

# Regulatory Analysis Form

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(1) Agency

PA Department of Environmental Protection (DEP)

2007 DEC 13 PM 1:36

(2) I.D. Number (Governor's Office Use)

7-406

INDEPENDENT REGULATORY  
REVIEW COMMISSION

IRRC Number:

2587

(3) Short Title: Notification of Proximity to Airports

(4) PA Code Cite

25 Pa. Code Chapters 271, 279, 287 and  
293

(5) Agency Contacts & Telephone Numbers

Primary Contact: Michele Tate, 783-8727

Secondary Contact: Kelly Jean Heffner, 783-8727

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Environmental Quality Board (EQB) is amending the definition of airport in 25 Pa. Code §§271.1 and 287.1 (relating to definitions) by adding the term "military airport" to the definition of "airport" and adding new sections 279.112 and 293.112 to require applicants for waste transfer facilities and expansions to notify airports if the proposed facility will be located within six (6) miles of the airport runway. The rulemaking is in response to the petition and communications with the Department of Defense (DOD). The Bureau of Aviation of the Pennsylvania Department of Transportation (PennDOT), the Federal Aviation Association (FAA) and the airport are the entities that will receive the proposed notification. Copies of these notifications and responses to the notifications must be included in the permit application that is submitted to the Department.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

- The Solid Waste Management Act (SWMA), (35 P.S. §§ 6018.101-6018.1003). Section §105(a) of SWMA grants the EQB the power and the duty to adopt the rules and regulations of the Department to accomplish the purposes and carry out the provisions of the SWMA. 35 P.S. §6018.105(a).
- Section 102(4) of SWMA states a purpose of the Act is to protect the public health, safety and welfare from the short and long-term dangers of transportation, processing, treatment, storage, and disposal of all wastes. 35 P.S. §6018.102.
- Section 104(6) of the SWMA provides the Department with the power and the duty to regulate the storage, collection, transportation, processing, treatment and disposal of solid waste. 35 P.S. §6018.104.

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- The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101), (53 P.S. §§4000.101 - 4000.1904). Section 302 of Act 101 gives the EQB the power and duty to adopt the regulations of the Department to accomplish the purposes and carry out the provisions of Act 101. 53 P.S. §4000.302.
- Section 102(b)(3) of Act 101 states a purpose of the Act is to protect the public health, safety and welfare from the short- and long-term dangers of transportation, processing, treatment, storage, and disposal of municipal waste. 53 P.S. §4000.102.
- Section 301(6) of Act 101 provides the Department with the power and the duty to abate public nuisances. 53 P.S. §4000.301.
- The Administrative Code of 1929 (71 P.S. §§510-1 - 510-27). Section 1917-A authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition that is declared to be a nuisance by any law administered by the Department. 71 P.S. §510-17. Section 1920-A grants the EQB the power and the duty to formulate, adopt, and promulgate such rules and regulations as may be determined by the EQB for the proper performance of the work of the Department. 71 P.S. §510-20.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The notification required by these regulations will alert airports when a new or expanded transfer station or municipal waste landfill is proposed within six miles of the airport. The airport can then evaluate whether the proposed facility will impact the operation of the airport and associated aircraft. This evaluation will potentially increase the level of protection from bird strikes or obstructions created by the operation of the facilities and therefore increase military and public safety.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Permitted waste transfer facilities normally operate in enclosed structures. However, there is a concern that waste transfer activities, such as waste loading, unloading and storage, may still occur outside of an enclosed building and pose a risk to aircraft approaching or departing from nearby airports. This is a risk to public health and safety, and includes military personnel and people living in the area. The risk of bird strikes to aircraft becomes negligible when the airport runway is greater than six (6) miles from the waste transfer facility.

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(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The military and public will benefit from the notification as the evaluation of the potential harms from the operation of the proposed facility will ultimately affect the level of safety of persons operating aircraft and persons in the surrounding community.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

There are no adverse effects resulting from the regulation. The amendment will require additional notification to be sent by permit applicants. On an annual basis, the number of facilities that have to provide these notifications is estimated at less than 13.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Applicants for new or expanding transfer stations and landfills will be required to provide notice if the airport runway is within six miles of the proposed operation. The Department is estimating less than 13 applications per year, but in reality believes that very few will be within six miles of an airport runway.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

This rulemaking is in response to the petition and communications with DOD. The proposed amendments were presented and discussed with the Solid Waste Advisory Committee (SWAC) on July 14, 2005. Some SWAC members, who represent the interests of the waste industry, contend that the hazard of bird strikes from waste transfer operations is not an issue, as these operations are typically conducted in enclosed structures. SWAC is also concerned about whether the Bureau of Aviation at PennDOT, FAA and the applicable airport would timely respond to the notice and the impact of an untimely response on the Department, which could result in a delay of permit issuance. Other concerns expressed were the intent of the petition and whether the proposed amendment will apply to a large number of facilities. The SWAC concerns were discussed with the DOD prior to going forward with the proposed amendments. DEP met with SWAC again on May 11, 2006, reiterating its intent to move the proposed amendments forward. SWAC voted against the proposal. The regulations were adopted as proposed by the EQB on October 17 and published as proposed on December 23, 2006. Three commentators raised the same issues that were addressed previously. At its meeting on April 11, 2007, SWAC voted to disapprove the final regulations.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The cost to notify the Bureau of Aviation of PennDOT, the FAA and the airport that would be imposed on an applicant for a new or expanding waste transfer facility or landfill located within six (6) miles of an airport runway is estimated at approximately \$50. As waste transfer operations are conducted in enclosed structures, there may be no additional mitigation required by proposed new facilities or expansions in case their proposals are within six (6) miles of an airport runway.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

There are no costs and/or savings associated with implementation of the regulation, other than those associated with the time needed to review copies of the notices. Any additional workload that would result from these amendments would be absorbed by existing staff.

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2007	FY +1 2008	FY +2 2009	FY +3 2010	FY +4 2011	FY +5 2012
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Savings	None	None	None	None	None	None
<b>COSTS:</b>						
Regulated Community	1,800	1,890	1,985	2,100	2,190	2,300
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Costs	1,800	1,890	1,985	2,100	2,190	2,300
<b>REVENUE LOSSES:</b>	None	None	None	None	None	None
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Revenue Losses	None	None	None	None	None	None

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(20a) Explain how the cost estimates listed above were derived.

The approximate total cost for notification (by certified mail with return receipt) to the Bureau of Aviation of PennDOT, the FAA and the airport is estimated at \$50 per notification. Given that three notifications are needed for each application, and the total number of anticipated applications for new or expanded waste transfer and landfill applications is less than 13 annually (and probably far fewer would actually be proposed within six miles of an airport runway), the \$150/application is multiplied by 12 for a total cost to the regulated community of \$1,800 per year. A Consumer Price Index of 5% is used to calculate the cost for each year thereafter.

