

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2897 Session of
1990

INTRODUCED BY D. R. WRIGHT, COY, STISH, FAIRCHILD, BILLOW,
PETRARCA, JACKSON, McCALL, STUBAN, LUCYK, HALUSKA, MIHALICH,
VEON, TANGRETTI, SCHULER, RYBAK, RUDY, PHILLIPS, DEMPSEY,
VAN HORNE, TRELLO, CAPPABIANCA, MAINE, LESCOVITZ, BELARDI,
DISTLER, SERAFINI, DOMBROWSKI, MORRIS, S. H. SMITH, FARGO,
PESCI, ROBBINS, CAWLEY, LAUGHLIN, MELIO, PISTELLA, DeLUCA,
GIGLIOTTI, COLAIZZO, STABACK, BLACK, TELEK AND COHEN,
SEPTEMBER 25, 1990

REFERRED TO COMMITTEE ON CONSERVATION, SEPTEMBER 25, 1990

AN ACT

1 Amending the act of October 18, 1988 (P.L.756, No.108), entitled
2 "An act providing for the cleanup of hazardous waste sites;
3 providing further powers and duties of the Department of
4 Environmental Resources and the Environmental Quality Board;
5 providing for response and investigations for liability and
6 cost recovery; establishing the Hazardous Sites Cleanup Fund;
7 providing for certain fees and for enforcement, remedies and
8 penalties; and repealing certain provisions relating to the
9 rate of the capital stock franchise tax," further providing
10 for the Hazardous Waste Facility Siting Team and for the
11 Hazardous Waste Facility Siting Commission.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 103 of the act of October 18, 1988
15 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, is
16 amended by adding definitions to read:

17 Section 103. Definitions.

18 The following words and phrases when used in this act shall
19 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Hazardous waste generator." A person or municipality that
4 produces or creates hazardous waste.

5 "Hazardous waste minimization." The reduction of hazardous
6 waste or residual waste generation using source reduction or
7 recycling techniques.

8 * * *

9 "Source reduction." The reduction or elimination of waste
10 generation at the source by methods, including, but not limited
11 to, process modification, a change in raw materials or
12 feedstocks used in a production process or operation, improved
13 efficiency of machinery, recycling within a process or any
14 action that reduces the amount of waste leaving a process. The
15 term does not include any of the following:

16 (1) Actions taken after a hazardous waste is generated.

17 (2) Actions that merely concentrate the constituents of
18 a hazardous waste to reduce its volume or that dilute the
19 hazardous waste to reduce its hazardous characteristics.

20 (3) Actions that merely shift hazardous wastes from one
21 environmental medium to another environmental medium.

22 (4) Treatment.

23 "Trade secret." Includes, but is not limited to, any
24 formula, plan, pattern, process, tool, mechanism, compound,
25 procedure, production, data or compilation of information which:

26 (1) Is not patented.

27 (2) Is known only to certain individuals within a
28 commercial concern who are using it to fabricate, produce or
29 compound an article of trade or a service having commercial
30 value.

1 (3) Gives its user an opportunity to obtain a business
2 advantage over competitors who do not know or use it.

3 * * *

4 "Waste exchange." A service that transfers information
5 between waste generators and potential users.

6 Section 2. Sections 312(a) and (f) and 313 of the act are
7 amended to read:

8 Section 312. Hazardous Waste Facility Siting Commission.

9 (a) Establishment.--In the event that no commercial
10 hazardous waste disposal facility has been permitted within this
11 Commonwealth pursuant to the Solid Waste Management Act by [July
12 1, 1992] December 31, 1990, an independent agency, known as the
13 Hazardous Waste Facility Siting Commission, is hereby
14 established. The commission shall consist of seven members,
15 three of whom shall be appointed by the Governor, one of whom
16 shall be designated as chairman, one of whom shall be appointed
17 by the President pro tempore of the Senate, one of whom shall be
18 appointed by the Speaker of the House of Representatives, one of
19 whom shall be appointed by the Minority Leader of the Senate and
20 one of whom shall be appointed by the Minority Leader of the
21 House of Representatives. Those persons appointed shall be
22 knowledgeable in the fields of hazardous waste management,
23 environmental protection, municipal government or other
24 pertinent fields and shall be appointed in such a manner as to
25 fairly represent local government, industry and public interest
26 groups. No member of the General Assembly or any officer or
27 employee of the State government shall serve as a member of the
28 commission.

29 * * *

30 [(f) Federal deadline.--Notwithstanding the provisions of

1 subsection (a), in the event the Environmental Protection
2 Agency, or its successor, notifies the department that Federal
3 funds for response actions shall not be provided to the
4 Commonwealth for failure to comply with the provisions of
5 section 104(b)(9) of the Federal Superfund Act, the commission
6 shall be established within one year from receipt of the notice
7 by the department, unless the department and the Environmental
8 Protection Agency reach an agreement prior to the establishment
9 of the commission that provides for the continued usage of
10 Federal funds for response actions.]

11 Section 313. Powers and duties of commission.

12 (a) General rule.--The commission shall have the power and
13 its duties shall be to:

14 (1) Cooperate with interested persons to identify areas
15 suitable for siting hazardous waste disposal facilities.

