

County of Centre

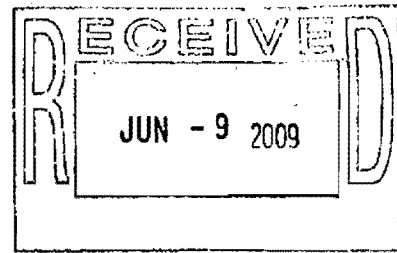


**PLANNING AND COMMUNITY
DEVELOPMENT OFFICE**

BOARD OF COMMISSIONERS

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June 3, 2009

Ms. Sandy Basehore
Skelly and Loy, Inc.
449 Eisenhower Boulevard, Suite 300
Harrisburg, PA 17111

RE: Alternate Route Evaluation, STB Finance Docket No. 35116

Dear Ms. Basehore,

The Centre County Planning and Community Development Office appreciates the opportunity to provide comments to the Surface Transportation Board (STB) regarding the Alternate Route Evaluation for STB Finance Docket 35116. The Planning Office is responsible for the review and coordination of local land use planning activities with the municipalities in Centre County.

As with the Planning Office comments to the STB on February 24, 2009, the following comments regarding the proposed reactivation of the Beech Creek rail line will include the impacts from the proposed land development activities that are the catalyst for this rail line reactivation. Regardless of the proposed alternate route, the Planning Office recommends that the STB's scope of the EIS include not only the rail line but the associated proposed land development activities. Without the inclusion of these proposed activities in the EIS, there would be no need for the rail line reactivation.

In regards to your request for information related to environmental concerns along the proposed alternate route, the following is provided:

Wetland and 100 year flood plain areas are located in the area of the proposed mainline connection which is identified as a purple line on the project location map dated March 2009 and could be impacted due to rail line construction.

The Planning Office would again like to note again that a recent action by the PA DEP regarding another proposed landfill approximately 16 miles west of the RR LLC site should question the economic viability of RR LLC's proposal. In this recent action from July 2008 (enclosed), the PA DEP denied a landfill permit submitted by PA Waste, LLC for a proposed landfill of similar size and proposed tonnage (5,000 tons per day). The reasons for the denial involve PA Waste's inability to justify the hauling of waste from New York to their proposed facility in Clearfield County when there were at least eight (8) existing landfill facilities identified between New York and the PA Waste, LLC facility that are capable of accepting the same waste.

The PA DEP decision to deny the PA Waste should be factored into this scope of study for the EIS because a representative at the February 10, 2009 public scoping meeting stated that the waste for the proposed RR LLC facility would also be from the New York and New Jersey areas. Based on this, the Planning Office recommends that the scope be expanded and include another alternative that considers landfill locations in closer proximity to the generated waste stream.

Additional Concerns

The Planning Office would like to bring to your attention recent federal legislation entitled the *Clean Railroads Act of 2008* which should be considered as part of the EIS. This involves solid waste transfer facilities and their required compliance with state permit requirements and/ or an STB issued land use exemption (if required).

Land Use/ Zoning

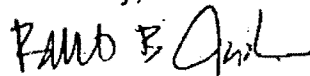
The map submitted as part of the request for comments indicates that the rail line reactivation extends into Snow Shoe Township near Gorton and its intersection with Gorton Road. As mentioned in previous correspondence, Snow Shoe Township denied a zoning amendment requested by RR LLC in 2004. The current zoning on the property is Forest – Open Space and does not permit industrial uses and their associated activities. Although there are no specific details, it appears as though the Gorton area may also be utilized as a rail terminus point in addition to the siding area west of the Peale Tunnel where solid waste materials and/ or materials generated will be off loaded to trucks for transport to the landfill.

This activity would be deemed an industrial use in Snow Shoe Township as rail/ truck terminal activity and is not permitted. Prior to any determination by the STB in regards to the EIS, this issue must be addressed.

In addition the rail terminus point as shown in Gorton is directly adjacent to existing residences along Gorton Road. The impacts from the movement of solid waste via rail and truck in this area would be detrimental to the residences.

The Planning Office again would like to thank the Board for requesting our comments on this Alternate Route Evaluation. Should you have any questions or require additional information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "R. B. Jacobs", written over the printed name.

