

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 427 Session of
2001

INTRODUCED BY GRUCELA, COY, SOLOBAY, YUDICHAK, COLAFELLA,
DeLUCA, FREEMAN, GEORGE, JOSEPHS, LAUGHLIN, McCALL, ROONEY,
RUFFING, SHANER, SURRA, THOMAS, WANSACZ AND C. WILLIAMS,
FEBRUARY 5, 2001

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 5, 2001

AN ACT

1 Amending the act of July 28, 1988 (P.L.556, No.101), entitled
2 "An act providing for planning for the processing and
3 disposal of municipal waste; requiring counties to submit
4 plans for municipal waste management systems within their
5 boundaries; authorizing grants to counties and municipalities
6 for planning, resource recovery and recycling; imposing and
7 collecting fees; establishing certain rights for host
8 municipalities; requiring municipalities to implement
9 recycling programs; requiring Commonwealth agencies to
10 procure recycled materials; imposing duties; granting powers
11 to counties and municipalities; authorizing the Environmental
12 Quality Board to adopt regulations; authorizing the
13 Department of Environmental Resources to implement this act;
14 providing remedies; prescribing penalties; establishing a
15 fund; and making repeals," providing for municipal waste
16 transportation fees.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The act of July 28, 1988 (P.L.556, No.101), known
20 as the Municipal Waste Planning, Recycling and Waste Reduction
21 Act, is amended by adding a chapter to read:

22 CHAPTER 8

23 MUNICIPAL WASTE TRANSPORTATION FEES

1 Section 801. Fee for disposing municipal waste at municipal
2 waste landfills more than 50 miles from site of
3 collection.

4 (a) Imposition.--There is imposed a municipal waste
5 transportation fee of \$2 per ton on all solid waste transported
6 to and disposed of at a municipal waste landfill if the solid
7 waste is transported to the municipal waste landfill from a
8 distance of 50 miles or more. For purposes of calculating
9 mileage under this section, all solid waste transported to a
10 municipal waste landfill shall be deemed to have been collected
11 at the principal place of business of the person transporting
12 the solid waste to the municipal waste landfill. The fee shall
13 be paid by the operator of each municipal waste landfill to the
14 host municipality. If a municipal waste landfill is located in
15 more than one host municipality, the paid fee shall be divided
16 equally among the host municipalities.

17 (b) Alternative calculation.--For operators of municipal
18 waste landfills that do not weigh solid waste when it is
19 received, the fee established by subsection (a) shall be
20 calculated so that three cubic yards equal one ton of solid
21 waste.

22 Section 802. Form and timing of payment.

23 (a) Quarterly payments.--Each operator of a municipal waste
24 facility shall make the municipal waste transportation fee
25 payment to the host municipality on a quarterly basis. The fee
26 shall be paid on or before the 20th day of April, July, October
27 and January for the three months ending the last day of March,
28 June, September and December.

29 (b) Quarterly reports.--Each fee payment under this section
30 shall be accompanied by a form prepared and furnished by the

department and completed by the operator. The form shall state the total weight or volume of solid waste received by the facility during the payment period and provide any other aggregate information deemed necessary by the department to carry out the purpose of this act. The form shall be signed by the operator.

(c) Timeliness of payment.--The operator shall be deemed to have made a timely payment of the transportation fee if the operator complies with all of the following:

(1) The enclosed payment is for the full amount owed under this chapter and no further action is required for collection.

(2) The payment is accompanied by the required form and the form is complete and accurate.

(3) The letter transmitting the payment that is received by the municipality is postmarked by the United State Postal Service on or prior to the final day on which the payment is to be received.

(d) Discount.--Any operator who makes a timely payment of the municipal waste transportation fee as provided in this section shall be entitled to a credit against the fee payable in the amount of 1% from the amount of the fee collected.

(e) Refunds.--Any operator who has overpaid the municipal waste transportation fee may file a petition for refund with the department. If the department determines that the operator has overpaid the fee, the host municipality shall refund the operator the amount due him, together with interest at a rate established pursuant to section 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, from the date of overpayment. No refund of the fee shall be made unless the

petition for the refund is filed with the department within six months of the date of the overpayment.

(f) Alternative proof of payment.--For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date shall be evidence of timely payment.

Section 803. Collection and enforcement of fee.

