

WILLIAM F. ADOLPH, JR., MEMBER
HOUSE POST OFFICE BOX 202020
ROOM 110, SPEAKER MATTHEW J. RYAN
LEGISLATIVE OFFICE BUILDING
HARRISBURG, PA 17120-2020
PHONE: (717) 787-1248
FAX: (717) 787-6685



House of Representatives

COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

**ENVIRONMENTAL RESOURCES
AND ENERGY,
MAJORITY CHAIRMAN**

CONSUMER AFFAIRS

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY,
BOARD OF DIRECTORS

Original: 2245
DISTRICT OFFICE:
920 WEST SPROUL ROAD
SPRINGFIELD, PA 19064
PHONE: (610) 544-9878
FAX: (610) 338-2294

August 8, 2003

The Honorable Kathleen A. McGinty
Secretary
Pennsylvania Department of Environmental Protection
16th Floor, Rachel Carson State Office Building
Harrisburg, Pennsylvania 17120

Dear Secretary McGinty:

I write to you today to offer comments on the Advanced Notice of Final Rulemaking for the Provisions for the Management of Safe Fill. I recognize that this issue has been debated for at least a year or more and the department has received a number of comments regarding these regulations during this time.

Over the past several weeks my office has been contacted by a number of organizations that would be affected by the proposed Safe Fill regulations. My office has also spent considerable time reviewing the current proposal, and I am concerned that the regulations in their present form will, especially the definition of safe fill, be open to a variety of misinterpretations resulting in confusion and uneven application of the final rules.

In the interest of brevity I would like to comment on only a few aspects of the proposed rule. First, is the "Spill or Release" provision. The current definition of a spill or release only references a material that has not been affected by a spill or release cannot qualify as safe fill. There is no definition regarding what constitutes a spill or release. Since a release is broadly defined under a number of environmental acts such as Act 2, this would lead to soils remediated on Act 2 sites being managed as a waste if removed from the location where the release occurred. This not only seems contrary to the provisions of our highly successful Act 2 program, but is contrary the "risk-based" approach that the department seeks to address with this regulation. I hope this conflict between Act 2 and the safe fill regulation can be resolved.

My second issue concerns the Historic Fill provision. Under the current version of the regulation historic fill would be classified as residual waste, and it further provides for only a single limited exception to this rule. This exception would allow historic fill to only be moved

RECEIVED
2003 AUG - 8 PM 1:38
INDEPENDENT REGULATORY
REVIEW COMMISSION

Page 2

August 8, 2003

offsite in quantities of no more than 500 cubic yards per excavation location for use as a fill provided the various requirements of Section 287.12 are met.

This will create enormous burdens to construction and other redevelopment projects in communities throughout Pennsylvania. There seems to be no justification to categorize this material as residual waste. Restrictions on the movement of historic fill off-site will leave no alternative but to landfill good fill material. Consequently the beneficial use of this material will be lost.

Next, I call your attention to the lack of clarity within the current version of the regulations. The absence of clear definitions, explanations, and guidance will only lead to multiple interpretations and uneven application of the regulations. I would urge the department to take time to carefully review the document and to clarify and improve the language contained within it.

Finally, I am sure the department will receive comments from the regulated community regarding this regulation. I urge you to carefully evaluate these suggestions as they are being submitted by the organizations that must adhere to the final rulemaking on a daily basis. Throughout this process we must ensure a proper balance between the health and safety of all Pennsylvanian's and an approach to managing this material that does not hinder economic growth in our cities and towns nor lead to the unnecessary loss of open space.

Thank you for your consideration of these comments.

Sincerely,



William F. Adolph, Jr., Majority Chairman
Environmental Resources and Energy Committee

WFAjr/vrh

Cc: Robert Nyce, Executive Director ✓
Independent Regulatory Review Commission