Robert B. Jacobs, AICP
Planning Director

pc: Victoria Rutson, Chief, STB Section of Environmental Analysis
Centre County Board of Commissioners
Timothy T. Boyde, County Administrator
Susan B. Hannegan, Assistant Director
Snow Shoe Township Supervisors
Jodi Brennan, Clearfield County Planning Director



CONTRIBUTOR COUNTY PLANNING ATTACHMENT

6/3/09

Pennsylvania Department of Environmental Protection

208 West Third Street, Suite 101
Williamsport, PA 17701-6448
July 11, 2008

Northcentral Regional Office

570-327-3740
Fax 570-327-3420

PERMIT DENIAL

CERTIFIED MAIL NO. 7007 1490 0002 0636 2658

Mr. Robert A. Rovner
PA Waste, LLC
175 Bustleton PK
Feasterville, PA 19053

Re: Camp Hope Run Landfill Permit Application
Permit ID# 101688
PA Waste, LLC
APS# 595150, Auth# 648555
Boggs Township, Clearfield County

Dear Mr. Rovner:

The Department of Environmental Protection (DEP) has completed its review of the subject permit application submitted by PA Waste LLC (hereinafter "PA Waste") for the proposed Camp Hope Run Landfill (Hereinafter the permit application shall be referred to as "Application" or "Permit Application"). The Permit Application indicates that the proposed landfill would accept an average of 5000 tons of waste per day.

The Permit Application was received on September 25, 2006. On January 29, 2007, DEP issued an administratively incomplete letter to PA Waste. On February 8, 2008, PA Waste submitted a response to the administratively incomplete letter. This information was evaluated by DEP and the Application was deemed administratively complete on February 21, 2007.

On April 12, 2007, DEP issued a first technical deficiency letter to PA Waste. The first technical deficiency letter described deficiencies related to compliance with § 507(a) of the Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101), 53 P.S. § 4000.507(a), 25 Pa. Code § 273.139 and 25 Pa. Code § 271.125(b). The first technical deficiency letter gave PA Waste 90 days from the date of receipt to respond to the technical deficiencies. On July 2, 2007, PA Waste submitted a request for an additional 90 days to respond to the first technical deficiency letter. DEP approved that request, and PA Waste's time frame to respond was extended until October 15, 2007.



At PA Waste's request, a meeting was held in Harrisburg on August 14, 2007, between representatives of PA Waste, its consultants and attorneys, and DEP regional and central office staff to discuss the issues raised by the first technical deficiency letter. At this meeting, there was extensive discussion of the issues raised by the first technical deficiency letter. DEP provided additional guidance to PA Waste on the information that PA Waste needed to submit in order to satisfy the threshold deficiencies described in the first technical deficiency letter. On October 15, 2007, PA Waste submitted a partial response to the first technical deficiency letter. This submission did not include a response to the issues related to compliance with Section 507(a) of Act 101, § 4000.507, 25 PA. Code § 273.139 and 25 Pa. Code § 271.125(b) as had been requested.

In its October 2007 response, PA Waste once again asked for a 90 day extension of time to respond to the outstanding compliance issues described in the first technical deficiency letter. While DEP did not officially respond to this time extension request, PA Waste submitted a second response 90 days later dated January 14, 2008. This response attempted to address the issues not addressed in the first response.

Following review of the information submitted by PA Waste, dated October 12, 2007, and January 14, 2008, on February 25, 2008, DEP issued a second technical deficiency letter to PA Waste. The second technical deficiency letter informed PA Waste that if all required information was not provided within 60 days, then DEP intended to deny the Permit Application. On April 8, 2008, a second meeting was held at PA Waste's request involving representatives of PA Waste, its consultants and attorneys, and DEP regional and central office staff, to discuss the issues raised by DEP's April 2007 and February 2008 technical deficiency letters. Again, extensive discussions of the outstanding threshold deficiencies took place. On April 28, 2008, PA Waste submitted a response to the second technical deficiency letter. Additional information to supplement the April 28, 2008, response was submitted on May 19, 2008.

Following DEP's review of the Permit Application, including PA Waste's responses to both of DEP's technical deficiency letters, DEP has made the determination that the Permit Application does not adequately address the requirements of Section 507 of Act 101, 53 P.S. § 4000.507. As you are aware, because PA Waste's proposed facility is not included in the host county's Act 101 plan, according to Section 507(a) of Act 101, DEP shall not issue any permit for a municipal waste landfill unless PA Waste demonstrates to DEP's satisfaction that the proposed facility meets all of the requirements in Section 507(a)(2) of Act 101, 35 P.S. § 4000.507(a)(2). These requirements include a demonstration by PA Waste that the "proposed location of the facility is at least as suitable as alternative locations giving consideration to environmental and economic factors." Briefly stated, DEP interprets this statutory provision as requiring an applicant to identify the sources and quantity of waste expected to be disposed at its facility, and to identify the current disposal locations for this expected waste. The applicant must then demonstrate that its proposed landfill location is at least as suitable, environmentally and economically, as the current disposal locations for this expected waste. The applicant must also examine available alternative disposal facilities located between the source of the expected waste and the applicant's proposed facility, and demonstrate that the proposed facility is at least as suitable, environmentally and economically, as the available alternative disposal locations. Applying this

statutory requirement to PA Waste's submissions, DEP has determined that PA Waste's application has not demonstrated that the location of its proposed facility is at least as suitable as alternative locations for disposal of waste that the facility proposes to accept.