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3 2004-2005	FY-2 2005-2006	FY-1 2006-2007	Current FY 2007-2008
Environmental Program Management (161)	\$37,594,000	\$37,049,000	\$36,868,000	\$39,909,000
Environmental Protection Operations (160)	\$85,898,000	\$87,897,000	\$89,847,000	\$98,582,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The costs associated with the final amendments are minimal with no adverse effects to the regulated community, except drafting and mailing a notice to the Bureau of Aviation of PennDOT, the FAA and the airport.

## Regulatory Analysis Form

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Department considered adding the notification requirement to Form D (relating to environmental assessment) by listing the Bureau of Aviation of PennDOT, the FAA and the airport in the Form's list of state and federal agencies that must be contacted during the completion of the assessment. The legal authority for this option was not clear, so regulations were developed instead as requested by the DOD.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Although there are federal standards for airport notification that apply to municipal waste landfills that have been adopted in the Department's regulations, there are no equivalent notification requirements at the federal level for waste transfer facilities. The rulemaking resulted from the DOD petition to the EQB requesting that notification requirements be imposed on applicants for new and expanded landfill facilities and waste transfer operations. The addition of "military airport" to the definition of "airport" provides the regulations more specificity.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

No.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. The regulations will amend the existing regulation in 25 Pa. Code §271.1 and §287.1 by including the term "military airports" in the definition of "airport." By changing the definition of "airport," 25 Pa. Code §271.127 and 287.127 will require an environmental assessment to consider military airports. Pursuant to 25 Pa. Code §§273.121, 277.121, 288.128 and 289.128, the airport notification requirement for municipal waste landfills, construction and demolition waste landfills, residual waste landfills and residual waste disposal impoundments will extend to military airports. The siting criteria listed in 25 Pa. Code §§273.202, 288.422, 288.522, 288.622, 289.422 and 289.522 for municipal waste landfills, residual waste landfills and residual waste disposal impoundments will also apply to military airports.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

A 30-day comment period followed the publication of the regulations in the *Pennsylvania Bulletin*. No public hearings or informational meetings were held.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

As part of its permit application, an applicant for a new or expanding waste transfer facility, municipal and residual waste landfills, construction and demolition waste landfills and residual waste disposal impoundments will be required to send to the Department copies of responses received to the notices from the two agencies and the airport.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

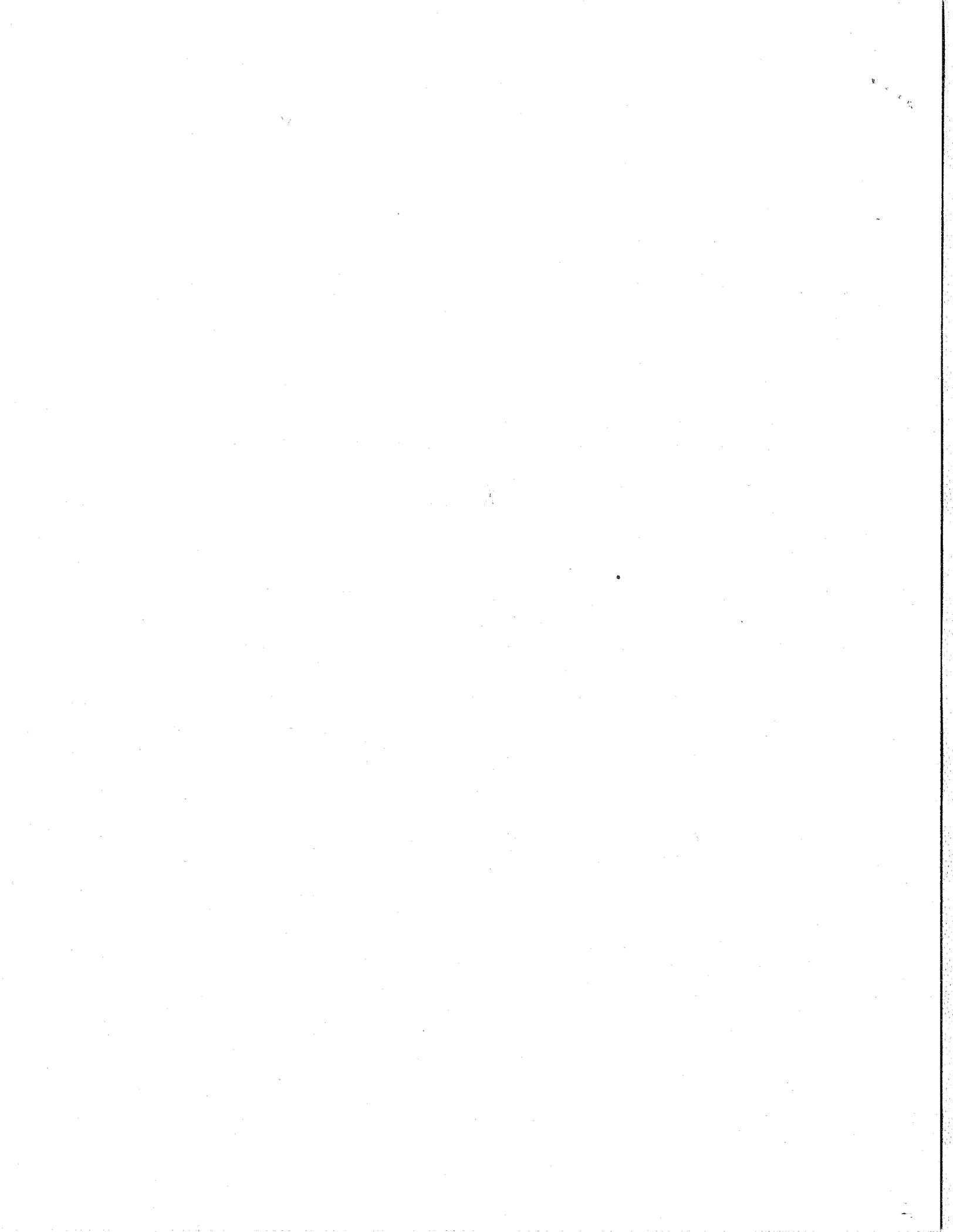
None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

It is anticipated that the final amendments will be published in the *Pennsylvania Bulletin* this summer and effective immediately.

(31) Provide the schedule for continual review of the regulation.

The regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.



