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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

KIBLER DEVELOPMENT CORPORATION	)	
and MARION RIDGE LANDFILL, INC.,	)	
	)	
Petitioners,	)	
	)	
vs.	)	PCB 05-35
	)	(Permit appeal – Land)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

NOTICE

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue, East  
P.O. Box 19274  
Springfield, IL 62794-9274

Stephen F. Hedinger  
Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703

James M. Kropid  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9274-9276

Francis X. Lyons  
Bell, Boyd & Lloyd LLC  
70 West Madison Street  
Suite 3100  
Chicago, IL 60602

Please take notice that I have today filed with the office of the Clerk of the Pollution Control Board a MOTION OF THE CITIES OF MARION AND HERRIN AND THE

WILLIAMSON COUNTY AIRPORT AUTHORITY TO INTERVENE AS PARTY  
PARTICIPANTS, a copy of which is herewith served upon you.

Dated: March 27, 2006

Respectfully submitted,

CITY OF MARION, CITY OF HERRIN, and  
WILLIAMSON COUNTY AIRPORT AUTHORITY

BY: Edward R. Gower  
HINSHAW & CULBERTSON, LLP  
EDWARD R. GOWER, Special Counsel

CHARLES F. HELSTEN  
EDWARD R. GOWER  
HINSHAW & CULBERTSON, LLP  
Attorneys at Law  
400 S. 9<sup>th</sup>, Suite 200  
Springfield, IL 62701  
(217) 528-7375

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ILLINOIS POLLUTION CONTROL BOARD

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	)	(Permit appeal – Land)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**MOTION OF THE CITIES OF MARION AND HERRIN**  
**AND THE WILLIAMSON COUNTY AIRPORT AUTHORITY**  
**TO INTERVENE AS PARTY PARTICIPANTS**

The City of Marion ("Marion"), the City of Herrin ("Herrin") and the Williamson County Airport Authority ("Airport Authority"), move the Board for an order authorizing each of them to intervene in the above-captioned proceeding as formal party participants. In support of their Motion, Marion, Herrin and the Airport Authority state:

1. The rules of the Illinois Pollution Control Board (the "Board"), provide that the "Board encourages public participation in all of its proceedings." 35 Ill. Adm. Code, § 101.110(a). Moreover, the Board's rules authorize the Board to permit intervention as a party where the movant "may be materially prejudiced absent intervention" or "is so situated that the person [movant] may be adversely affected by a final Board order." 35 Ill. Adm. Code, §101.402(d)(2) and (3).

2. Marion appeared and offered testimony concerning the proposed landfill at the siting hearing that ultimately resulted in the issuance of the permit and permit conditions that are at issue in this proceeding.

3. Under the Third District Appellate Court's decision in *Land and Lakes Co. v. Pollution Control Board*, 245 Ill. App. 3d 631, 616 N.E.2d 349, 354-55 (3d Dist.), *app. denied*, 152 Ill. 2d 561, 622 N.E.2d 1209 (1993), it is appropriate to allow officials who represent the public interest to intervene in appeal proceedings before the Board. In the *Land and Lakes* case, it was the Will County State's Attorney who was permitted to intervene because of its "interest in protecting the health and environment within which the People of Will County must live and work." 616 N.E.2d at 355. Here, Williamson County was the siting authority, and it therefore would be inappropriate for the State's Attorney to intervene. Under the circumstances, there is no public body better situated to protect the public interest than the adjacent municipalities and airport whose citizens and users, respectively, will be most directly affected by the proposed landfill. For the reasons set forth below, Marion, Herrin and the Airport Authority satisfy both of the Board's alternative criterion for intervention, are the public bodies best situated to protect the public interest, and should be permitted to intervene in this case.

#### **I. LOCATION OF THE PROPOSED LANDFILL**

4. This proceeding was instituted by the proposed developers of a municipal solid waste landfill, Kibler Development Corporation and Marion Ridge Landfill, Inc., (collectively the "Proposed Landfill Developers").

5. The proposed landfill site would occupy 353 acres and ultimately would be about 170 feet tall. The site would be located immediately adjacent to Marion's corporate boundaries, right next to the Kokopelli Golf Club and related subdivision development and less than a quarter mile from new retail development in Marion. In addition, the facility would be located less than two miles from the Williamson County Regional Airport, which is owned and controlled by the Airport Authority. In fact, the proposed location is directly beneath the path followed by aircraft landing and taking off from the east-west runway of the Airport. the

proposed landfill is approximately two miles from Herrin. As more fully discussed below, construction of the proposed landfill would endanger public safety, and severely disrupt economic development in the area.

