



September 5, 2023

Hon. Robert Freeman, Chair
Hon. Lee James, Republican Chair
Local Government Committee, Pennsylvania House of Representatives

Via Email

**RE: Recommendation to Exempt Waste-Handling Facilities from Article VI-A
To the Pennsylvania Municipalities Planning Code in HB 782**

Dear Chairman Freeman:

The Pennsylvania Waste Industries Association (“PWIA”) appreciates the opportunity to submit these comments on HB 782. PWIA is the Pennsylvania chapter of the National Waste and Recycling Association, a non-profit organization that represents the interests of the North American waste services industry. PWIA members include both privately held and publicly traded companies that own and operate numerous commercial solid waste disposal facilities throughout the Commonwealth, including facilities that would be subject to the additional procedural and deliberative requirements of the proposed legislation. We offer our comments in furtherance of our mission to promote the efficient, environmentally safe management of recycling and solid waste and to advocate for sound public policy affecting the management of recycling and solid waste.

While PWIA fully supports the objectives of ensuring that host municipalities consider the types of information contained in an impact analysis and providing opportunities for the surrounding communities and municipalities to offer comment on projects of regional significance, our members contend that those goals and the related procedures are already met (and exceeded) through the extensive review and approval process required for permitting new waste disposal facilities and expansions within the Commonwealth. Specifically, our waste-handling facilities are already required to comply with local zoning and zoning approval (typically special exception or conditional use), land development and a DEP permitting process that includes a host municipal benefit fee (and usually a Host Municipal Agreement), a Local Municipal Involvement Process, an Environmental Site Assessment review (including a detailed harms and benefits analysis and detailed PennDOT traffic analysis), and a comprehensive technical review, all of which is subject to mandatory public review and comment. As such, subjecting these facilities to yet another time-consuming, subjective review procedure is entirely duplicative and

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unjustifiably burdensome, and PWIA recommends exempting waste-handling facilities from this proposed amendment to the Municipalities Planning Code.

Pennsylvania waste-handling facilities, including specifically landfills, are obliged to obtain a variety of local and state approvals for a new operation or expansion of an existing site. Consistent with the requirements of Act 101, the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act, most projects include a host municipal agreement that establishes a variety of monetary and other mutually acceptable conditions and benefits (financial, social and environmental) that will be provided in connection with ultimate approval. These agreements (and impact agreements with affected surrounding municipalities) are adopted pursuant to the state's sunshine laws and are often the first step in addressing any of an array of possible concerns raised by the host municipality, by adjacent and affected communities and by neighboring municipalities. Moreover, the monetary mitigation afforded under these agreements typically exceeds the mandatory host municipal benefit fee of \$1/ton of waste disposed, with the statewide average in excess of \$3/ton as reflected in an Economic Impact study conducted of the Pennsylvania waste industry in 2013. Potential impacts from the project ranging from aesthetics to support of emergency services in the community to roadway maintenance to hours of operation are typically addressed in these agreements, which often establish enhanced communication procedures between the facility and the host municipality, as well as joint advisory committees to review ongoing operations and ensure compliance with the extensive federal, state and local rules and regulations applicable to the facility.

In addition to the terms of these host municipal agreements, a waste-handling facility must also fully comply with the requirements of the local zoning and subdivision ordinances relative to a proposed project. Typically for zoning, beyond ensuring that the district allows for the solid-waste operation, this involves pursuing either a special exception or conditional use approval for the project or proposed expansion. These zoning approvals involve public notice and public hearing(s) and generally require the applicant to demonstrate compliance with a number of zoning provisions for hours of operation, procedures for emergencies, water and sewage, drainage, buffers, setbacks, fencing, landscaping, and mitigation of noise, dust, glare and vibration. It is also common that these reviews require copies of Pennsylvania Department of Environmental Protection permit applications, review comments and permit conditions. Many of the items identified as appropriate for review by the host municipality in the proposed Article VI-A are already included in the zoning approval process.

Once securing the local zoning approval for the project, a project developer must still satisfy the extensive, but generally more objective requirements for local land development approval. In this process, even more of the items identified as appropriate for review in proposed Article VI-A are included in the land development approval process and are vetted subject to public review and comment procedures. In addition, consistent with the requirements of the MPC, notice of

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these applications is typically provided to the county and/or intercounty planning agencies, as well as other appropriate government agencies – e.g., PA DEP, PennDOT, the County Conservation District – for their review and comment. It is important to note that the local land development approval process is typically conducted in correlation with the even more comprehensive review undertaken by the PA DEP for the solid waste permit application required for a new waste-handling facility or an expansion of an existing facility.