**FACE SHEET  
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WITH THE LEGISLATIVE REFERENCE  
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# 2587

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-406

DATE OF ADOPTION October 16, 2007

BY Kathleen A. McGinty  
TITLE **KATHLEEN A. MCGINTY  
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY Andrew C. Clark  
DATE OF APPROVAL  
**NOV 7 2007**

(Deputy General Counsel)  
(Chief Counsel - Independent Agency)  
(Strike inapplicable title)

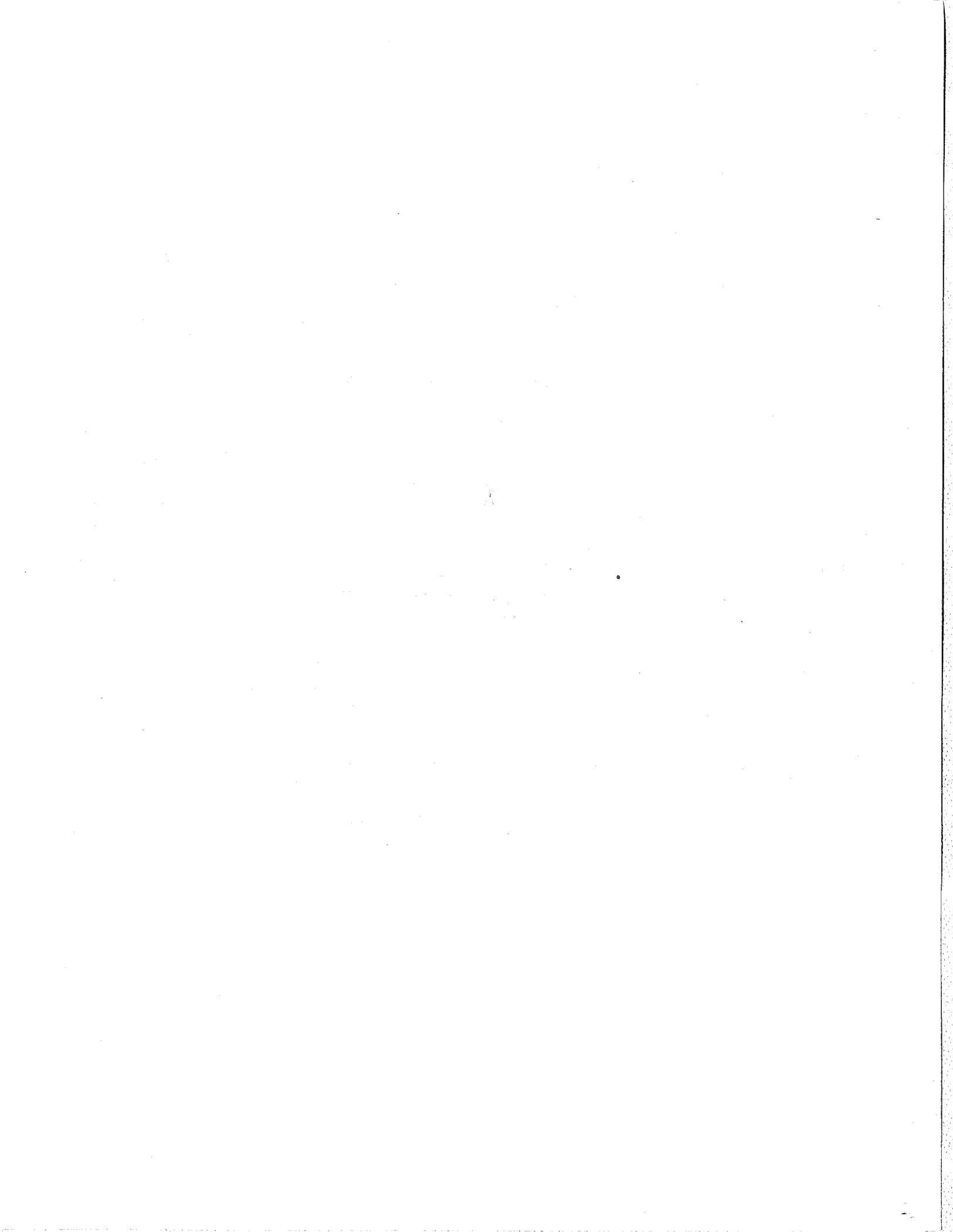
Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Notification of Proximity to Airports**

**25 Pa. Code, Chapters 271, 279, 287 and 293**



**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**(25 Pa. Code, Chapters 271, 279, 287 and 293)**

**Notification of Proximity to Airports**

**Order**

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapters 271, 279, 287 and 293 (relating to municipal waste and residual waste management). The amendments are based on a petition submitted by the Department of Defense (DOD), requesting that the Department address the potential hazards posed to military aircraft from bird strikes near waste landfill and transfer facilities. The amendments would broaden the definition of airport to include military airports, extend existing airport notification requirements for waste landfills to military airports and impose an airport notification requirement on waste transfer facilities.

This order was adopted by the Board at its meeting of October 16, 2007.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information contact Stephen Socash, Chief, Division of Municipal and Residual Waste, P.O. Box 8472, Rachel Carson State Office Building, Harrisburg, PA 17105-8472, (717) 787-7381, or Susan Seighman, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This final-form rulemaking is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

**C. Statutory Authority**

The final-form rulemaking is being made under the authority of the following:

The Solid Waste Management Act (SWMA) (35 P.S. §§6018.101 - 6018.1003), as amended, which in Section 105(a) (35 P.S. §6018.105 (a)) grants the Board the power and the duty to adopt the rules and regulations of the Department to accomplish the purposes and carry out the provisions of the SWMA. Sections 102(4) and 104(6) of SWMA (35 P.S. §§ 6018.102 and 104) provide the Department with the power and duty to regulate the storage, collection, transportation, processing, treatment and disposal of solid waste to protect the public health, safety and welfare.

The Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§4000.101 - 4000.1904), which in Section 302 (53 P.S. §4000.302) gives the Board the power and duty to adopt the regulations of the Department to accomplish the purposes and carry out the provisions of this act. Sections 102(b)(3) and 301(6) of Act 101 (53 P.S. §§ 102 and 301) state the intent of protecting the public health,

safety and welfare from the dangers associated with transportation, processing, treatment, storage and disposal of municipal waste and provide the Department with the power and duty to abate public nuisances.

The Administrative Code of 1929 (71 P.S. §§510-1 - 510-27), which in Section 1917 A (71 P.S. §510-17) authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition that is declared to be a nuisance by any law administered by the Department, and, which in Section 1920 A (71 P.S. §510-20) grants the Board the power and the duty to formulate, adopt and promulgate such rules and regulations as may be determined by the Board for the proper performance of the work of the Department.

#### **D. Background of the Amendments**

Current municipal and residual waste regulations require applicants for municipal and residual waste landfills, construction and demolition waste landfills and residual waste disposal impoundments to notify public airports if a new or expanded facility is proposed within six (6) miles of an airport runway. There is no similar notification requirement for municipal or residual waste transfer facilities because these operations are primarily conducted in enclosed structures. The DOD maintains and the Department concurs that there is a concern that waste transfer activities, such as waste loading, unloading and storage, may still occur outside of an enclosed building and pose a risk to aircraft approaching or departing from nearby airports. This is a risk to public health and safety, and includes military personnel and people living in the area. The risk of bird strikes to aircraft becomes negligible when the airport runway is greater than six (6) miles from the waste transfer facility. Accordingly, DOD petitioned the Department on July 28, 2004, to require an airport notification from waste transfer facilities. Furthermore, since the current definition of "airport" in §271.1 and §287.1 did not include the term "military airports," the petition also requested that the Department include this term in the definition.

The Board accepted the petition for further study on October 19, 2004. The Department agreed with the petition and submitted a Petition Report to the Board on April 19, 2005, recommending that the municipal and residual waste regulations be amended as requested by the DOD.