**II. GRANTING THE RELIEF REQUESTED BY THE PROPOSED LANDFILL DEVELOPERS WOULD RAISE SERIOUS PUBLIC SAFETY CONCERNS FOR THE MOVANTS' CITIZENRY AND USERS.**

6. The Proposed Landfill Developers initiated this proceeding for the purpose, among others, of appealing a condition in the Illinois Environmental Protection Agency's ("IEPA") approval of their municipal solid waste landfill construction permit. The permit condition at issue requires the Proposed Landfill Developers to comply with federal law, and, accordingly, obtain all necessary approvals from the Federal Aviation Administration ("FAA") before they can proceed with construction and operation of the proposed municipal solid waste landfill.

7. The federal law in question is 49 U.S.C. § 44718(d). That law prohibits construction or establishment of a municipal solid waste landfill within six miles of a public airport that meets certain statutory criteria unless: (a) the State's Aviation Agency requests that the Administrator of the FAA exempt the landfill from the otherwise applicable prohibition; and (b) the FAA Administrator finds that the exemption "would have no adverse impact on aviation safety." (Emphasis added). The Williamson County Regional Airport clearly meets the statutory criteria of 49 U.S.C. §44718(d) because it has received federal Airport Improvement Program grant funds and it is primarily served by general aviation aircraft and regulatory scheduled flights of aircraft designed for 60 passengers or less. Since the proposed landfill is less than 6 miles from the Airport, in turn, the Proposed Landfill Developers must secure a federal exemption from the otherwise applicable landfill prohibition in 47 U.S.C. § 44718(d) before they can construct or operate the proposed landfill.

8. The reason that federal law prohibits, with extremely limited exceptions, the construction of municipal solid waste landfills near airports is because municipal solid waste landfill construction in proximity to airports poses serious risks to public safety. Waste facilities attract birds, and birds pose a major danger to low flying aircraft. According to FAA Advisory Circular 150/5200-34A (which governs construction of landfills near airports), there were more than 59,000 collisions in the United States between aircraft and wildlife in the period from 1990-2004. That same Advisory Circular reports that aircraft-wildlife collisions annually result in over \$495 million per year in aircraft damage and associated losses, and over 631,000 hours per year in lost aircraft time. Moreover, 87% of those collisions occur below 200 feet, where there is little time for a pilot to react and regain control of the aircraft. In one of the more well publicized tragic collisions, an Air Force E-3B AWACS aircraft collided with a flock of Canadian geese on the Elmendorf Air Force Base in Alaska, killing all 24 passengers and crew. A copy of the FAA Advisory Circular 150/5200-34A is attached as Exhibit 1.

9. According to the attached FAA Advisory Circular, gulls, Canadian geese, raptors and turkey vultures are the biggest threat to aircraft, as all are commonly found foraging and resting on or near landfills.

10. According to a Wildlife Hazard Assessment conducted for the Williamson County Regional Airport in 2002-2003 by the United States Department of Agriculture, pursuant to a contractual arrangement with the FAA, gulls, Canadian geese, various raptors, and turkey vultures were all observed on the Airport property. The Williamson County Regional Airport is particularly susceptible to bird and other wildlife strikes because: 1) the facility would be located 2.5 miles north/northeast of the Crab Orchard Lake, which is the site of a national wildlife refuge, and 2) the facility would be located very near the confluence of the Mississippi

and Ohio River laboratory bird flyways. Constructing a municipal solid waste landfill less than 2 miles from the airport that would attract birds to a site directly beneath the approach to one of the two runways at the Airport, under the circumstances, would appear to be a recipe for disaster.

11. To the best of the Movants' knowledge, neither the IEPA nor any other party has performed any meaningful analysis of the public safety risks posed to air traffic at the Williamson County Regional Airport by construction of a large municipal solid waste landfill directly beneath the approach to one of its runways. Those very real public safety issues were not thoroughly evaluated or vetted in either the siting or permitting process. Under federal law, no such landfill can be constructed unless the FAA determines that there would be "no adverse impact on aviation safety." 49 U.S.C. § 44718(d)(1). (Emphasis added). Given these very real and substantial risks, the IEPA's decision to expressly condition permit approval upon compliance with federal law was a very necessary and wise decision.