In its April 28, 2008 response, PA Waste focused on one company that would transport waste by truck to the proposed facility. Because of your request for confidentiality, dealt with in more detail below, at this time, the company listed will be referred to as Company X. The amount of waste PA Waste states that Company X would transport by truck to the proposed PA Waste facility is approximately 2,000 tons per day. PA Waste indicated that this waste stream would consist of only construction demolition (C/D) waste and would originate from New York City. None of the facilities currently used for disposal of waste by Company X were identified and no comparison was made between those existing facilities and PA Waste's proposed facility in terms of economic and environmental impact as required by Act 101.

Instead, PA Waste provided some general statistics regarding waste that is currently being transported from New York City to Ohio to demonstrate the suitability of the proposed landfill as opposed to trucking waste from New York to a landfill in Ohio. However, PA Waste has not provided any documentation that the waste that Company X will be bringing to the proposed facility is actually being transported to Ohio for disposal. In order to demonstrate that it would be at least as suitable to transport waste to the proposed facility as opposed to a landfill in Ohio, PA Waste has to provide evidence that the waste from Company X is actually and currently being transported to Ohio.

In the April 28, 2008 response, PA Waste provided a list of eight landfills that Company X would pass on its way by truck from New York City to the proposed facility. For each of these landfills, PA Waste has provided a short analysis and attempted to demonstrate why each site is not a suitable alternative to the proposed facility. For the following seven facilities listed below, PA Waste has failed to show that the proposed Camp Hope Run Landfill is as suitable both economically and environmentally:

1. Grand Central Landfill – Northampton County: PA Waste's argument that this site would not be as suitable as the proposed landfill is based on two criteria; 1) there will not be enough disposal capacity at the landfill, and 2) the price would be prohibitive. PA Waste assumes that if Grand Central Landfill resumes operations at near full capacity, there will not be available disposal capacity because the landfill has to serve the needs of the parent owner of the landfill which holds contracts for a significant portion of residential waste from New York City. PA Waste appears to imply with this statement that this landfill's disposal capacity is being reserved by the owners to accept mostly New York City waste. In fact, this is not true. Since 2001, the most waste on an annual basis this landfill has taken from New York State has been only 4.8% of the total waste amount received by the landfill. PA Waste also states that the tipping fee for waste disposal in Northeast Pennsylvania is generally in the range of \$65 per ton. They have not provided any supporting documentation to show that the tipping fee at the Grand Central Landfill would be \$65 per ton. In addition, using PA

Waste's own argument from the permit term justification analysis submitted with the April 28, 2008 response, it is highly unlikely that a landfill would charge the gate rate tipping fee for a large volume customer.

2. **Chrin Landfill – Northampton County:** PA Waste states that this site is not as suitable as the proposed landfill because there is a commitment with the host municipality to serve only communities within a 60 mile radius from the site. However, PA Waste did not provide any proof evidencing the existence of this commitment. No discussion was provided regarding if this commitment extends east across the Pennsylvania/New Jersey border. In 2007, Chrin accepted over 90,000 tons of waste from New Jersey.
3. **Alliance Landfill – Lackawanna County:** PA Waste's argument that this site would not be as suitable as the proposed landfill is based on two criteria; 1) there will not be enough disposal capacity at the landfill, and 2) the price would be prohibitive. With respect to disposal capacity, while it is true that Alliance has in the last several years, accepted approximately 75% of their permitted average daily volume (ADV), the landfill still may accept approximately 500 tons per day to reach the permitted ADV. With respect to the price per ton, PA Waste has not provided the actual tipping fee for this landfill. Furthermore, as noted above, and as noted by PA Waste in the April 28, 2008 response, the actual tipping fee would likely be less for a large volume customer.
4. **Keystone Landfill - Lackawanna County:** PA Waste's argument that this site would not be as suitable as the proposed landfill is based on two criteria; 1) there will not be enough disposal capacity at the landfill, and 2) the price would be prohibitive. With respect to disposal capacity, PA Waste states that the ADV for this landfill is 3750 tons per day. PA Waste uses this figure to argue that the landfill does not have enough daily capacity beyond what it has been operating to accept an appreciable amount of the waste from Company X. This is incorrect; the ADV for this landfill is 4750 tons per day. With respect to the price per ton, PA Waste has not provided the actual tipping fee for this landfill. Furthermore, as noted above, and as noted by PA Waste in the April 28, 2008 response, the actual tipping fee would likely be less for a large volume customer.
5. **Commonwealth Environmental Services Landfill – Schuylkill County:** PA Waste's argument that this site would not be as suitable as the proposed landfill is based on the assertion that the price per ton would be cost prohibitive. While PA Waste states that the landfill charges the same price for municipal waste as for C/D waste, PA Waste has not provided any documentation to support this contention. Furthermore, the actual tipping fee would likely be less for a large volume customer. Finally, PA Waste states that the relative travel distance to the Commonwealth Environmental Services landfill from New York City versus the proposed site is relatively small and