Adding the term "military airport" to the definition of "airport" in §§271.1 and 287.1 broadens the definition to address DOD airfields as well as public airports. With the exception of two strictly military airports in Pennsylvania, many public airports also serve as military airports. The addition of new §§279.112 and 293.112 will require a new or expanding waste transfer facility to provide notification to airports, including military airports, if the facility is within six (6) miles of the airport runway. By including military airports in the definition of "airport," the notification requirements are also being extended to military airports for new or expanded landfills.

The proposed amendments were presented to the Solid Waste Advisory Committee (SWAC) on July 14, 2005. Some members of the SWAC, primarily representing the interests of the waste industry, opposed these amendments. These members asserted that, unlike landfills, waste transfer facilities do not attract birds as the activities are primarily conducted in enclosed structures. Another industry concern was the airport not responding in a timely fashion or commenting on non-technical issues, which could delay permit issuance. Other concerns expressed were the intent of the petition; the additional notification burden imposed on the waste industry; and this requirement applying to a large number of facilities.

The Department, in agreement with the petition filed by the DOD, maintained that these amendments, as proposed, would provide for increased safety for both military and non-military personnel operating aircraft from airports located in the vicinity of waste transfer facilities and landfills. On May 11, 2006, the committee continued to discuss its prior concerns and the Department relayed the information that it obtained from DOD

in response to these concerns. The committee voted against the proposed amendments. However, the Department decided to proceed with the amendments in light of the reasoning advanced by DOD.

The proposed rulemaking was adopted by the Board at its meeting of October 17, 2006, and published in the *Pennsylvania Bulletin* on December 23, 2006. During the 30-day public comment period that followed, the agency received comments from three commentators: Tim O'Donnell, President, Pennsylvania Waste Industries Association; Elam M. Herr, Assistant Executive Director, Pennsylvania State Association of Township Supervisors; and the Independent Regulatory Review Commission.

The following major issues were raised: whether transfer operations in an enclosed building present an increased risk of bird strikes; whether inclusion of military airports retroactively imposes setback restrictions on existing, permitted facilities; and whether a lack of response from FAA or the Bureau of Aviation would result in a determination that an application was incomplete. These issues and the Department's responses were incorporated into the Comment and Response Document. No changes were made to the final amendments as a result of the comments.

On April 11, 2007, the Department presented the final amendments and Comment and Response Document to the Solid Waste Advisory Committee for their consideration. Again, the Committee voted to disapprove the rulemaking. For the same reasons discussed above, the Department has chosen to proceed to final rule with the package as originally presented to the EQB as proposed.

#### **E. Summary of Changes to the Proposed Rulemaking**

No changes were made to the Final Rulemaking as a result of comments received during the public comment period.

#### **F. Summary of Comments and Responses on the Proposed Rulemaking**

Notice of proposed rulemaking was published at 36 Pa.B. 7867 (Saturday, December 23, 2006). The proposal set forth a 30-day comment period. No public meetings or hearings were held.

During the public comment period, the Board and the Department received written comments from three individuals or groups. The Board and the Department considered the comments received and has prepared a comment and response document that addresses each comment on the proposed amendments. The following is a summary of the comments and the Board's responses.

*Chapter 271. Municipal Waste Management- General Provisions*

*Chapter 287. Residual Waste Management- General Provisions*

*§271.1. and §287.1. Definitions.*

The Board amended the term "airport" in these sections to include the term "military airport" in the definition. By including this term, all regulatory requirements that relate to airports, current and proposed, will apply to military airports.

Two commentators objected to the retroactive application of the airport exclusionary criteria that would result from the proposed definitional change. The comments asserted that inclusion of military airports within the definition of airport retroactively imposes setback restrictions on existing, permitted facilities and raises the potential for a confiscatory scenario. The commentators suggested that existing permitted municipal waste landfills be given a grandfathering provision from these requirements. The

Board declined to change the relevant exclusionary criteria, since currently there are no existing military airports either within or outside the borders of the Commonwealth that would trigger the existing setback criteria for municipal waste landfills, residual waste landfills or residual waste disposal impoundments. The regulation does not create any potential for confiscatory scenarios and therefore does not need to be amended to include only prospective provisions or grandfathering provisions for existing facilities.

*Chapter 279. Transfer Facilities.*

*Subchapter B. Application Requirements for Transfer Facilities.*

*Chapter 293. Transfer Facilities for Residual Waste.*

*Subchapter B. Application Requirements for Transfer Facilities.*

*§279.112 and §293.112. Notification of Proximity to Airport.*

The Board added new subsections that require applicants to notify the Bureau of Aviation of the Pennsylvania Department of Transportation (PennDOT), the Federal Aviation Agency (FAA) and the applicable airport if the proposed new or expanding municipal or residual waste transfer facility will be located within six (6) miles of the airport runway. These amendments would also require the applicant to include copies of these notifications in the permit application. The amendments would not affect most existing transfer facilities; it would apply only to new facilities and expansions of existing facilities.

Two commentators objected to requiring transfer facilities to provide the applicable notice, stating that transfer operations occur within an enclosed building and do not present a realistic increase in the risk of bird strikes. The Board disagreed, stating that although municipal and residual waste transfer operations are primarily conducted in enclosed structures, some waste transfer activities may occur outside of an enclosed building and attract birds, which potentially pose a risk to aircraft approaching or departing from nearby airports.

One commentator questioned whether municipal recycling centers are transfer facilities that need to comply with the regulations. The Board took no action regarding this comment, since the definition of a municipal waste transfer facility specifically excludes a collecting or processing center that is only for source-separated recyclable materials.

One commentator suggested that the Board refrain from enacting any regulatory changes until the results on an FAA-sponsored study on birds associated with waste transfer stations is complete. The Board declined to act on this suggestion to delay the regulation and believes it is appropriate to move forward with the rulemaking, since no new information has been provided at the time of the rulemaking to substantiate the claim that transfer stations do not pose an increased risk to aircraft from nearby airports. This action, however, does not preclude the Board from making further regulatory changes in the future as a result of the FAA study.

One commentator stated that this new subsection does not adequately guide new waste transfer facilities since it does not provide a timeframe under which the notification must be delivered or how long the notified parties have to respond. The Board declined to modify this subsection, since there are similar existing notification and contact provisions in the Department's Form D, Environmental Assessment for Municipal and Residual Waste Management Facilities. Applicants typically send notice to affected agencies with a response request of 30 to 60 days. If no response is received, the applicant may solicit the assistance of the Department to verify that the agency and/or airport receiving notification has no comment.

One commentator suggested that an exemption be granted to transfer facilities that do not accept putrescible waste. The Board declined to grant such an exemption, since there is no certainty that the waste will not attract birds or that putrescible waste will not be accepted sometime during the operational life of the transfer facility.

## **G. Benefits, Costs and Compliance**

### **Benefits**

The final-form amendments will benefit both military and non-military personnel operating and traveling in aircraft near waste landfill and transfer facilities, as they either approach or depart the airport runway, by reducing the potential risk of bird strikes to their aircraft, which can cause hazards to surrounding communities, as well.

