

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Land Recycling And Waste Management

DOCUMENT NUMBER: 254-2100-101

TITLE: Environmental Assessment Process, Phase I Review

EFFECTIVE DATE: August 24, 2002.

AUTHORITY: PA Const. Art. I, §27; Act of July 7, 1980 (P.L. 380, No. 97), as amended, known as the Solid Waste Management Act ("SWMA"), 35 P.S. §6018.101 et seq; Act of July 28, 1988 (P.L. 556, No. 101), as amended, known as the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §4000.101 et seq; Section 1917-A of the Administrative Code, Act of April 9, 1929, as amended, 71 P.S. §510-17; and the rules and regulations promulgated thereunder.

POLICY: The Department will perform the Environmental Assessment in Phase I or prior to other technical review for applicable municipal and residual waste permit applications. If the Department is aware of technical deficiencies or other issues that would preclude issuance of the permit, it may deny the application without conducting an environmental assessment review.

PURPOSE: This policy establishes procedures the Department will follow in reviewing environmental assessments submitted by municipal and residual waste permit applicants to evaluate the harms and benefits of the proposed facility on public health, welfare and safety and the environment.

APPLICABILITY: This policy applies to applications for municipal and residual waste disposal or processing permits specified in 25 Pa. Code §271.126 and §287.126 (relating to requirement for environmental assessment). The applicant will define the scope of the project, which may include more than one modification in a single application. 25 Pa. Code §271.126 and §287.126 state that the following do not require an environmental assessment unless the Department determines that the facility may have a significant effect on the environment:

- (1) Permit applications for agricultural utilization of sewage sludge or residual waste;
- (2) Permit applications for land reclamation facilities for sewage sludge or residual waste; and
- (3) Permit modification applications that are not for major modifications under §271.144 or §287.154 (relating to public notice and public hearings for permit modifications).

For facilities that have previously been subject to an environmental assessment under the current regulations, the Department will (and in the case of residual waste facilities, may) limit the scope of the review to information that relates to the proposed modification to the facility and to changes in the areas covered by the earlier environmental assessment in accordance with §271.126(c) and §287.126(c). Harms and benefits of a facility that has already been subject to an environmental assessment may be useful in indicating the likelihood of harms and benefits

from the modification and may affect or be affected by harms and benefits resulting from the proposed project.

For major permit modifications under sections 271.144 and 287.154 that do not involve an increase in: disposal capacity, waste capacity, average or maximum daily waste volume or expansion of the permit area, the applicant may demonstrate that no additional known or potential environmental, social or economic harms are created by the permit modification and that the modification provides environmental benefits or further mitigates environmental harm by enhancing the existing facility design or operation to provide additional environmental protection. In this case, the Department may limit its scope of review as provided in sections 271 and 287.126 (c).

DISCLAIMER: The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures will affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 10 Pages

LOCATION: Volume 6, Tab 49

DEFINITIONS:

Host municipality or county: The municipality or county within which an applicable municipal waste disposal or processing facility is located, proposed to be located, or has been permitted but not constructed.

Local municipalities: Local municipalities include the host municipality, the host county, municipalities adjacent to the host municipality or municipalities, municipalities located within one mile of the permitted or proposed area, other municipalities that demonstrate that they may be adversely impacted by the proposed project and municipalities located along the approach routes.

Approach routes: Routes from the nearest limited access (or major) highway used by vehicles traveling to and from the facility.

TECHNICAL GUIDANCE:

I. EVALUATION OF ENVIRONMENTAL ASSESSMENT

1. General principles

The environmental assessment is designed to ensure that environmental harms from proposed municipal and residual waste disposal and processing facilities are mitigated to the fullest extent possible. If harms are not completely mitigated, (and for facilities listed in sections 271.127(c) and 287.127 (c)), the benefits of the project to the public must clearly outweigh the known and potential environmental harms. The term “clearly” refers to the level of proof required, not to the amount of the benefits provided in relation to the remaining harms.

Five general principles should be considered when evaluating harms and benefits in environmental assessments. These are discussed more fully throughout this document.

1. Compare the proposed facility or modification to the conditions that would exist if the project did not move forward and not to other potential uses of the property or to other properties.
2. Focus on harms and benefits that relate to the proposed modification when a facility has previously been subject to an environmental assessment.
3. Look at and beyond compliance with statutes and regulations. Harms may exist even when the law is complied with, and benefits may arise inherently from the project, through compliance with the law, or by intention.
4. Evaluate harms individually and collectively; evaluate mitigation measures individually and collectively; and evaluate benefits individually and collectively because the impact from the facility may be greater than the sum of its parts.
5. Consider the anticipated closing of the facility in determining the duration of known and potential harms and benefits. Some harms and benefits will last for a limited time period and others may last longer even after the facility closes.