more than justifies the transport of waste to the proposed site at the lower rate. PA Waste did not provide the actual difference in travel distance and has not provided an economic analysis that supports this statement. In fact, the distance to CES from New York City is approximately 160 miles, whereas the distance from New York City to Boggs Township, the proposed location of PA Waste's facility, is approximately 260 miles. Aside from the environmental impact associated with trucking waste for an additional 100 miles each way, the cost of fuel alone raises issues concerning the economic suitability of trucking waste to Boggs Township in lieu of CES.

6. Wayne Township Landfill – Clinton County: PA Waste's argument that this site would not be as suitable as the proposed landfill is based on the fact that this landfill has not recently taken waste from New York. The fact that Wayne Township Landfill has not recently taken waste from New York does not mean that the operator of the landfill would not accept New York waste in the future. PA Waste did not provide any information confirming that it is Wayne Township Landfill's policy not to accept waste from New York.
7. Lycoming County Landfill – Lycoming County: PA Waste's argument that this site would not be as suitable as the proposed landfill is based on their assertion that there is will not be enough disposal capacity at the landfill to accept any appreciable volume of the Customer X's waste. Lycoming County Landfill has an ADV of 1600 tons per day. Waste acceptance records for this landfill indicate the actual daily tonnage accepted over the last several years is over 400 tons per day less than their permitted volume.

The May 19, 2008, supplement to the April 28, 2008, response by PA Waste included a letter from another company (hereinafter referred to as "Company Y"). No environmental or economic analysis of why the proposed site would be as suitable than landfills currently being used by Company Y has been provided. PA Waste has not demonstrated that the proposed landfill would be at least as suitable both environmentally and economically than those currently being used by Company Y.

Finally, as a general matter, PA Waste has not demonstrated how redirecting the expected waste to PA Waste's proposed facility will not contribute to an increase in pollution to the environment. The application also does not demonstrate how redirecting the expected waste from New York City to PA Waste's proposed facility in Boggs Township will be more cost-efficient.

Based on the above remaining deficiencies, DEP has determined that PA Waste, LLC has not adequately addressed the questions of site suitability and other requirements of Act 101. PA Waste has had 330 days to prepare a response to these issues pertaining to Act 101. DEP is terminating the review of the application and is hereby denying the application.

In PA Waste's submissions to DEP, PA Waste requested that certain information be kept confidential as confidential business information ("CBI"). In PA Waste's October 12, 2007 submission, PA Waste states that "[t]his financial information was prepared pursuant to discussions with the Department's Central Office staff during a meeting held on August 14, 2007, at the Rachel Carson Building. PA Waste has intentionally marked this material as 'Confidential' and the Department is requested to designate, maintain and prevent disclosure of this information as Confidential Business Information, pursuant to the requirement of 25 Pa. Code § 271.5."

In its January 14, 2008 correspondence, with regard to certain information, PA Waste again requested that certain information be kept confidential as CBI. In this submission, PA Waste states that "[a]t this stage, the customer list for the Camp Hope Run Landfill is, and necessarily must be treated as, confidential and proprietary business information. As such, PA Waste intentionally separately packaged and marked this material as 'Confidential' and the Department is requested to designate, maintain and prevent disclosure of this information as Confidential Business Information, pursuant to the requirement of 25 Pa. Code § 271.5." The CBI supplement also states that "[t]his information identifies the anticipated sources of various waste streams to the facility, and at this stage, this customer list for the Camp Hope Run Landfill is, and necessarily must be treated as, confidential and proprietary business information." The Department is again requested to designate the information as confidential.