### **Compliance Costs**

The final-form amendments will minimally increase the application cost, via the notification requirement, only for a new or expanding waste landfill or transfer facility and in these cases, only for those facilities that are proposed within six (6) miles of an airport runway. As applications for new or expanding landfills are estimated at less than ten, and new and expanding transfer facilities at a frequency of two or three per year, this minimal application cost increase will not affect the several hundred municipal and residual waste transfer facilities that are currently permitted in Pennsylvania. The applicant will be required to notify the relevant airport, the Bureau of Aviation of PennDOT and the FAA. The cost of each notice, sent by certified mail including a request for a return receipt, is estimated to be no more than \$50 current value, with the total cost of notification for each applicant estimated at \$150. The total cost per year, therefore, for up to 12 applicants sending notification to the two agencies and the airport is estimated at \$1,800.

There are no additional permit fees associated with these amendments and no indirect cost to the regulated community or the Department.

### **Compliance Assistance Plan**

Since the amendments would impose notification requirements only, a compliance assistance plan is not required.

### **Paperwork Requirements**

As part of its permit application, an applicant for a new or expanding waste landfill or transfer facility will be required to send copies of responses received from the two agencies and airport in response to the notices, to the Department. This is not expected to increase compliance costs.

## **H. Pollution Prevention**

Not applicable.

## **I. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

## **J. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 7, 2006, the Department submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B.7867, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment. Pursuant to section 5(e) of the Regulatory Review Act, the Department resubmitted the proposed rulemaking to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees on January 31, 2007.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on     (blank)    , these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on     (blank)     and approved the final-form regulations.

## **K. Findings of the Board**

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *Pennsylvania Code* §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 36 *Pennsylvania Bulletin* 7867 (Saturday, December 23, 2006).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

## **L. Order of the Board**

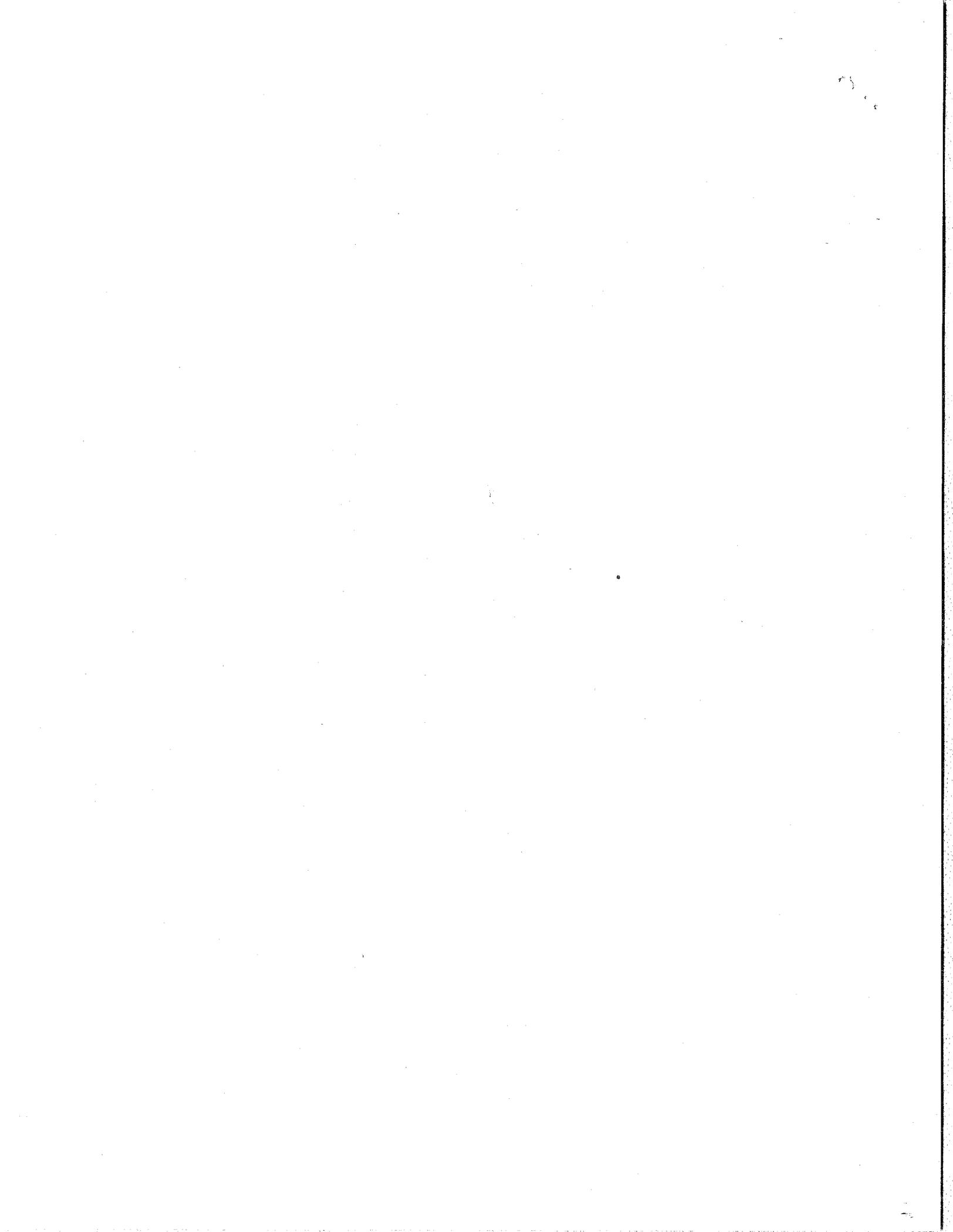
The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, 25 *Pennsylvania Code*, Chapters 271, 279, 287 and 293, are amended to read as set forth in Annex A.

- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately.

BY:

KATHLEEN A. MCGINTY  
Chairperson  
Environmental Quality Board



ANNEX A

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SUBPART D. ENVIRONMENTAL HEALTH AND SAFETY  
ARTICLE VIII. MUNICIPAL WASTE**

**CHAPTER 271. MUNICIPAL WASTE MANAGEMENT –  
GENERAL PROVISIONS**

**Subchapter A. GENERAL**

**§ 271.1. Definitions.**

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Airport*— “Public airport,” as defined in 67 Pa. Code § 471.2 (relating to definitions). [**The term does not include heliports.**]

**(i) The term includes military airports.**

**(ii) The term does not include heliports.**

\* \* \* \* \*

**CHAPTER 279. TRANSFER FACILITIES**

**Subchapter B. APPLICATION REQUIREMENTS FOR  
TRANSFER FACILITIES**

**GENERAL**

**§279.112. Notification of proximity to airport.**

**An applicant shall notify the Bureau of Aviation of the Department of Transportation, the Federal Aviation Administration and the airport if a proposed transfer facility or expansion is within 6 miles of an airport runway. The application must include a copy of each notification and each response to each notification received by the applicant.**

## ARTICLE IX. RESIDUAL WASTE MANAGEMENT

### CHAPTER 287. RESIDUAL WASTE MANAGEMENT – GENERAL PROVISIONS

#### Subchapter A. GENERAL

##### § 287.1. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Airport*— A public airport, as defined in 67 Pa. Code § 471.2 (relating to definitions). [The term does not include heliports.]

