

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1600 Session of
2001

INTRODUCED BY GEORGE, SURRA, DeWEESE, WANSACZ, BELARDI, BROWNE,
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SANTONI, SHANER, SOLOBAY, STURLA, TANGRETTI, THOMAS, TRELLO,
WALKO, C. WILLIAMS, WOJNAROSKI, YEWCIC AND YOUNGBLOOD,
MAY 10, 2001

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 10, 2001

AN ACT

1 Establishing a moratorium on the issuance of certain permits
2 relating to municipal waste landfills; providing for
3 rescission of unused capacity, for municipal control and for
4 rebuttable presumptions and defenses; establishing a
5 transporter program; providing for a manifest system;
6 authorizing grants for municipal recycling improvements; and
7 prescribing penalties.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Municipal
12 Solid Waste Control Act.

13 Section 2. Purpose.

14 The General Assembly declares the purposes of this act as
15 follows:

16 (1) To provide municipalities across this Commonwealth
17 with the ability to control the disposal of solid waste in

1 their communities.

2 (2) To ensure the protection of public health and
3 safety.

4 (3) To provide a means of reconciling the amount of
5 solid waste that is disposed of in this Commonwealth with the
6 amount of solid waste that is permitted to be disposed of in
7 this Commonwealth.

8 (4) To provide municipalities with the ability to impose
9 restrictions upon solid waste disposal facilities within
10 their borders.

11 (5) To preserve and extend the existing solid waste
12 disposal capacity within this Commonwealth.

13 Section 3. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Daily volume." The amount of solid waste actually disposed
18 of each day at a facility.

19 "Department." The Department of Environmental Protection of
20 the Commonwealth.

21 "Facility." A municipal waste landfill,
22 construction/demolition waste landfill, resource recovery
23 facility or commercial residual waste disposal facility.

24 "Gross vehicle weight." The combined weight of a vehicle or
25 combination of vehicles and its load, excluding the driver's
26 weight.

27 "Host municipality." A city, borough, incorporated town,
28 township or home rule municipality within which a facility is
29 located or proposed to be located or has been permitted but not
30 constructed.

1 "Municipal Waste Planning, Recycling and Waste Reduction
2 Act." The act of July 28, 1988 (P.L.556, No.101), known as the
3 Municipal Waste Planning, Recycling and Waste Reduction Act.

4 "Permitted daily volume." The amount of solid waste
5 permitted by the Department of Environmental Protection to be
6 disposed of at a facility each day.

7 "Region." The geographical area designated by the Department
8 of Environmental Protection for each of its regional field
9 operations.

10 "Secretary." The Secretary of Environmental Protection of
11 the Commonwealth.

12 "Solid waste." Solid waste as defined in the act of July 7,
13 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

14 "Solid Waste Management Act." The act of July 7, 1980
15 (P.L.380, No.97), known as the Solid Waste Management Act.

16 "Transporter." The owner of a semitrailer used for the
17 transportation of municipal or residual waste.

18 Section 4. Moratorium.

19 (a) General rule.--For a period of one year from the
20 effective date of this section, and subject to continuation of
21 such period under subsection (b):

22 (1) The department may not accept an application for a
23 permit modification nor issue a permit or permit modification
24 under the Solid Waste Management Act for the construction,
25 expansion or operation of a facility.

26 (2) The department may not accept for review nor issue a
27 permit modification that would result in an increase in
28 average daily volume or maximum daily volume at a facility.

29 (b) Review of Statewide landfill capacity and usage.--Ninety
30 days before the expiration of the one-year moratorium period set

1 forth in subsection (a), the secretary shall review Statewide
2 landfill capacity and usage. If the secretary determines that
3 unused Statewide landfill capacity continues to be equal or more
4 than six years of unused landfill capacity remains, then the
5 moratorium shall continue for one additional year beyond the
6 original ending date of the moratorium and the secretary shall
7 publish notice of such continuation as a notice in the
8 Pennsylvania Bulletin.

9 Section 5. Rescission of unused capacity.

10 (a) Duty of secretary.--The secretary shall rescind
11 permitted daily volume amounts which exceed the actual daily
12 volume amounts as calculated by the department in accordance
13 with subsection (b).