Similarly, in the April 28, 2008 letter, PA Waste requests that CBI be kept confidential and states that "PA Waste has intentionally marked this material as 'Confidential' and the Department is requested to designate, maintain and prevent disclosure of this information as Confidential Business Information, pursuant to the requirement of 25 Pa. Code § 271.5." In this letter, PA Waste further states in part, that "PA Waste's confidential and proprietary pro forma and economic analyses and related financial information, as well as anything relating to or which might be used by a competitor to reveal the intended customer list for this landfill is and must be retained as confidential, as the disclosure of this information by the Department would directly and adversely affect the competitive business position of PA Waste."

In DEP's correspondence dated February 25, 2008, DEP with regard to keeping information confidential, DEP noted that 25 Pa. Code § 271.5(b) requires that "...the person or municipality providing the information demonstrates [that] the information contains trade secrets, processes, operations, style of work or apparatus of a person or municipality or is otherwise confidential business information..." PA Waste was advised that the request was not fulfilled as it did not give any reason as to why the material should be kept confidential. PA Waste has presumed that because it wants the information to be kept confidential, then DEP should honor the request. PA Waste has submitted many pages without providing specificity as to why they should all be kept confidential. Some of the documents are public (i.e., the Mifflin, Bucks, and Delaware County Municipal Waste Management Plans; the Comprehensive Waste Management Plan from New York City; and a part of the Commercial Waste Management Study prepared for the New York City Department of Sanitation). The burden is not on DEP to wade through these various submissions and designate which are confidential. Rather, it is on the Permit Applicant to demonstrate, as set forth in 25 Pa. Code § 271.5(b) which documents should be kept confidential.

As noted above, PA Waste's requests to mark information as CBI are made in a conclusory fashion without providing a substantive basis for the request. For example, PA Waste has requested that the customer lists be afforded trade secret status. Under Pennsylvania law, they generally are. *Pestco, Inc. v. Associated Products, Inc.*, 880 A.2d 700, 706-707 (PA. Super. 2005). However, "[f]or customer information to be protectible it must be a *particular secret* of the business..." (Emphasis in the original). (Citation omitted). Courts have denied protection to customer lists which are easily generated from trade journals, ordinary telephone listings or an employee's general knowledge of who, in an established industry, is a potential customer of a given product." (Citation omitted). *Id.* at 707. While the lists may in fact be confidential business information, PA Waste has not demonstrated how.

In its April 28, 2008 correspondence to the Department, PA Waste cites *Horsehead Resource Development Company, Inc. v. DEP*, 1087 EHB 1998, where the Environmental Hearing Board ("Board") determined that certain information was confidential. However, while the Board noted that the appellant in that case had requested certain testimony to be deemed confidential, the request was granted only after the appellant had submitted a more limited statement of specific items to be sealed. *Id.*, at 1091. The Board had noted that much of the testimony, deemed by the Appellant to be confidential during closed sessions of a supersedeas hearing, was actually so general in nature that it would not qualify as confidential business information. *Id.*, at 1089. Unlike the request for confidentiality that is presented here, a review of what was found to be entitled to protection in the *Horsehead Resource Development Company, Inc. v. DEP* matter shows a very specific list of items. *Id.*, at 1094-95.

In its April 28, 2008 correspondence, PA Waste requested that if DEP makes a determination contrary to PA Waste's request for confidential treatment of the information submitted to it, that PA Waste be advised in writing to allow PA Waste time to "pursue judicial interpretation on the applicability of 25 Pa. Code § 271.5 to the information PA Waste had designated..." as confidential. DEP will wait to place these documents in the public file for 30 days from the date that PA Waste receives this letter.

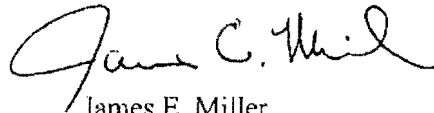
Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 PA.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

If you have any questions concerning this letter or requirements of the Solid Waste Management Act, please contact me at 570-327-3740.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Miller".

James E. Miller
Environmental Program Manager
Waste Management

cc: Nels Taber (Regional Counsel)
Ken Reisinger (Bureau of Waste Management)
Boggs Township Supervisors - Certified Mail No. 7007 1490 0002 0636 2665
Clearfield County Commissioners - Certified Mail No. 7007 1490 0002 0636 2672
Field
File