**(i) The term includes military airports.**

**(ii) The term does not include heliports.**

\* \* \* \* \*

### CHAPTER 293. TRANSFER FACILITIES FOR RESIDUAL WASTE

#### Subchapter B. APPLICATION REQUIREMENTS FOR TRANSFER FACILITIES

##### **§293.112. Notification of proximity to airport.**

**An applicant shall notify the Bureau of Aviation of the Department of Transportation, the Federal Aviation Administration and the airport if a proposed transfer facility or expansion is within 6 miles of an airport runway. The application must include a copy of each notification and each response to each notification received by the applicant.**

**COMMENT/RESPONSE DOCUMENT**  
**ON THE**  
**PROPOSED AMENDMENTS**  
**TO THE**  
**MUNICIPAL AND RESIDUAL WASTE REGULATIONS**  
**REGARDING NOTIFICATION OF PROXIMITY TO AIRPORTS**

**INDIVIDUALS OR ORGANIZATIONS THAT COMMENTED ON  
THE PROPOSED REGULATIONS REGARDING  
NOTIFICATION OF PROXIMITY TO AIRPORTS**

1. Tim O'Donnell, President  
Pennsylvania Waste Industries Association  
York, PA 17402-8240
2. Elam M. Herr, Assistant Executive Director  
Pennsylvania State Association of Township Supervisors  
Enola, PA 17025-1291
3. Independent Regulatory Review Commission  
Harrisburg, PA 17101

**Comment:** It is important to understand that the solid waste regulations specifically require that a waste transfer operation occur within an enclosed building – i.e., “Loading, unloading, storage, compaction and related activities shall be conducted in an enclosed building...” (emphasis added). See 25 Pa. Code, §279.215(a) and §293.215(a), for municipal waste and residual waste transfer facility requirements, respectively. Conventional wisdom readily supports the conclusion that waste transfer operations conducted within an enclosed building do not present a realistic increase in risk of bird strikes. (1)

We do question the rationale for notification of any airport if the proposed or expansion of a transfer facility is totally enclosed. We would contend that there is a difference between an open-air and an enclosed facility. (2)

**Response:** The notification requirement for transfer facilities is appropriate. Although municipal and residual waste transfer operations are primarily conducted in enclosed structures, some waste transfer activities still occur outside of an enclosed building and attract birds, which potentially pose a risk to aircraft approaching or departing from nearby airports.

As mentioned in part by commentator (1), the Department of Environmental Protection (Department) may permit non-enclosed operations in accordance with the regulatory provisions of 25 Pa. Code, §279.215(a) and §293.215(a). The complete regulatory citations referenced by commentator (1) read as follows: “(a) Loading, unloading, storage, compaction and related activities shall be conducted in an enclosed building, unless otherwise approved by the Department in the permit.” While the Department acknowledges they constitute a small number of facilities, there are transfer stations in the Commonwealth that operate in non-enclosed structures and accordingly pose the risks that the notification will address.

**Comment:** Since most municipal recycling centers are areas where recyclable material is sorted and transferred to other vehicles, could one argue that it is a transfer station and needs to comply with the proposed regulations? (2)

**Response:** The definition of *transfer facility* in the Solid Waste Management Act, 35 P.S. §6018.103, and the Department’s municipal and residual waste regulations specifically exempts a collecting or processing center that is only for source-separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper and plastics.

**Comment:** The commentator objects to the retroactive application of the airport exclusionary criteria that would result from the proposed definitional change. Specifically, while the new notice provisions in the rulemaking are limited to new or expanded operations, the Department’s solid waste

regulations establish the airport exclusionary criteria as operational limitations. See, for example, 23 Pa. Code, §273.202(a)(14)-(16). Inclusion of military airports within the definition of airport retroactively imposes such setback restrictions on existing, permitted facilities, and raises the potential for a confiscatory scenario. The commentator recommends that the rulemaking provide appropriate prospective-only provisions in the relevant exclusionary criteria sections of the Department's regulations to avoid unintended takings repercussions. (1)

Will this notification requirement for existing facilities result in setback restrictions or "confiscatory scenarios" on those facilities? Will existing permitted municipal waste landfills be grandfathered from these requirements? These questions also apply to Section 287.1. (3)

**Response:** Based on the Department's review of available information, there are no existing military airports either within or outside the borders of the Commonwealth that would trigger the existing setback criteria for municipal waste landfills, residual waste landfills, or residual waste disposal impoundments. The proposed regulation does not create any potential for confiscatory scenarios and therefore does not need to be amended to include only prospective provisions or grandfathering provisions for existing facilities.

**Comment:** The Board should note that the FAA is currently undertaking an in-depth study of bird presence associated with putrescible waste transfer stations across the country, examining everything from chicken wire fenced transfer operations to those enclosed in buildings. The commentator contends that the Board should refrain from enacting regulatory changes to the transfer station rules until the results of this study are available and the Department and interested stakeholders have the opportunity to consider these findings and recommendations and, thereby, obtain some level of objective intelligence about whether and if so, under what circumstances there exists a realistic increase in potential for bird strikes associated with transfer facilities. (1)

**Response:** At this time, no new information has been provided to substantiate the claim that transfer station operations do not pose an increased risk to aircraft from nearby airports as a result of bird strikes. Accordingly, the Department believes it is appropriate to move forward with the final rulemaking. This action does not preclude the Department from making further regulatory changes in the future as a result of the FAA study.