12. If that condition were eliminated and the Proposed Landfill Developers were allowed to proceed with construction of the landfill, the citizens of Marion and Herrin as well as the owners and users of the Williamson County Regional Airport would be exposed to the very real potential of a major aircraft crash.

### **III. GRANTING THE REQUESTED RELIEF WOULD HAVE A NEGATIVE IMPACT ON REGIONAL ECONOMICAL DEVELOPMENT, IMPACTING MARION, HERRIN AND THE AIRPORT AUTHORITY.**

13. As noted above, the proposed landfill site is adjacent to the Kokopelli Golf Club and a related subdivision development. Homes in that development have sold for \$200,000 to more than \$1 million, significantly enhancing Marion's tax base. Who, in their right mind, would spend that kind of money in Marion, Illinois for a home near a large landfill?

14. Moreover, the Southern Illinois Baseball Group is in the process of constructing the infrastructure for a minor league baseball park to be located immediately adjacent to the

proposed landfill site. The Group previously had a tentative agreement to buy a Class A minor league franchise in South Bend, Indiana, and move it to Marion, and is now attempting to secure rights to another minor league franchise. If the permit condition is dropped and construction of a landfill proceeds, trucks moving between the landfill site and I-57 Interstate will inevitably have to move along the property immediately adjacent to the stadium site. The prospects of attracting a minor league franchise to play at the stadium site will plummet, and economic development in the entire region, including at Marion, Herrin and the Airport, will suffer tremendously.

15. The Williamson County Regional Airport is a public facility that has some commercial passenger service to St. Louis, and, moreover, primarily serves general aviation needs of the region. In 2005, the Airport had 11,934 aircraft operations. Approximately 40% of its flights are transient, involving aircraft not based at the airport. In addition, the Airport currently is pursuing additional commercial service to Chicago.

16. If the condition is dropped from the permit and construction of the landfill proceeds, the Airport Authority believes that the Airport will lose its existing commercial service as well as any prospect it has of attracting additional commercial service. Furthermore, the Airport Authority believes that at least some of traffic involving aircraft not based at the Airport would shift elsewhere. The potential of attracting additional federal airport improvement grant funds for future improvements at the Airport also would likely be severely diminished.

17. Marion and Herrin are committed to maintaining the economic vitality as airports, by their very nature, are economic generators for adjacent communities.

**IV. MARION HAS AN INTEREST IN PROTECTING ITS CITIZENS BY INTERVENING TO ENSURE THAT THE SETBACK CONDITION REMAINS IN THE PERMIT**

18. The permit approval issued to the Proposed Landfill Developers also provided that no liner shall be constructed within 500 feet of any inhabited structure and required the



developers to conduct a survey before starting construction of the liner. The inclusion of a setback requirement illustrates the incompatibility of the proposed landfill with the immediately adjacent residential community.

19. As noted above, Marion's corporate boundaries are immediately adjacent to the proposed landfill site, and the setback requirement provides some limited measure of protection for the sanctity of the homes of Marion's citizens. In addition to the other grounds, Marion is entitled to intervene in this proceeding to ensure that its citizens are protected by retention of the setback requirement in the permit.

**V. GRANTING THE MOTION TO INTERVENE WILL NOT DELAY THIS PROCEEDING IN ANY RESPECT.**

20. Granting the Motion to Intervene will not delay this proceeding in any respect. The Petition for Review was filed on August 29, 2004, but the administrative review record has never been filed and there have been no substantive actions or activities in the case. In fact, the Petitioners have filed their seventh waiver of decision deadline, and the next status conference is scheduled for April 4, 2006. The current deadline for a Board decision in this matter is September 1, 2006.

**VI. CONCLUSION**

21. The Proposed Landfill Developers have always proposed to build a municipal solid waste landfill at the site in question. They cannot build such a landfill without getting a federal exemption, and the existing IEPA permit is properly conditioned upon them obtaining the requisite federal exemption before they can proceed with construction. If the Proposed Landfill Developers are permitted to proceed with construction of any kind of landfill at the site, it will have a deleterious and devastating impact on the region's economy. If the current condition is eliminated from the permit, and the Proposed Landfill Developers proceed with construction of a

municipal solid waste facility without first obtaining the requisite federal exemption (which the Proposed Landfill Developers have asserted they have the right to do), it will seriously jeopardize public safety.