14 (b) Calculations by department.--The department shall
15 calculate actual daily volume amounts by averaging the disposal
16 of actual daily volume at each facility for the preceding 12-
17 month period. Any amount of daily volume in excess of the
18 determined actual daily volume shall be subject to the
19 rescission under subsection (a).

20 Section 6. Municipality control.

21 (a) Denial of permits.--The governing body of a host
22 municipality may deny any permit or permit modification for a
23 facility located in the municipality, except as provided in
24 subsection (b).

25 (b) Exception for public need.--

26 (1) The host municipality may not deny a permit or
27 permit modification of a facility located in the municipality
28 if the department determines that there is a public need for
29 the additional capacity contained within that permit or
30 permit modification. The public need for additional capacity

1 shall be determined by the department, at least every three
2 years, by totaling the available disposal capacity within
3 that region. If the total disposal capacity within that
4 region is at or below the two-year capacity, the department
5 may issue a certificate of public need which shall override
6 any host municipality denials of permits or permit
7 modifications.

8 (2) The department may issue permits and permit
9 modifications within that region until such time as the
10 permitted capacity within that region reaches the seven-year
11 capacity.

12 (c) Public hearing.--

13 (1) If the department determines to issue a certificate
14 of public need under subsection (b), the department shall
15 conduct at least one public hearing in the host municipality
16 before the permit or permit modification is approved. The
17 public hearing shall be scheduled with a minimum of 30 days'
18 public notice prior to the hearing date. A comment period of
19 not less than 60 days shall be provided to accept written
20 comments on the permit or permit modification.

21 (2) At the public hearing, the department shall present
22 information, including, but not limited to:

23 (i) The nature of the proposed facility.

24 (ii) The site of the proposed facility or expansion
25 of existing facility.

26 (iii) The potential generators of waste.

27 (iv) The life expectancy of the proposed facility or
28 expansion of existing facility.

29 (v) An explanation of the host municipality's rights
30 with regard to abatement of nuisances at the facility,

1 including, but not limited to, traffic problems, litter,
2 odors, noise, dust or other nuisances that may emanate
3 from the facility or that may increase daily volume at
4 the facility.

5 Section 7. Rebuttable presumption and defenses.

6 (a) Liability of facility operator.--It shall be rebuttably
7 presumed, as a matter of law, that a facility operator is liable
8 without proof of fault, negligence or causation for all
9 pollution or diminution of public or private water supplies
10 within 2,500 linear feet of the boundaries of the facility.

11 (b) Defenses limited.--There shall only be five defenses to
12 the rebuttable presumption of liability provided for in
13 subsection (a). A facility operator must affirmatively prove by
14 a preponderance of evidence that one of the following conditions
15 exists:

16 (1) The landowner is not within 2,500 linear feet of the
17 facility boundary.

18 (2) The landowner or water supply company refused to
19 allow the facility operator access to conduct a survey prior
20 to commencing operations.

21 (3) The pollution or diminution existed prior to
22 facility operation as determined by a survey conducted prior
23 to commencing facility operations.

24 (4) The pollution or diminution occurred as a result of
25 some cause other than the facility operation.

26 (5) The landowner, water supply user or water company
27 refused to allow the facility operator access to determine
28 the cause of pollution or diminution or to replace or restore
29 the water supply.

30 Section 8. Transporter program.

1 (a) Written authorization required.--It shall be unlawful
2 for a transporter to transport municipal or residual waste to a
3 municipal waste landfill, construction/demolition waste
4 landfill, resource recovery facility or a commercial residual
5 waste facility in this Commonwealth on a combination of vehicles
6 that exceeds 56,000 pounds gross vehicle weight unless the
7 transporter has obtained a written authorization from the
8 department under this section. A combination of vehicles shall
9 include the tractor and semitrailer.

10 (b) One-time application fee.--The initial application for a
11 written authorization submitted by the transporter shall be
12 accompanied by a one-time application fee of \$1,000.

13 (c) Vehicle and weight fee.--The initial application and
14 each annual submission to the department shall be accompanied by
15 a fee based on the number of vehicles and gross vehicle weight
16 of the vehicles owned by the transporter that are subject to
17 this section, as follows:

18 (1) Combination of vehicles licensed for 56,000-64,000
19 pounds gross vehicle weight - \$50 per vehicle.