(a) Interest.--If an operator fails to make a timely payment of the municipal waste transportation fee, the operator shall pay interest on the unpaid amount due at the rate established pursuant to section 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, from the last day for timely payment to the date paid.

(b) Additional penalty.--In addition to the interest provided for in subsection (a):

(1) If an operator fails to make timely payment of the transportation fee, there shall be added to the amount of the fee actually due 5% of the amount of such fee.

(2) If the failure to file a timely payment is more than one month, there shall be added to the amount of the fee actually due an additional 5% for each additional month, or fraction thereof, during which such failure continues, not to exceed 25% in the aggregate.

(c) Assessment notices.--

(1) If the municipality determines that an operator has not made a timely payment of the transportation fee, it shall send the operator a written notice of the amount of the deficiency within 30 days of determining such deficiency. If the operator has not provided a complete and accurate statement of the weight or volume of solid waste received at

1 the facility for the payment period, the municipality may
2 estimate the weight or volume in its notice.

3 (2) The operator charged with the deficiency shall have
4 30 days to pay the deficiency in full, or if the operator
5 wishes to contest the deficiency, to forward the amount of
6 the deficiency to the host municipality for placement in an
7 escrow account with the State Treasurer or any Pennsylvania
8 bank, or to post an appeal bond in the amount of the
9 deficiency. The bond shall be executed by a surety licensed
10 to do business in this Commonwealth and shall be satisfactory
11 to the department. Failure to forward the money or the appeal
12 bond to the host municipality within 30 days shall result in
13 a waiver of all legal rights to contest the deficiency.

14 (3) If it is determined through administrative or
15 judicial review of the deficiency that the amount of the
16 deficiency must be reduced, the host municipality shall
17 within 30 days remit the appropriate amount to the operator,
18 with any interest accrued by the escrow deposit.

19 (4) The amount determined after administrative hearing
20 or after waiver of administrative hearing shall be payable to
21 the host municipality and shall be collectible in the manner
22 provided in section 1709.

23 (5) Notwithstanding any law to the contrary, an action
24 brought by a host municipality pursuant to this section must
25 be commenced within five years from the date of the
26 deficiency.

27 (6) If any amount due under this subsection remains
28 unpaid 30 days after receipt of notice thereof, the
29 department may order the operator to cease receiving any
30 solid waste at the facility until the amount of the

1 deficiency is completely paid.

2 (d) Filing of appeals.--Notwithstanding any other provision
3 of law, all appeals of final department actions concerning the
4 fee, including, but not limited to, petitions for refunds, shall
5 be filed with the Environmental Hearing Board.

6 (e) Constructive trust.--All transportation fees collected
7 by an operator and held by the operator prior to payment to the
8 host municipality shall constitute a trust fund for the host
9 municipality, and the trust shall be enforceable against the
10 operator, its representatives and any person receiving any part
11 of the fund without consideration or with knowledge that the
12 operator is committing a breach of trust. Any person receiving
13 payment of a lawful obligation of the operator from the fund
14 shall be presumed to have received the same in good faith and
15 without any knowledge of the breach of trust.

16 (f) Remedies cumulative.--The remedies provided to the host
17 municipality in this section are in addition to any remedies
18 provided at law or in equity.

19 Section 804. Records.

20 An operator shall keep daily records of all deliveries of
21 solid waste to the facility as required by the department,
22 including, but not limited to, the name and address of the
23 hauler, the source of the waste, the kind of waste received and
24 the weight or volume of the waste. A copy of these records shall
25 be maintained at the site by the operator for no less than five
26 years and shall be made available for inspection by the
27 department or the host municipality upon request.

28 Section 805. Surcharge.

29 Notwithstanding any law to the contrary:

30 (1) An operator may collect the municipal waste

1 transportation fee established by this chapter as a surcharge
2 on any fee schedule established pursuant to law, ordinance,
3 resolution or contract for solid waste processing or disposal
4 operations at the facility.

5 (2) Any person who collects or transports solid waste
6 subject to the transportation fee to a municipal waste
7 landfill may impose a surcharge on any fee schedule
8 established pursuant to law, ordinance, resolution or
9 contract for the collection or transportation of solid waste
10 to the facility. The surcharge shall be equal to the increase
11 in disposal fees at the facility attributable to the fee,
12 provided that interest and penalties on the fee under section
13 803(a) and (b) may not be collected as a surcharge.

14 Section 2. This act shall take effect in 60 days.