

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
DAVID M. BARASCH, ESQ.
DAVID J. DEVRIES, ESQ.
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL
LESLIE A. LEWIS JOHNSON, DEPUTY CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 21, 2007

Honorable Kathleen A. McGinty, Chairperson
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-406 (IRRC #2587)
Environmental Quality Board
Notification of Proximity to Airports

Dear Chairperson McGinty:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission
on
Environmental Quality Board Regulation #7-406 (IRRC #2587)

Notification of Proximity to Airports

February 21, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the December 23, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (Board) to respond to all comments received from us or any other source.

1. Section 271.1. Definitions. – Reasonableness; Fiscal impact.

This section adds “military airport” to the definition of “airport.” When describing this amendment in the Preamble, the Board states “By including ‘military airport’ in the definition of ‘airport,’ regulatory requirements that relate to airports, **current** and proposed, will apply to military airports” (Emphasis added).

The Pennsylvania Waste Industries Association (PWIA) raised objections and stated that the “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.” Specifically, PWIA pointed to 25 Pa. Code § 273.202(a)(14)-(16), relating to the areas where municipal waste landfills are prohibited.

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.

2. Section 279.112. Notification of proximity to airport. – Reasonableness; Clarity.

We have two concerns with this section. They also apply to proposed Section 293.112.

First, 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 method of 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.

Second, PWIA 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.

Facsimile Cover Sheet

RECEIVED
07 FEB 21 AM 9:25
LARRY FAVRELLER
SECRETARY'S OFFICE



Phone: (717) 783-5417
Fax #: (717) 783-2664
irrc@irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: February 21, 2007
Pages: 3

RECEIVED
2007 FEB 21 AM 9:25
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Environmental Protection's regulation #7-406 (IRRC #2587). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: A. Paul Date: 2/21/07