22. The Proposed Landfill Developers should be required to follow the law, and that is what the existing permit condition was designed to ensure is done. The parties who will be most severely impacted if the Proposed Landfill Developers do not follow the law (which are the Movants in this case), should most assuredly be permitted to intervene as parties in this proceeding to ensure that the Proposed Landfill Developers are required to follow the law and that the permit condition properly remain in place.

23. The record in this case indicates that the current parties have discussed a settlement that would involve some change to the permit language. Under the circumstances, it is important that the Movants be permitted to intervene as parties in this proceeding so that they have a seat at the negotiating table with formal party status, rather than being permitted to simply file an *amicus* brief after the fact on a done deal.

24. If any of the three Movants are denied the right to intervene as party participants, then they request the right to file *Amici Curiae* briefs in this proceeding.

WHEREFORE, the City of Marion, the City of Herrin and Williamson County Airport Authority move the Board for entry of an order granting them leave to intervene and appear as party participants in this proceeding.

CITY OF MARION, CITY OF HERRIN, and  
WILLIAMSON COUNTY AIRPORT AUTHORITY

BY: Edward R. Gower  
HINSHAW & CULBERTSON, LLP  
EDWARD R. GOWER, Special Counsel

CHARLES F. HELSTEN  
EDWARD R. GOWER  
HINSHAW & CULBERTSON, LLP  
Attorneys at Law  
400 S. 9<sup>th</sup>, Suite 200  
Springfield, IL 62701  
(217) 528-7375

APR 06 2006

STATE OF ILLINOIS  
Pollution Control Board

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VERIFICATION FOR THE CITY OF MARION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the facts concerning the location of the proposed landfill and its impact on the City of Marion and its citizens, as set forth in the Motion of the Cities of Marion and Herrin and the Williamson County Airport Authority to Intervene as Parties in PCB Case No. 05-35, are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes them to be true.

Robert L. "Bob" Butler

Bob Butler  
Mayor  
City of Marion

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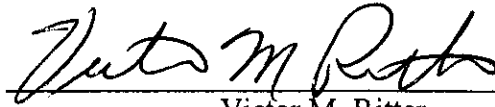
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STATE OF ILLINOIS  
Pollution Control Board

VERIFICATION FOR THE CITY OF HERRIN

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the facts concerning the location of the proposed landfill and its impact on the City of Herrin and its citizens, as set forth in the Motion of the Cities of Marion and Herrin and the Williamson County Airport Authority to Intervene as Parties in PCB Case No. 05-35, are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes them to be true.



Victor M. Ritter

Mayor

City of Herrin

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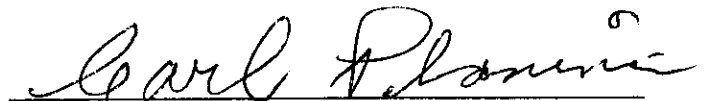
VERIFICATION FOR THE WILLIAMSON  
COUNTY AIRPORT AUTHORITY

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APR 06 2006

STATE OF ILLINOIS  
Pollution Control Board

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the facts concerning the location of the proposed landfill and its impact on the Williamson County Airport Authority and its users, as set forth in the Motion of the Cities of Marion and Herrin and the Williamson County Airport Authority to Intervene as Parties in PCB Case No. 05-35, are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes them to be true.



Carl Planinc  
Chairman

Williamson County Airport Authority



U.S. Department  
of Transportation

Federal Aviation  
Administration

# Advisory Circular

**Subject:** CONSTRUCTION OR  
ESTABLISHMENT OF LANDFILLS NEAR  
PUBLIC AIRPORTS

**Date:** January 26, 2006  
**Initiated by:** AAS-300

**AC No:** 150/5200-34A  
**Change:**

## 1. Purpose.

This advisory circular (AC) contains guidance on complying with Federal statutory requirements regarding the construction or establishment of landfills near public airports.

## 2. Application.

The guidance contained in the AC is provided by the Federal Aviation Administration (FAA) for use by persons considering the construction or establishment of a new municipal solid waste landfill (MSWLF) near a public airport. Guidance contained herein should be used to comply with MSWLF site limitations contained in 49 U.S.C. § 44718(d), as amended by section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century, Pub. L. No. 106-181 (April 5, 2000), "Structures interfering with air commerce." In accordance with § 44718(d), as amended, these site limitations are not applicable in the State of Alaska.