20 (2) Combination of vehicles licensed for 64,001-73,280
21 pounds gross vehicle weight - \$200 per vehicle.

22 (3) Combination of vehicles licensed for more than
23 73,281 pounds gross vehicle weight - \$400 per vehicle.

24 (d) Semitrailer stickers.--The department shall provide the
25 transporter with two stickers for each semitrailer indicating
26 the transporter's authorization number and authorization
27 expiration date. One sticker shall be displayed prominently on
28 the left front bulkhead, and the other sticker shall be
29 similarly displayed on the back of the semitrailer used to
30 transport the waste. Each tractor used in combination with the

1 semitrailer shall carry a copy of the written authorization
2 issued by the department to the transporter.

3 (e) Term of written authorization.--The written
4 authorization shall be valid for a maximum of one year. The fees
5 established in subsection (c) shall be paid to the department by
6 July 1 of each year, at which point the department shall renew
7 the authorization in writing and shall issue updated stickers.

8 (f) Collateral bond required.--

9 (1) Prior to the issuance of a written authorization
10 under this section for the transportation of municipal or
11 residual waste, the applicant for the written authorization
12 shall file with the department a collateral bond on a form
13 prescribed and furnished by the department. The department
14 may waive the bonding requirement for municipalities that are
15 transporters upon written request from the municipality.

16 (2) The bond shall be payable to the Commonwealth and
17 conditioned upon compliance by the transporter with this
18 chapter, the Solid Waste Management Act, and every rule,
19 regulation and order of the department and the terms and
20 conditions of the written authorization.

21 (3) The amount of the bond shall be in an amount
22 determined by the secretary and shall be based upon the
23 number of semitrailers a transporter uses under subsection
24 (c), but shall be not less than \$10,000.

25 (4) The department may require additional bond amounts
26 if the department determines such additional amounts are
27 necessary to guarantee compliance.

28 (5) The transporter may elect to deposit cash or
29 automatically renewable irrevocable letters of credit which
30 are terminable only upon 90 days' written notice to the

1 operator and the department, or negotiable bonds of the
2 United States Government or the Commonwealth of Pennsylvania,
3 the Pennsylvania Turnpike Commission, the Department of
4 General Services, the State Public School Building Authority,
5 or any municipality within the Commonwealth. No corporate
6 surety bond may be used to satisfy this subsection. The cash
7 amount of such deposit, irrevocable letters of credit or
8 market value of such securities shall be equal at least to
9 the sum of the bond.

10 (6) The secretary shall, upon receipt of any such
11 deposit of cash or negotiable bonds, immediately place the
12 same with the State Treasurer, whose duty it shall be to
13 receive and hold the same in the name of the Commonwealth, in
14 trust, for the purposes for which the deposit is made. The
15 State Treasurer shall, at all times, be responsible for the
16 custody and safekeeping of such deposits.

17 (7) (i) The transporter making the deposit shall be
18 entitled from time to time to demand and receive from the
19 State Treasurer, on the written order of the secretary,
20 the whole or any portion of any collateral so deposited,
21 upon depositing with the State Treasury, in lieu thereof,
22 other collateral of the classes specified in this
23 subsection having a market value at least equal to the
24 sum of the bond, and also to demand, receive and recover
25 the interest and income from the negotiable bonds as they
26 become due and payable.

27 (ii) Where negotiable bonds are deposited, mature or
28 are called, the State Treasurer, at the request of the
29 transporter, shall convert the negotiable bonds into
30 other negotiable bonds of the classes specified in this

subsection as may be designated by the transporter.

(8) Where notice of intent to terminate a letter of credit is given, the department shall, after 30 days' written notice to the transporter and in the absence of a replacement of the letter of credit within the 30-day period by the transporter with other acceptable bond guarantees provided under this subsection, draw upon and convert the letter of credit into cash and hold it as a collateral bond guarantee. Liability under the bond shall be for the duration of the written authorization and for a period of one year after the expiration of the written authorization.