2. Consultation and Timing

Sections 271.127(g) and 287.127(g) state that after consultation with other appropriate agencies and potentially affected persons, the Department will evaluate the environmental assessment in Phase I of the permit review or otherwise prior to technical review of the permit application. The Department will solicit input from local municipalities and any relevant party regarding the proposed project as part of, or in addition to, the Local Municipality Involvement Process and the public notice and comment procedures specified in the regulations. This input is useful in identifying and evaluating harms, mitigation measures and benefits.

3. Other Agencies

The applicant must submit all correspondence received from any State or Federal agency contacted as part of the environmental assessment. The Department may seek input from other agencies during its review of an environmental assessment. The Department may rely upon the expertise of other agencies, but may not blindly defer to it. The Department must exercise its discretion to accept or reject input from other agencies, by determining whether the facts justify that agency's determination. Remember that the Department has the ultimate permit decision authority.

4. Adequacy of Information

It is important that there is adequate information in the permit application to make a meaningful evaluation of the impacts. Unsupported or conclusory statements by the applicant may not be sufficient. In such cases, the burden is on the applicant to provide supporting information from a qualified individual. Make sure the site plan and related documents contain all of the information required by the regulations (such as wind direction based on meteorological data and approach routes).

5. Impacts to the environment, public health, safety and welfare

The environmental assessment submitted by the applicant must contain a detailed analysis of the potential impact of the proposed facility on the environment, public health, safety and welfare. Sections 271.127(a) and 287.127(a) list items that must be included in this analysis. Form D also contains this list, with additional specificity. The Department, the applicant and any other person or municipality may identify additional impacts.

6. Environmental Harms and Mitigation

Overview

Under §271.127(b) and 287.127(b), the applicant's environmental assessment shall describe the known and potential environmental harms of the proposed project. These include, among other things, adverse impacts relating to traffic, aesthetics, noise, odor, dust, air quality and airport safety. The applicant shall provide the Department with a written mitigation plan that explains how the applicant plans to mitigate each identified known and potential environmental harm. If the Department or another person identifies additional environmental harms, the applicant must provide a mitigation plan for them, as well. The environmental assessment must also describe known and potential environmental harms that are not mitigated.

Harms

The Department should compare the applicant's proposal to the conditions that would exist if the project did not move forward in determining whether something amounts to a harm, rather than comparing it to other potential uses of the property or other properties.

Impacts that might not amount to harm by themselves sometimes create harm together or collectively. For this reason, the Department should evaluate impacts individually and collectively in identifying (and later, evaluating) harms.

An impact may contribute to more than one harm. For instance, noise and odors on different days may impact local residents, and each impact would be considered a harm, but if they occur simultaneously (i.e., collective impact) they might so diminish the local aesthetic that residents cannot comfortably go outdoors. This aesthetic harm is a separate harm. (Aesthetic harm can also result from unsightliness, interference with visibility and loss of solace.)

Public input is useful in identifying and determining the extent of harms. Related complaints and the frequency and basis of the complaints may also be useful. The absence of a notice of violation in response to a complaint does not mean something is not a harm. Public input and complaints should be evaluated objectively on a case-by-case basis. The absence of public input is sometimes instructive, depending upon the nature of the harm and the public's awareness of it.

The Department may take the applicant or a related party's compliance history into account in ascertaining the likelihood of harm, but a full compliance history review is not generally necessary for the environmental assessment. (Poor compliance history is an indicator of harm, but is not typically a harm in itself.)

Harm from waste vehicles traveling to and from the facility should be considered. Vehicle-related harm is considered an environmental harm. It has various components, including, among others, traffic, road and bridge conditions, vehicle weight, other vehicle and driver-related safety concerns, vehicle-related environmental violations and environmental harms such as odor noise, fumes and dust. The Department's "Municipal Waste Facility Review – Traffic Analysis" guidance document, dated February 7, 1997, #254-2100-102, describes the involvement of PENNDOT and others in reviewing "Traffic Impact Studies." Other sources of information are also pertinent. Where available, the Department should use facility-specific data (such as data from Trashnets and Clean Sweeps), on vehicle safety, including overweight violations, and vehicle-related environmental violations, to help determine the likelihood and extent of harm that will result from waste transportation to the facility. If site-specific data is not available, statewide data may be used.

Something can amount to a harm even if it meets the requirements of the law. Sometimes this will occur as a result of the collective impact of various activities of the proposed facility and sometimes it will occur on its own. An example is a landfill gas system that vents some gas into the atmosphere even though it is constructed and operated in compliance with the regulations.

An impact can also amount to a harm even if it occurs away from the host or local municipality.

Related permits and approvals required for operation of the facility will be taken into consideration in evaluating the known and potential environmental harms. The Department may solicit input from the local municipalities regarding these other permits and approvals.