In addition, this AC provides guidance for a state aviation agency desiring to petition the FAA for an exemption from the requirements of § 44718(d), as amended.

## 3. Cancellation

This AC cancels AC 150/52300-34, *Construction or Establishment of Landfills Near Public Airports*, dated August 8, 2000.

This revision contains no substantive changes to the original. Changes include revised and new website addresses, revised strike statistics, and regulation titles.

## 4. Related Reading Materials.

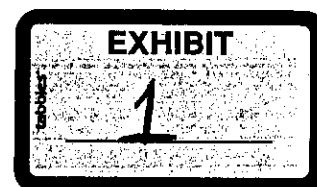
AC - 150/5200-33, *Hazardous Wildlife Attractions On or Near Airports*.

*Wildlife Strikes to Civil Aircraft in the United States*. FAA Wildlife Aircraft Strike Database Serial Reports.

Report to Congress: *Potential Hazards to Aircraft by Locating Waste Disposal Sites in the Vicinity of Airports*, April 1996, DOT/FAA/AS/96-1.

Title 14, Code of Federal Regulation, Part 139, Certification of Airports.

Title 40, Code of Federal Regulation, Part 258, Municipal Solid Waste Landfill Criteria.



Some of these documents and additional information on wildlife management, including guidance on landfills, are available on the FAA's Airports web site at [http://www.faa.gov/airports\\_airtraffic/airports/](http://www.faa.gov/airports_airtraffic/airports/) or <http://wildlife-mitigation.tc.faa.gov>

## **5. Definitions.**

Definitions for the specific purpose of this AC are found in Appendix 1.

## **6. Background.**

The FAA has the broad authority to regulate and develop civil aviation under the Federal Aviation Act of 1958, 49 U.S.C. § 40101, et. seq., and other Federal law. In section 1220 of the Federal Aviation Reauthorization Act of 1996, Pub. L. No. 104-264 (October 9, 1996), the Congress added a new provision, section (d), to 49 U.S.C. § 44718 to be enforced by the FAA and placing limitations on the construction or establishment of landfills near public airports for the purposes of enhancing aviation safety. Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21), Pub. L. No. 106-181 (April 5, 2000) replaced section 1220 of the 1996 Reauthorization Act, 49 U.S.C. § 44718 (d), with new language. Specifically, the new provision, § 44718(d), as amended, was enacted to further limit the construction or establishment of a municipal solid waste landfill (MSWLF) near certain smaller public airports.

In enacting this legislation, Congress expressed concern that a MSWLF sited near an airport poses a potential hazard to aircraft operations because such a waste facility attracts birds. Statistics support the fact that bird strikes pose a real danger to aircraft. An estimated 87 percent of the collisions between wildlife and civil aircraft occurred on or near airports when aircraft are below 2,000 feet above ground level (AGL). Collisions with wildlife at these altitudes are especially dangerous as aircraft pilots have minimal time to recover from such emergencies.

The FAA National Wildlife Aircraft Strike Database shows that more than 59,000 civil aircraft sustained reported strikes with wildlife from 1990 to 2004. Between 1990-2004, aircraft-wildlife strikes involving U. S. civil aircraft resulted in over \$495 million/year worth of aircraft damage and associated losses and over 631,000 hours/year of aircraft down time.

From 1990 to 2004, waterfowl, gulls and raptors were involved in 77% of the 3,493 reported damaging aircraft-wildlife strikes where the bird was identified. Populations of Canada geese and many species of gulls and raptors have increased markedly over the last several years. Further, gulls and Canada geese have adapted to urban and suburban environments and, along with raptors and turkey vultures, are commonly found feeding or loafing on or near landfills.

In light of increasing bird populations and aircraft operations, the FAA believes locating landfills in proximity to airports increases the risk of collisions between birds and aircraft. To address this concern, the FAA issued AC 150/5200-33, *Hazardous Wildlife Attractions On or Near Airports*, to provide airport operators and aviation planners with guidance on minimizing wildlife attractants. AC 150/5200-33 recommends against locating municipal solid waste landfills within five statute miles of an airport if the landfill may cause hazardous wildlife to move into or through the airport's approach or departure airspace.