In this regard, note that the state solid waste permitting process goes to great lengths to ensure that local land use and comprehensive plans are considered, that extensive public and municipal involvement is afforded, and that all of the potential community, environmental and resource impacts that might stem from a proposed waste-handling facility are identified, evaluated and adequately addressed. Interestingly, the Joint State Government Commission Report that prompted the proposed Article VI-A (see, Developments of Regional Significance and Impact: Findings and Recommendations, report of the Advisory Committee on Developments of Regional Significance and Impact, March 2012), specifically references the regulatory provisions of the waste program Harms Benefits Analyses for municipal waste landfills at 25 Pa. Code §271.127(a) and (b), as a relevant scope for the proposed impact analysis under proposed Article VI-A. See, fn. 224 of Advisory Committee report. And of course, an application for a waste disposal operation must be duly noticed and open for public and municipal comment during PA DEP's comprehensive review.

But even before that solid waste permit application is received by the PA DEP for review, the state regulatory program requires a Local Municipal Involvement Process, whereby the Department, applicant and local municipal officials meet to discuss the permit application, the Department's permit application review process and the public involvement steps in that process to hear and understand the concerns and questions of the municipal officials. Included within the group of municipalities invited to attend is not only the host municipality and host county, but municipalities adjacent to the host, municipalities located within one mile of the proposed project, any other municipality that demonstrates they may be adversely impacted by the proposed project, and all municipalities located along the approach routes.

Only after the LMIP meeting and a review schedule is established will the PA DEP commence the Environmental Assessment Review and the Harms Benefits Analysis. As indicated above, that review and analysis is expansive and is open-ended, in that any and all topics of potential concern can be identified for consideration. Moreover, most solid waste applications also address (directly or through companion permit applications) storm water management, sewage and wastewater treatment, air emissions management, groundwater monitoring, traffic (both in the vicinity of the facility and along the approach route and compliant with applicable PennDOT policies and procedures for Transportation Impact Studies), and many others, along with measures to minimize and mitigate potential concerns. Further, like the proposed Article VI-A

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impact analysis, this Harms Benefits Analysis considers each of the identified concerns individually and collectively, before making the “subjective and speculative”¹ determination as to whether the harms of the proposed project outweigh the various benefits. However, unlike the proposed impact analysis, PA DEP’s Harms Benefits Analysis includes and carefully weighs the important benefits afforded to the state through recycling and environmental stewardship fees, regional and statewide disposal capacity, implementation of county solid waste management plans developed under Act 101, and provision of the essential public services provided by the proposed waste-handling facility project.

PWIA contends that applying Article VI-A to waste-handling facilities is inappropriate, creating an unnecessary additional redundancy to the already extensive and costly review process currently in place. Through the existing review procedures – zoning and zoning approval (conditional use/special exception), host municipal agreements, land use approvals, PA DEP permitting (LMIP and EA Review with Harms Benefits) - a host municipality is provided multiple opportunities to receive and consider the full array of potential concerns identified in Article VI-A. Adding another step to the existing comprehensive review process doesn’t provide new information for a host municipality to consider. Rather, it further burdens the host municipality with yet another time consuming and costly procedural hurdle, which has the potential to create uncertainty and conflicting conditions or objectives.

PWIA requests that waste-handling facilities be excluded from the proposed procedural review provisions of Article VI-A in HB 782. Existing review procedures at both the local and state level fully address the goals of informing all affected and interested communities and surrounding municipalities and ensuring that their comments and concerns are considered in a wholistic review of a proposed new waste-handling facility or expansion thereof. Imposing an additional review procedure neither advances that goal, nor improves the decision-making process at the host municipal level. Rather, the additional review measures only add increased costs, delays and uncertainty to an existing comprehensive review procedure, while also imposing unnecessary and unfair burdens on both the host municipality and project proponent.

We hope that you and the committee find these comments helpful in understanding the issues and implications relating to the provisions of HB 782 relative to waste-handling facilities.

Very truly yours,

/s/ Tim O’Donnell

Tim O’Donnell
President

¹ Advisory Committee Report, p. 102 (Although a harms-benefits analysis may be subjective and speculative ...)