Potential long-term harms resulting from the likelihood of large quantities of waste remaining in place indefinitely should always be considered in applications involving municipal waste landfills, construction/demolition waste landfills, noncaptive residual waste landfills and noncaptive residual waste disposal impoundments. These potential harms may include harms from gas, odors, fire, subsidence, groundwater contamination, etc. Similarly, potential long-term harms resulting from large scale operations at resource recovery facilities and noncaptive residual waste incinerators should always be considered.

Mitigation

The Department will evaluate each mitigation measure and will collectively review mitigation measures to ensure that individually and collectively they adequately protect the environment and the public health, safety and welfare.

The applicant must demonstrate that a proposed mitigation measure will have continuous and long lasting success. Mitigation plans may include engineering controls, administrative controls and procedural controls, as appropriate. Mitigation plans should include provisions to periodically measure the effectiveness of the controls in mitigating harms and procedures to take corrective and preventive actions. If the mitigation, itself, would create harm, the applicant must provide a plan to mitigate that harm. Any remaining harm will be evaluated as part of the balancing.

As with harms, the Department may take compliance history into account in ascertaining the likely success of a mitigation measure.

In a few cases, the Department will prefer to review a mitigation measure in Phase II of the permit review, when related technical information is reviewed. The Department may only accept such a proposed mitigation during the environmental assessment if convinced that it is feasible and likely to succeed to the level described above.

A harm is not necessarily considered completely mitigated simply because the applicant has obtained a permit or approval from another Bureau of the Department or another Commonwealth agency.

Harm that is completely mitigated will generally not be considered during the balancing of benefit and harm. Harm that is only partially mitigated will be considered to the extent that harm remains. In some cases, an unmitigated or partially mitigated harm may be so significant that it will call for permit denial without further balancing.

Mitigation plans should be approved before a permit is granted and mitigation measures must be completed before the harm that is being mitigated occurs. Under sections 271.201(4) and 287.201(4), the Department may require mitigation plans to be implemented prior to issuing a permit. The Department may list or describe approved mitigation measures in the permit, or require them through a more general condition incorporating the application. However this is done, failure to implement and maintain an approved mitigation measure is a permit violation.

7. Applications that must identify benefits

Applications for the following types of facilities must demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms: municipal waste landfills, resource recovery facilities, construction/demolition waste landfills, noncaptive residual waste landfills, noncaptive residual waste disposal impoundments and noncaptive residual waste incinerators.

Applications for other facilities must make this demonstration if the Department or the applicant determines that known or potential environmental harm remains despite mitigation.

8. Benefits

An applicant must describe in detail the benefits relied upon. Sections 271 and 287.127(c), (d) explain that the benefits of the project shall consist of social and economic benefits that remain after taking into consideration the known and potential social and economic harms of the project and shall also consist of the environmental benefits of the project, if any.

The applicant, the Department or any other person may also identify benefits. Benefits must accrue to the public, which may include, but is not limited to, the host municipality and county. Benefits should be concrete and particularized and not mere speculation.

Benefits may arise inherently from the project (e.g., serving a need for disposal or processing capacity), or from compliance with the law (e.g., paying host municipality benefit fees and providing recycling drop-off centers), and benefits may also be intentionally created (e.g., charitable contributions).

As a general rule, the Department should compare the applicant's proposal to the conditions that would exist if the project did not move forward in determining whether something amounts to a benefit, rather than comparing it to other potential uses of the property or to other properties.

An activity or mechanism that reduces or prevents harm created by this applicant or facility (e.g., proposing rail instead of truck transport) does not typically amount to a benefit; it is simply a reduction or avoidance of harm.

A benefit that occurs away from the host or local municipality may still be considered.

Something that might not appear to be a benefit on its own might combine with something else to create a benefit. For this reason, the Department should evaluate positive impacts individually and collectively in identifying (and later, evaluating) benefits.

As with harms and mitigation measures, the Department may take compliance history into account in ascertaining the likelihood of occurrence of a benefit.

Public input is useful in identifying and determining the extent of benefits. Public input should be evaluated objectively on a case-by-case basis. The absence of public input is sometimes instructive, depending upon the nature of the benefit and whether the public is aware of it.

A social and economic benefit is generally educationally or financially based, and has social and economic impacts. Impacts are not to be categorized separately as “social” or “economic” benefits; the category of “social and economic benefits” is a single concept. The category includes, among other things, employment resulting from construction or operation of the facility, wages or property assessments, anticipated tax revenue from sales, statutory fees to the host municipality and Commonwealth, establishing schools, charitable contributions and free waste disposal for communities. The circumstances of each project will determine whether something amounts to a social and economic benefit.

Environmental benefits may be derived from activities associated with the project that will benefit the environment. Examples include on-site recycling, composting and landfill mining.