(g) Transporter or agent noncompliance.--In carrying out this chapter, the department may deny, suspend, modify or revoke any written authorization if it finds that:

(1) The transporter or its agent has failed or continues to fail to comply with any provision of:

(i) this chapter;

(ii) the Solid Waste Management Act;

(iii) the Municipal Waste Planning, Recycling and Waste Reduction Act;

(iv) the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law;

(v) the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act;

(vi) the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act;

(vii) any other Federal or State statute relating to environmental protection or to the protection of the public health, safety and welfare;

(viii) any rule or regulation of the Department of

1 Environmental Protection or the Department of
2 Transportation;

3 (ix) any order of the Department of Environmental
4 Protection or the Department of Transportation; or

5 (x) any condition of any permit, license or other
6 written authorization issued by the Department of
7 Environmental Protection or the Department of
8 Transportation.

9 (2) The transporter has shown a lack of ability or
10 intention to comply with:

11 (i) any provision of this chapter;

12 (ii) any of the acts referred to in this subsection;

13 (iii) any rule or regulation of the Department of
14 Environmental Protection or the Department of
15 Transportation or order of the department; or

16 (iv) any condition of any permit or license issued
17 by the Department of Environmental Protection or the
18 Department of Transportation as indicated by past or
19 continuing violations.

20 In the case of a corporate transporter, the department may deny
21 the issuance of a written authorization if the department finds
22 that a principal of the corporation was a principal of another
23 corporation which committed past violations of this chapter.

24 (h) Transportation noncompliance.--A written authorization
25 issued under this section shall be revocable or subject to
26 modification or suspension at any time the department determines
27 that the solid waste transportation:

28 (1) Is being, or has been conducted in violation of this
29 chapter, the Solid Waste Management Act or the rules or
30 regulations adopted pursuant to this chapter or the Solid

1 Waste Management Act.

2 (2) Creates a public nuisance.

3 (3) Creates a potential hazard to the public health,
4 safety and welfare or the environment.

5 (4) Was conducted pursuant to an authorization that was
6 not granted in accordance with law.

7 (i) Correction of noncompliance.--

8 (1) Any person who or municipality that has engaged in
9 unlawful conduct as defined in this chapter, the Solid Waste
10 Management Act or the Municipal Waste Planning, Recycling and
11 Waste Reduction Act or whose partner, associate, officer,
12 parent corporation, subsidiary corporation, contractor,
13 subcontractor or agent has engaged in such unlawful conduct
14 shall be denied a written authorization under this section
15 unless the written authorization application demonstrates to
16 the satisfaction of the department that the unlawful conduct
17 has been corrected.

18 (2) Independent contractors and agents who operate under
19 the written authorization shall be subject to the provisions
20 of this section and shall be jointly and severally liable,
21 without regard to fault, for violations of this chapter which
22 occur during the independent contractor's or agent's
23 involvement in the course of operations.

24 (j) Penalty.--A person who violates subsection (a) or (b)
25 shall be guilty of a misdemeanor of the third degree and, upon
26 conviction for the first offense, shall pay a penalty of not
27 less than \$5,000 nor more than \$10,000. Upon the second or
28 subsequent conviction of subsection (a) or (b), a person shall
29 be guilty of a misdemeanor of the second degree and shall pay a
30 penalty of not less than \$10,000 nor more than \$25,000, and the

1 court may order the operating privilege of the vehicle operator
2 to be suspended for a period of up to one year or both.

3 (k) Deposit of fees, and penalties.--All written
4 authorization fees, fines and penalties collected under this
5 section shall be paid into the Solid Waste Abatement Fund
6 established under section 701 of the Solid Waste Management Act
7 and shall be used for the purposes enumerated in that act. The
8 fees may also be used to implement the written authorization
9 program and to support efforts to inspect vehicles used to
10 transport municipal and residual waste.

11 (l) Forfeiture of semitrailers.--A semitrailer used in
12 commission of an offense under this section shall be deemed
13 contraband and may be forfeited to the department. The
14 provisions of law relating to seizure, summary and judicial
15 forfeiture and condemnation of intoxicating liquor shall apply
16 to seizures and forfeitures under this section. Proceeds from
17 the sale of forfeited semitrailers shall be deposited in the
18 Solid Waste Abatement Fund.