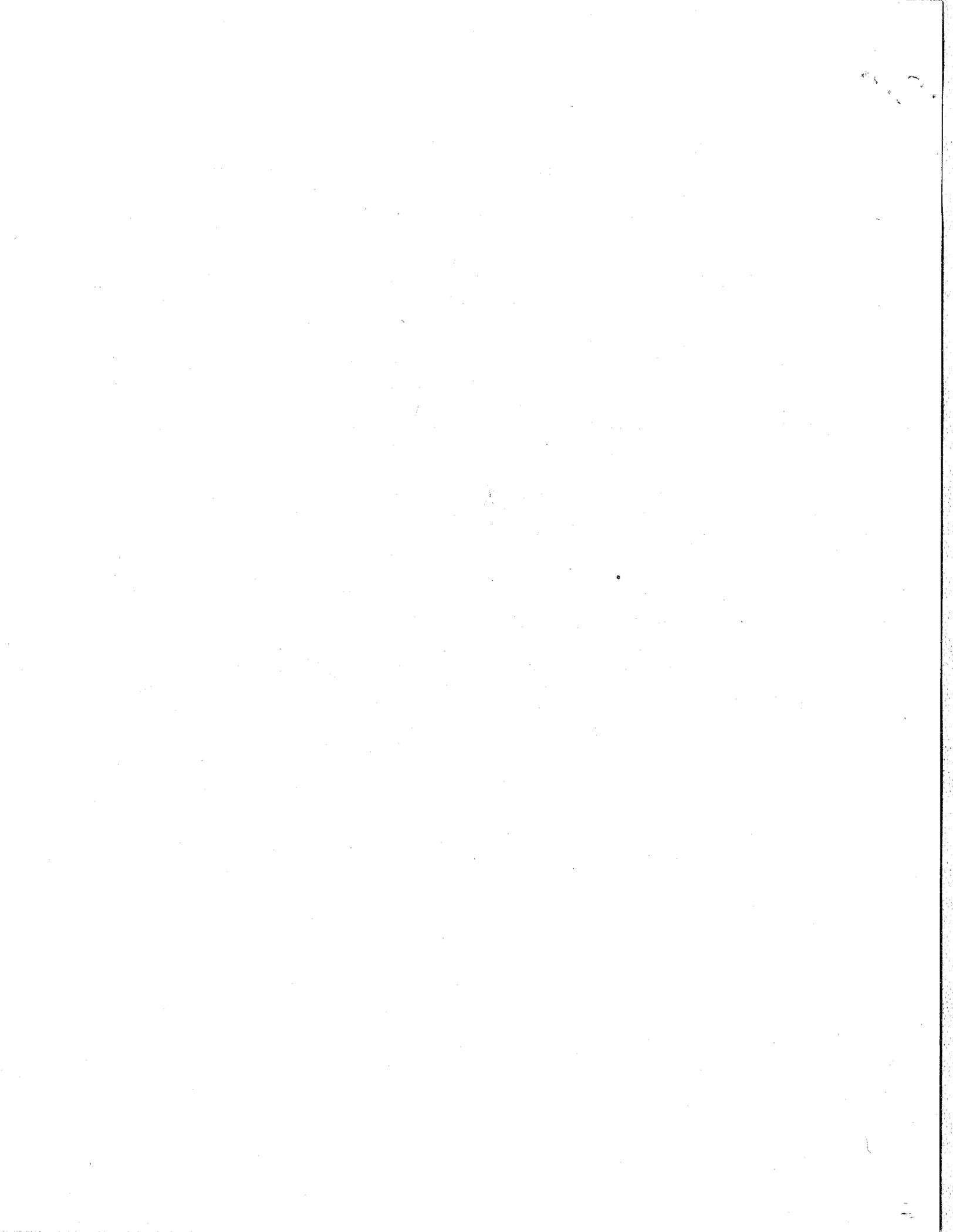
**Comment:** The proposed language in this section does not adequately guide waste transfer facilities. It imposes notification requirements for new proposed waste transfer facilities or for existing facilities that wish to expand their operation. The facility is required to notify the Bureau of Aviation of the

Department of Transportation, the Federal Aviation Administration (FAA) and the airport if the facility is, or will be, within six miles of an airport. However, the section fails to set forth the required notification, the timeframe under which this notification must be delivered or how long the notified parties have to respond. These provisions should be added to the final-form regulation. (3)

**Response:** As part of the environmental assessment process for landfills and transfer facilities, applicants are currently required to contact a number of agencies to determine the impact the operation of the facility may have on human health and the environment. Those agencies are listed on the Department's Form D, Environmental Assessment for Municipal and Residual Waste Management Facilities. Permit applicants for municipal waste landfills, for example, are currently required to notify the PA Bureau of Aviation, the Federal Aviation Administration, and the airport if the proposed facility is located within six miles of a public airport and to provide copies of any comments received. The permit applicant typically sends the notice to the agencies or airport with a response request of 30-60 days. If there is no response, the permit applicant can solicit the assistance of the Department to verify that the agency or airport has no comment.

**Comment:** The commentator stated that FAA studies have shown that birds are not attracted to facilities that do not accept "putrescible waste". The Board should consider adding an exemption for these facilities. (3)

**Response:** The Department has considered this suggestion and determined that notification will be required because there is no certainty that the waste will not attract birds or that putrescible waste will not be accepted sometime during the operational life of the facility.





## Pennsylvania Department of Environmental Protection

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Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

December 13, 2007

Policy Office

717-783-8727

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown #2  
333 Market Street  
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Notification of Proximity to Airports (#7-406)

Dear Mr. Kaufmann:

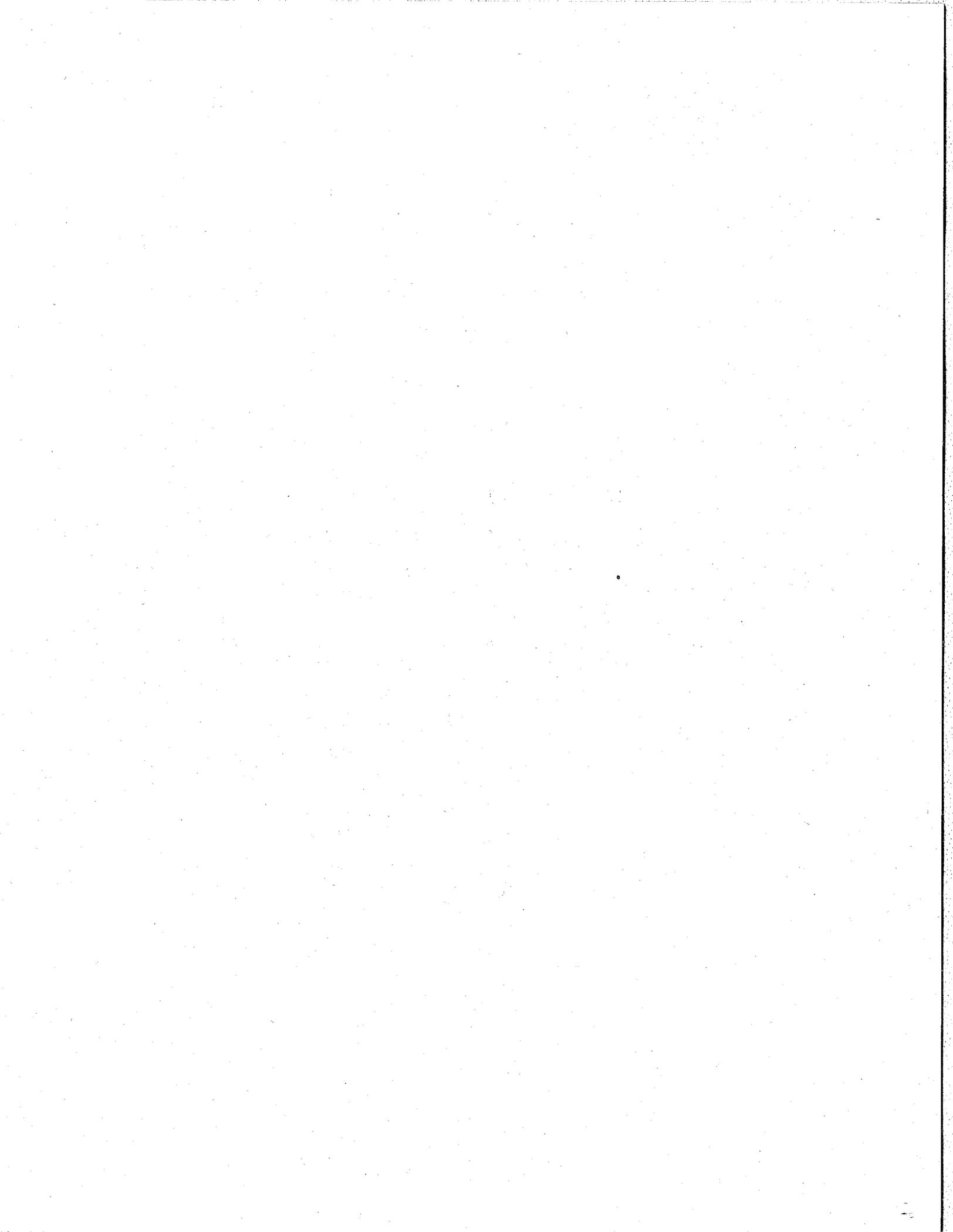
Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy of a final-form rulemaking for review and comment by the Independent Regulatory Review Commission. The Environmental Quality Board (EQB) approved this final-form rulemaking at its October 16, 2007, meeting.