Need for the facility or modification may be considered as one kind of benefit. It may be demonstrated by showing, for example, that an actual hardship to the community will exist if the project is not permitted. It may be appropriate to consider alternatives that are available to that community to eliminate the hardship in order to determine the true scope of the “need,” if any. Simply adding new capacity does not establish need for a facility. Likewise, being provided for in a municipal waste plan does not, by itself, mean that the proposed facility is actually needed or amounts to any benefit, even if the applicant demonstrates that it will actually receive waste under the plan.

The Department may list or describe benefits in the permit or may require that they occur through a more general condition incorporating the application. However this is done, failure of the benefit to occur is generally a permit violation.

9. Social and Economic Harm

Social and economic harms include, among other things, reduction in residential property values and interference with civic pride. Social and economic harms may be mitigated.

10. Balancing

The regulations require that the benefits of the project to the public clearly outweigh the known and potential environmental harms. A summary of the analysis might look like this:

Environmental harms
that will exist after
mitigation

vs.

Benefits: consisting of **social & economic** benefits that will remain after taking into consideration social & economic harms; and **environmental** benefits.

In order to weigh harms and benefits, the Department should evaluate them individually and collectively, taking into account the relevant factors listed in the next paragraph and being sure to include public input, input from other agencies and the Department's own knowledge and experience.

The factors that should be considered for each harm and benefit are the following:

- **Duration.** (e.g., some harms and benefits will be limited in duration by the closing of the facility, while others will last longer.)
- **Intensity.**
- **Frequency.** (e.g., an on-site recycling facility that must be used by disposal customers generally merits greater weight than one that is used voluntarily).
- **Reach, or who will be affected** (e.g., a harm or benefit that affects the whole community generally merits greater weight than a harm or benefit that affects just a few people. A benefit that will be experienced by the same community that will experience the harms generally merits greater weight than one that will be experienced elsewhere.)
- **Sensitivity of receptor.** (When the public is the "receptor," public input is a particularly useful indicator.)
- **Known or potential.** (The more likely the harm or benefit is to occur, the more weight it will generally merit.)
- **Other** relevant factors.

Once each harm and benefit is evaluated individually with these factors in mind, it should be evaluated collectively: harms with harms, and benefits with benefits. This collective evaluation is important because the interactions of harms with each other and of benefits with each other can strengthen or weaken the harms and benefits, and puts harms and benefits of a different nature (e.g., environmental and monetary) on an equal playing field. Similarly, viewing harms collectively and benefits collectively can reveal important patterns or inequities. It could reveal, for example, that while most harms from a project would fall upon one community, most benefits would accrue to others; or that the harms will outlive the benefits.

The goal of an environmental assessment review is for the Department to make an informed, well-reasoned judgment, in which the Department feels confident that the impacts of the known and potential harms, mitigation measures and benefits will occur. It must be clear to the Department that the project is more beneficial than harmful in order for it to proceed to the Phase II (technical review) in the application process. The precise regulatory standard stated in Sections 271.127(c), (d) and 287.127(c), (d) is that the benefits of the project to the public must clearly outweigh the known and potential environmental harms.

11. Department Response to the Applicant

After completing the final evaluation of the environmental assessment, the Department will inform the applicant of the outcome of the evaluation by letter. The following format is suggested:

- a. The purpose of the letter.
- b. A summary of the application.
- c. A statement of the precise question to be answered by the Department's review, such as: "Whether the benefits of allowing the landfill to accept an additional 2,000 tons per day of waste on average clearly outweigh the known and potential environmental harms of allowing the landfill to accept an additional 2,000 tons per day of waste on average."
- d. A summary of the Department's conclusion, including whether to proceed to technical review of the application or to deny it based on the environmental assessment.
- e. A summary of the environmental assessment's requirements and procedures.
- f. A summary of public input.
- g. An evaluation of each identified harm, each proposed mitigation measure and whether each harm is mitigated. The letter should be clear about which mitigation measures the Department believes will work. This part of the letter should also provide sufficient information upon which to evaluate the balancing.
- h. An evaluation of each benefit. This part of the letter should provide sufficient information upon which to evaluate the balancing.
- i. The letter should indicate where the Department relies upon the applicant's assertion of a point without being able to confirm it precisely, e.g., "*The applicant states that purchases of goods from local merchants will equal \$2,000,000 a year.*"
- j. An evaluation of the balancing of harms and benefits.
- k. Appeal paragraph.
- l. Conclusion.

III. PERMIT ACTION

In situations in which the benefits of the project clearly outweigh the harms, the application may proceed to the Phase II or other technical review.

Where benefits of the project do not clearly outweigh the harms, the application may be denied without proceeding to Phase II or other technical review or a request for further demonstration of mitigation or benefits.

IV. REVISION

The Department may require submission of a revised environmental assessment if additional known or potential harms are discovered during any phase of permit application review, as specified in Sections 271.127(h) and 287.127(h).