

Plastics Recycling Facility/Pennsylvania Environmental Hearing Board: Clean Air Council Challenges Port Township Facility's Classification as Advanced Recycling Facility



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The Clean Air Council (“CAC”) filed a Notice of Appeal (“Notice”) before the Pennsylvania Environmental Hearing Board (“Board”) challenging a letter determination by the Pennsylvania Department of Environmental Protection (“DEP”) for a proposed Port Township, Pennsylvania, plastics recycling facility (“Facility”).

CAC is challenging DEP’s letter determination that the proposed Facility meets the definition of an Advanced Recycling Facility as that phrase is defined in the Pennsylvania Solid Waste Management Act (“SWMA”). See 35 P.S. §§ 6018.101-6018.1001.

Pennsylvania and a number of states (including Arkansas) have undertaken legislation at the request of the American Chemistry Council (“ACC”) to exempt from certain solid waste management requirements activities fitting within the scope of the term Advanced Recycling Facility. The stated objective has been to encourage the reuse of plastic as feedstock. Certain environmental groups have objected to such changes arguing that it is improper to exempt such activities from traditional solid waste related permitting.

An August 1st DEP letter to ENCINA, which is presumably the company developing the Facility, apparently provided information about the materials that would be consumed.

The DEP letter notes in part:

Based upon the information provided to the Department of Environmental Protection (Department), your proposed facility meets the definition of an “Advanced Recycling Facility” per the Solid Waste Management Act (SWMA), 35 P.S. §§ 6018.101—6018.1001. Please be advised that in order to continue to meet this definition, the materials that you receive at your facility shall originate from residential, municipal or commercial sources, and may include source-separated recyclable plastics from a materials recycling facilities (MRFs), that are not mixed with solid waste, municipal waste, residual waste, regulated medical and chemotherapeutic waste, hazardous waste, electronic waste, waste tires or construction or demolition waste. Under the SWMA, an Advanced Recycling Facility cannot receive residual waste.

CAC argues in part in its Notice to the Board that:

. . . Phase 1 would be a standalone project that would engage in processing plastic waste and not in “advanced recycling.”

CAC argues that DEP should not have exempted what it describes as “both phases” of the Facility from the requirement to obtain a processing facility permit per the SWMA because Phase I would be a standalone project not involving “advanced recycling.” The organization argues that the activities instead meet the definition of “processing” in the previously referenced statute and its regulations.

This challenge is arguably important because it is likely one of the first instances in which state legislation addressing the “advanced recycling” legislation is being addressed in an administrative or judicial appeal context.

A copy of the Notice can be downloaded [here](#).