This final rulemaking is the result of a petition submitted to the EQB by the Department of Defense (DOD) to address its concerns about potential hazards to military aircraft from bird strikes caused by birds attracted to transfer stations and landfills. Current regulations require municipal and residual waste landfills, construction and demolition waste landfills, and residual waste disposal impoundments to notify public airports of their pending construction or expansion. The amendments included in the draft final rulemaking add notification requirements for new or expanding transfer stations located within six miles of public and military airport runways. By including military airports in the definition of "airport," the Department is also extending the existing public airport notice requirements to military airports.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on December 23, 2006, at 36 Pa.B.7867. During the 30-day public comment period, the EQB received comments from three commentators, who questioned whether transfer operations in an enclosed building present an increased risk of bird strikes; whether inclusion of military airports retroactively imposes setback restrictions on existing, permitted facilities; and whether a lack of response from the Federal Aviation Administration or the Bureau of Aviation would result in a determination that an application was incomplete.

On April 11, 2007, the Department presented the final amendments and the Comment and Response Document to the Solid Waste Advisory Committee (SWAC) for their consideration. SWAC objected to the draft final rulemaking, primarily on the grounds that notification for transfer facilities is not necessary because these operations are usually conducted in enclosed structures and do not attract birds that could potentially strike aircraft. The Department and DOD maintain, however, that waste transfer activities (including waste loading, unloading, and storage) do pose a risk to public health and





safety, as these activities can occur outside of an enclosed building. These risks, however, become negligible when the airport runway is greater than six miles from the waste transfer facility.

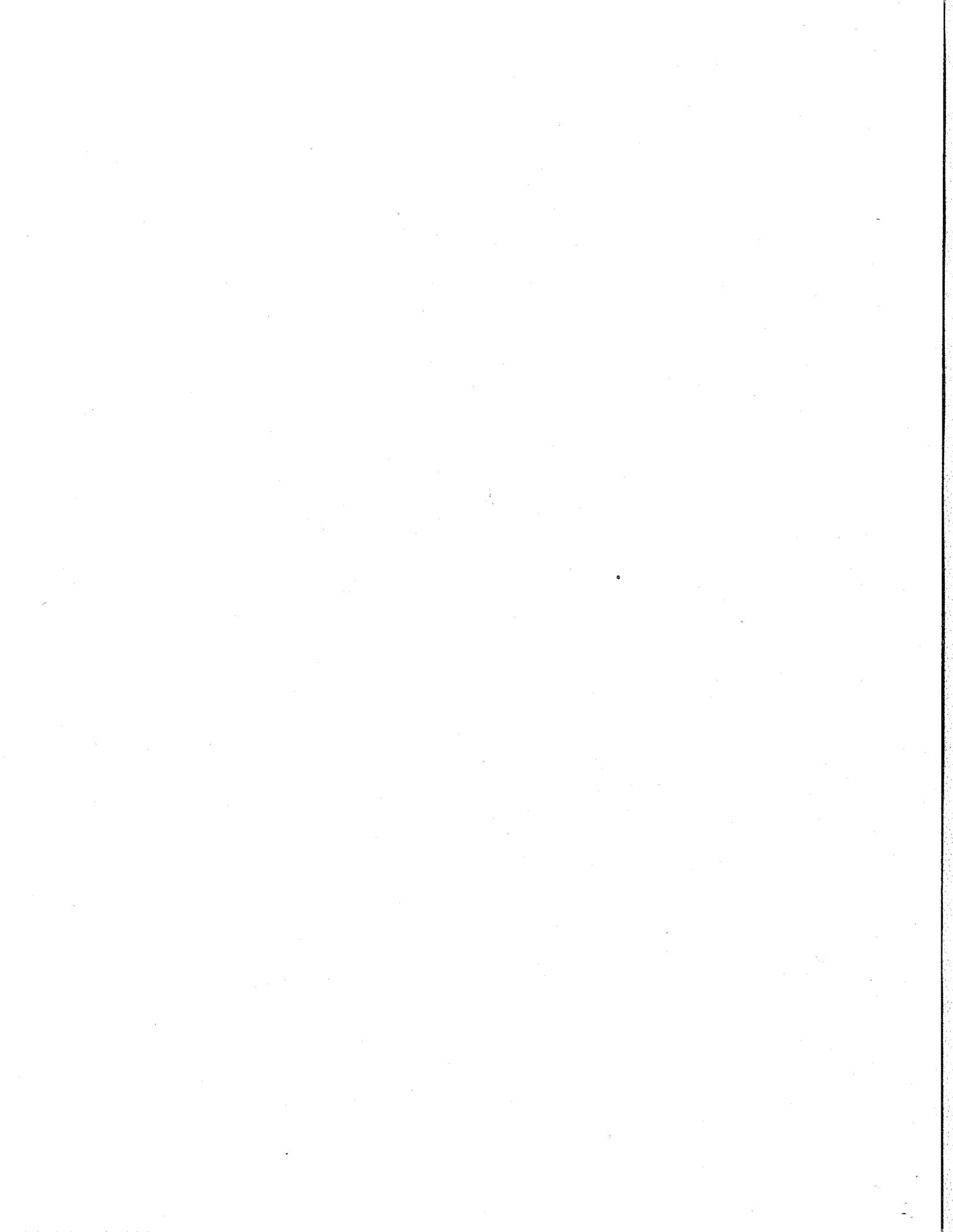
The Department will provide assistance as necessary to facilitate the Commission's review of this final-form rulemaking under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate  
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7- 406  
SUBJECT: Notification of Proximity to Airports  
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

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 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
12-13-07	<i>Jane Thomas</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
12/13/07	<i>Carolyn</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
12/13/07	<i>Donald A. Castelli</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
12-13-07	<i>A. Rybarczyk</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
12/13/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