19 (m) Suspension of commercial driver's license.--Any person
20 who violates subsection (h) by disposing or delivering waste to
21 a facility that is not permitted by the Commonwealth to receive
22 the waste and who has a commercial driver's license shall have
23 that license suspended for a period of one year from the date of
24 conviction.

25 Section 9. Manifest system.

26 (a) Generator manifest required.--It shall be unlawful for a
27 person or municipality to transport on vehicles that exceed
28 56,000 pounds gross vehicle weight mixed loads of municipal and
29 residual waste to a municipal waste landfill or resource
30 recovery facility in this Commonwealth without a manifest

1 prepared by the generator, on a form approved by the department.
2 The manifest shall state that the residual waste is suitable for
3 disposal at the facility. The mixed municipal waste and residual
4 waste must be transported to a facility permitted by the
5 department to receive the mixed load.

6 (b) Deposit of mixed load prohibited.--Any vehicle that
7 exceeds 56,000 pounds gross vehicle weight that transports mixed
8 loads of municipal and residual waste without the required
9 manifest or delivers the mixed load to a facility in violation
10 of the facility's waste acceptance plan shall be prohibited from
11 depositing the mixed load at the facility.

12 (c) Penalty.--A person or municipality who violates
13 subsection (a) or (b) shall be guilty of a misdemeanor of the
14 third degree and, upon conviction for the first offense, shall
15 pay a penalty of not less than \$5,000 nor more than \$10,000.
16 Upon the second or subsequent conviction of subsection (a) or
17 (b), a person shall be guilty of a misdemeanor of the second
18 degree and shall pay a penalty of not less than \$10,000 nor more
19 than \$25,000, and the court may order the operating privilege of
20 the vehicle operator to be suspended for a period of up to one
21 year or both.

22 (d) Forfeiture.--A vehicle or conveyance used in commission
23 of an offense under this section shall be deemed contraband and
24 may be forfeited to the department. The provisions of law
25 relating to seizure, summary and judicial forfeiture and
26 condemnation of intoxicating liquor shall apply to seizures and
27 forfeitures under this section. Proceeds from the sale of
28 forfeited vehicles or conveyances shall be deposited in the
29 Solid Waste Abatement Fund.

30 Section 10. Grants for municipal recycling improvements.

1 (a) Authorization.--The department shall pay \$5,000,000 in
2 fiscal year 2000-2001 from the Recycling Fund to municipalities
3 that propose to significantly increase their recycling efforts.
4 The department shall pay an additional \$5,000,000 from the
5 Recycling Fund in each of the two following fiscal years to
6 municipalities that propose to significantly increase their
7 recycling efforts. For the fiscal year 2000-2001 and the two
8 following fiscal years, the department shall continue to award
9 other recycling grants under the Municipal Waste Planning,
10 Recycling and Waste Reduction Act at or above the current level
11 of funding. For the purposes of this section, a significant
12 increase in recycling efforts is defined as a 10% or more
13 increase in recycling percentage or recycling tonnage.

14 (b) Application and use of grant funds.--

15 (1) On an application form approved by the department,
16 each municipality shall detail its plans to significantly
17 improve recycling percentage or tonnage. A municipality that
18 is awarded a grant under this section shall spend those grant
19 funds only for the purposes and programs detailed on its
20 grant application and approved by the department in its grant
21 award.

22 (2) A municipality awarded a State grant under this
23 program must agree to maintain its level of municipal funding
24 for recycling programs at or above the level of the previous
25 year. No municipality may receive more than \$1,000,000 a year
26 from this grant program.

27 (c) Regulations.--In the second and third year of this
28 program, the department shall promulgate regulations to
29 implement this section.

30 Section 11. Regulations.

1 Within 120 days of the effective date of this section, the
2 department shall promulgate rules and regulations to administer
3 the provisions of this act.

4 Section 12. Repeal.

5 All acts and parts of acts are repealed insofar as they are
6 inconsistent with this act.

7 Section 13. Effective date.

8 This act shall take effect as follows:

9 (1) Sections 3 and 4 shall take effect immediately.

10 (2) This section shall take effect immediately.

11 (3) The remainder of this act shall take effect in 60
12 days.