hearing on June 25th, 2003. We feel that the materials should not be classified as a waste provided that they meet safe fill numeric values. We have heard from many people on this particular issue and the committee hopes that it can be resolved so that there is no conflict between the Land Recycling Program and the safe fill regulations.

The Honorable Kathleen A. McGinty, Chairwoman
Environmental Quality Board
August 5, 2003
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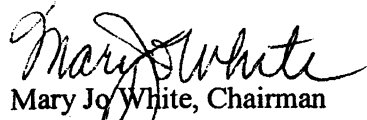
Other provisions in the proposed regulation may also affect the Land Recycling Program. For example, in the Permit By Rule portion of the proposal (section 287.102) there are restrictions on the use of materials within a 100-year floodplain and within 100 feet of any surface water body. These restrictions may limit the use of many brownfields which are located along many of Pennsylvania's rivers.

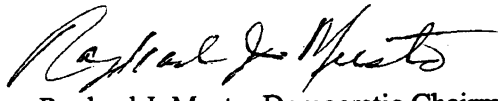
Section 287.11 of the proposed regulation contains the due diligence and safe fill numeric standards. This section requires sampling and analysis to demonstrate that the material meets the safe fill numeric standard or that the material has not been affected by a spill or release. This provision requires proving a negative – that the material has not been subject to a spill or release. The previous version of the regulations had required that no knowledge exists to prove that release had occurred. The due diligence section as currently written will require expensive sampling and analysis of materials to ensure compliance. This new and perhaps unnecessary expense may well force more material to be landfilled.

In closing, we urge you to look carefully at the comments submitted by the regulated community. These are the individuals that will need to deal day-to-day with the ramifications of the safe fill rulemaking. It is imperative that the final form rulemaking embrace a proper balance between ensuring adequate health and safety standards for the citizens of Pennsylvania with a common sense approach to safe fill management that spurs job growth, land recycling and preserves existing greenfields from unnecessary development.

Thank you very much for your consideration of these comments.

Sincerely,


Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee


Raphael J. Musto, Democratic Chairman
Senate Environmental Resources
& Energy Committee