

EXECUTIVE SUMMARY

Final Amendments to the Municipal Waste and Residual Waste Regulations Regarding Notification of Proximity to Airports

The Department is amending the municipal and residual waste regulations at 25 Pa. Code, §§271.1, 279.112, 287.1, and 293.112. These amendments are being offered in response to the petition submitted to the Environmental Quality Board (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 impose notification requirements to public airports on municipal and residual waste landfills, construction and demolition waste landfills, and residual waste disposal impoundments. These amendments would 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 EQB accepted the petition for study on October 19, 2004, and the Department’s Report on April 19, 2005, to adopt DOD’s proposal to add “military airport” to the definition of “airport” as set forth in existing §§271.1 and 287.1. The Report also recommended that the regulations be amended to require an applicant for a waste transfer facility or expansion that will be located within six miles of an airport runway to notify the Bureau of Aviation of the Pennsylvania Department of Transportation, the Federal Aviation Administration (FAA) and the airport. The DOD requested that this notification requirement be included within the existing general requirements at §279.101. However, instead of amending §279.101, the Report recommended that the EQB add a new section to the municipal waste regulations, §279.112, so the notification requirements could be consistent with the existing notification requirements for other facilities. The Report further recommended that the EQB adopt the DOD’s request to add a new section, §293.112, to the residual waste regulations to impose the notification requirements on applicants for a residual waste transfer facility. The EQB accepted the Report and asked the Department to move forward with a proposed rulemaking.

The following amendments were proposed:

- Amending the definition of “airport” in §§271.1 and 287.1 by indicating that the term includes military airports
- Adding new subsection 279.112 to Subchapter B (relating to application requirements for transfer facilities) requiring that the applicant notify the airport if a new municipal waste transfer facility or expansion of an existing facility is proposed within six (6) miles of an airport runway.
- Adding new subsection 293.112 to Subchapter B (relating to application requirements for transfer facilities) requiring that the applicant notify the airport if a new residual waste transfer facility or expansion of an existing facility is proposed within six (6) miles of an airport runway.

On July 14, 2005, the proposed regulatory amendments were discussed with the Solid Waste Advisory Committee (SWAC). The committee believed that notification for transfer facilities was not necessary because, unlike sanitary landfills, waste transfer operations are usually conducted in enclosed structures and therefore would not attract birds that could potentially strike aircraft. The committee had other concerns, which included the airport not responding in a timely fashion or commenting on non-technical issues, which could delay permit issuance and the perception that a large number of transfer facilities would now be subject to this additional requirement.

Although SWAC's concerns were discussed with the DOD, the DOD maintained, and the Department concurred, 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. 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.

With these amendments, the airport notification requirements would apply to new and expanded municipal and residual waste landfills and transfer facilities, construction and demolition waste landfills and residual waste disposal impoundments. Few applications for transfer facilities and landfills are expected on an annual basis.

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.