## **7. General.**

Using guidance provided in the following sections, persons considering construction or establishment of a landfill should first determine if the proposed facility meets the definition of a new MSWLF (see Appendix 1). Section 44718(d), as amended, applies only to a new MSWLF. It does not apply to the expansion or modification of an existing MSWLF, and does not apply in the State of Alaska. If the proposed landfill meets the definition of a new MSWLF, its proximity to certain public airports (meeting the criteria specified in Paragraph 8 below) should be determined. If it is determined that a new MSWLF would be located within six miles of such a public airport, then either the MSWLF should be planned for an alternate location more than 6 miles from the airport, or the MSWLF proponent should request the appropriate State aviation agency to file a petition for an exemption from the statutory restriction.

In addition to the requirements of § 44718(d), existing landfill restrictions contained in AC 150/5200-33, *Hazardous Wildlife Attractions On or Near Airports* (see Paragraph 5, Background) also may be applicable. Airport operators that have accepted Federal funds have obligations under Federal grant assurances to operate their facilities in safe manner and must comply with standards prescribed in advisory circulars, including landfill site limitations contained in AC 150/5200-33.

## **8. Landfills Covered by the Statute.**

The limitations of § 44718(d), as amended, only apply to a new MSWLF (constructed or established after April 5, 2000). The statutory limitations are not applicable where construction or establishment of a MSWLF began on or before April 5, 2000, or to an existing MSWLF (received putrescible waste on or before April 5, 2000). Further, an existing MSWLF that is expanded or modified after April 5, 2000, would not be held to the limitations of § 44718(d), as amended.

## **9. Airports Covered by the Statute.**

The statutory limitations restricting the location of a new MSWLF near an airport apply to only those airports that are recipients of Federal grants (under the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*) and primarily serve general aviation aircraft and scheduled air carrier operations using aircraft with less than 60 passenger seats.

While the FAA does not classify airports precisely in this manner, the FAA does categorize airports by the type of aircraft operations served and number of annual passenger enplanements. In particular, the FAA categorizes public airports that serve air carrier operations. These airports are known as commercial service airports, and receive scheduled passenger service and have 2,500 or more enplaned passengers per year.

One sub-category of commercial service airports, nonhub primary airports, closely matches the statute requirement. Nonhub primary airports are defined as commercial service airports that enplane less than 0.05 percent of all commercial passenger enplanements (0.05 percent equated to 352,748 enplanements in 2004) but more than 10,000 annual enplanements. While these enplanements consist of both large and small air carrier operations, most are conducted in aircraft with less than 60 seats. These airports also are heavily used by general aviation aircraft, with an average of 81 based aircraft per nonhub primary airport.

In addition, the FAA categorizes airports that enplane 2,500 to 10,000 passengers annually as non-primary commercial service airports, and those airports that enplane 2,500 or less passengers annually as general aviation airports. Both types of airports are mainly used by general aviation but in some instances, they have annual enplanements that consist of scheduled air carrier operations conducted in aircraft with less than 60 seats. Of the non-primary commercial service airports and general aviation airports, only those that have scheduled air carrier operations conducted in aircraft with less than 60 seats would be covered by the statute. The statute does not apply to those airports that serve only general aviation aircraft operations.

To comply with the intent of the statute, the FAA has identified those airports classified as nonhub primary, non-primary commercial service and general aviation airports that:

1. Are recipients of Federal grant under 49 U.S.C. § 47101, et. seq.;
2. Are under control of a public agency;
3. Serve scheduled air carrier operations conducted in aircraft with less than 60 seats; and
4. Have total annual enplanements consisting of at least 51% of scheduled air carrier enplanements conducted in aircraft with less than 60 passenger seats.

Persons considering construction or establishment of a new MSWLF should contact the FAA to determine if an airport within six statute miles of the new MSWLF meets these criteria (see paragraph 11 below for information on contacting the FAA). If the FAA determines the airport does meet these criteria, then § 44718(d), as amended, is applicable.

An in-depth explanation of how the FAA collects and categorizes airport data is available in the FAA's National Plan of Integrated Airport Systems (NPIAS). This report and a list of airports classified as nonhub primary, non-primary commercial service and general aviation airports (and associated enplanement data) are available on the FAA's Airports web site at [http://www.faa.gov/airports/airtraffic/airports/planning\\_capacity/](http://www.faa.gov/airports/airtraffic/airports/planning_capacity/).

## **10. Separation distance measurements.**

Section 44718(d), as amended, requires a minimum separation distance of six statute miles between a new MSWLF and a public airport. In determining this distance separation, measurements should be made from the closest point of the airport property boundary to the closest point of the MSWLF property boundary. Measurements can be made from a perimeter fence if the fence is co-located, or within close proximity to, property boundaries. It is the responsibility of the new MSWLF proponent to determine the separation distance.

## **11. Exemption Process.**

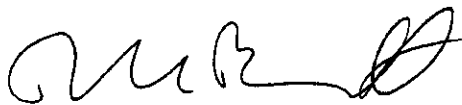
Under § 44718(d), as amended, the FAA Administrator may approve an exemption from the statute's landfill location limitations. Section 44718(d), as amended, permits the aviation agency of the state in which the airport is located to request such an exemption from the FAA Administrator. Any person desiring such an exemption should contact the aviation agency in the state in which the affected airport is located. A list of state aviation agencies and contact information is available at the National Association of State Aviation Officials (NASAO) web site at [www.nasao.org](http://www.nasao.org) or by calling NASAO at (301) 588-1286.

A state aviation agency that desires to petition the FAA for an exemption should notify the Regional Airports Division Manager, in writing, at least 60 days prior to the construction of a MSWLF. The petition should explain the nature and extent of relief sought, and contain information, documentation, views, or arguments that demonstrate that an exemption from the statute would not have an adverse impact on aviation safety. Information on contacting FAA Regional Airports Division Managers can be found on the FAA's web site at [www.faa.gov](http://www.faa.gov).

After considering all relevant material presented, the Regional Airports Division Manager will notify the state agency within 30 days whether the request for exemption has been approved or denied. The FAA may approve a request for an exemption if it is determined that such an exemption would have no adverse impact on aviation safety.

## **12. Information.**

For further information, please contact the FAA's Office of Airport Safety and Standards, Airport Safety and Operations Division, at (800) 842-8736, Ext. 7-3085 or via email at [WebmasterARP@faa.gov](mailto:WebmasterARP@faa.gov). Any information, documents and reports that are available on the FAA web site also can be obtained by calling the toll-free telephone number listed above.

A handwritten signature in black ink, appearing to read 'DLB', with a stylized flourish at the end.

DAVID L. BENNETT  
Director, Office of Airport Safety and Standards

## APPENDIX 1. DEFINITIONS.

The following are definitions for the specific purpose of this advisory circular.

**Construct a municipal solid waste landfill (MSWLF)** means excavate or grade land, or raise structures, to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting authority.

**Establish a municipal solid waste landfill (MSWLF)** means receive the first load of putrescible waste on site for placement in a prepared municipal solid waste landfill.

**Existing municipal solid waste landfill (MSWLF)** means a municipal solid waste landfill that received putrescible waste on or before April 5, 2000.

**General aviation aircraft** means any civil aviation aircraft not operating under 14 CFR Part 119, Certification: Air carriers and commercial operators.

**Municipal solid waste landfill (MSWLF)** means publicly or privately owned discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR § 257.2. A MSWLF may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste, as defined under 40 CFR § 258.2. A MSWLF may consist of either a standalone unit or several cells that receive household waste.

**New municipal solid waste landfill (MSWLF)** means a municipal solid waste landfill that was established or constructed after April 5, 2000.

**Person(s)** means an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them (14 CFR Part 1).

**Public agency** means a State or political subdivision of a State; a tax-supported organization; or an Indian tribe or pueblo (49 U.S.C. § 47102(15)).

**Public airport** means an airport used or intended to be used for public purposes that is under the control of a public agency; and of which the area used or intended to be used for landing, taking off, or surface maneuvering of aircraft is publicly owned (49 U.S.C. § 47102(16)).

**Putrescible waste** means solid waste which contains organic matter capable of being decomposed by micro-organisms and of such a character and proportion as to be capable of attracting or providing food for birds (40 CFR § 257.3-8).

**Scheduled air carrier operation** means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the air carrier, commercial operator, or their representatives offers in advance the departure location, departure time, and arrival location. It does not include any operation that is conducted as a supplemental operation under 14 CFR Part 119, or is conducted as a public charter operation under 14 CFR Part 380 (14 CFR § 119.3).

**Solid waste** means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) (40 CFR § 258.2).