16 (2) Review and approve or disapprove the siting module
17 portion of applications for hazardous waste disposal facility
18 sites brought before the commission to determine conformity
19 with [Phase I of departmental siting criteria as found in 25
20 Pa. Code Ch. 75 Subch. F (relating to siting hazardous waste
21 treatment and disposal facilities).] 25 Pa. Code § 269.21 et
22 seq. (relating to Phase I exclusionary criteria).

23 (3) Assist local governments in planning for the siting
24 of hazardous waste disposal facilities or in reviewing the
25 siting module portion of applications for such facilities.

26 (b) Schedule for facilities.--Within 90 days following the
27 commission's organizational meeting, the commission shall
28 establish a schedule that outlines the process for siting new
29 hazardous waste disposal facilities identified as necessary in
30 the Pennsylvania Hazardous Waste Facilities Plan. The commission

1 may amend such schedule from time to time.

2 (c) Criteria.--The commission shall use existing
3 departmental regulations for the siting of hazardous waste
4 disposal facilities as set forth in [Phase I of departmental
5 siting criteria found in 25 Pa. Code Ch. 75 Subch. F] 25 Pa.
6 Code § 269.21 et seq., except to the extent that the commission,
7 in selecting a disposal site, shall give preference to a
8 suitable site located on public land over other equally suitable
9 sites.

10 (d) Selection of site by commission.--The commission shall
11 apply the siting criteria to the entire Commonwealth, including
12 public lands, and shall identify potentially suitable sites for
13 hazardous waste disposal facilities throughout this
14 Commonwealth. The commission may, at any time, solicit proposals
15 from interested persons to develop hazardous waste disposal
16 facilities at such sites as may be identified by the commission.
17 [If no such proposals are received by January 1, 1994, the
18 commission may make application to the department, in the name
19 of the Commonwealth, for the necessary permits to establish a
20 State-owned hazardous waste disposal facility. In carrying out
21 its duties under this subsection, the] The commission shall give
22 preference to a suitable site located on public lands over other
23 equally suitable sites. If the commission determines that a
24 suitable disposal site can be located on public lands, the
25 commission shall be authorized to lease such real estate owned
26 by the Commonwealth which is not being used in connection with
27 the work of any department, board or commission thereof for a
28 period of not more than 50 years to individuals, firms,
29 corporations or the Federal Government pursuant to section
30 2402(i) of the act of April 9, 1929 (P.L.177, No.175), known as

1 The Administrative Code of 1929, and shall also have the power
2 of eminent domain to acquire a site or sites as may be deemed
3 necessary, for the purpose of establishing a hazardous waste
4 disposal facility.

5 (e) Transition.--The department shall [complete] cease its
6 review of any permit application for a commercial hazardous
7 waste disposal facility, which is deemed administratively
8 complete and has been filed with the department prior to or on
9 [July 1, 1992] December 31, 1990. The siting module portion of a
10 permit application for a commercial hazardous waste disposal
11 facility that is subject to review subsequent to [July 1, 1992]
12 December 31, 1990, shall be filed with the commission in
13 accordance with this section. For the purpose of implementing
14 this section, the authority of the department with regard to the
15 review and approval of the siting module portion of a permit
16 application for a commercial hazardous waste disposal facility
17 as set forth in section 309(c) and applicable provisions of the
18 Solid Waste Management Act is hereby transferred to the
19 commission only to the extent that it relates to the siting of a
20 commercial hazardous waste disposal facility within this
21 Commonwealth.

22 (f) Applicability.--Nothing in this section shall be
23 construed to affect, impair or supersede the authority of the
24 department to issue a permit for a hazardous waste disposal
25 facility pursuant to the Solid Waste Management Act.

26 Section 3. The act is amended by adding a section to read:
27 Section 1303.1. Waste minimization plan.

28 (a) General rule.--Each hazardous waste generator shall
29 prepare and implement a waste minimization plan to demonstrate
30 that a program is in place to reduce the volume and toxicity of

1 hazardous waste generated to the degree that is determined by
2 the department to be technologically and economically feasible.
3 The waste minimization plan shall be prepared, submitted to the
4 department and available for inspection within one year of the
5 effective date of this section. Implementation shall commence
6 within 18 months of the effective date of this section.

7 (b) Contents of plan.--Each waste minimization plan shall
8 contain the following information:

9 (1) A description of each hazardous waste stream
10 generated at the facility, the generation rate by weight or
11 volume per unit of production and an evaluation of the nature
12 and extent of any current or previous waste minimization
13 programs or efforts at the facility.

14 (2) A plan for reducing the volume of hazardous waste
15 generated by source reduction techniques to the greatest
16 extent that is technologically and economically feasible. The
17 plan shall describe the specific source reduction techniques
18 that will be implemented, the extent to which the volume of
19 waste will be reduced and the manner in which the reduction
20 will be measured. The plan shall include a detailed
21 evaluation of the potential for waste reduction by changing
22 the nature or quantity of raw materials, changing production
23 equipment or technology, improving production operations and
24 procedures, improving quality control and employee education,
25 redesigning or reformulating end products and other means.
26 The plan shall fully document and explain the generator's
27 rationale for rejecting any source reduction approach
28 available to the generator.

29 (3) A detailed analysis of the potential for cost
30 savings from source reduction, including savings in raw

1 materials and energy, reduced disposal costs, reduced
2 environmental liability, increased operational efficiency and
3 other factors.

4 (4) An evaluation and, to the extent practicable, a
5 quantification of the effects of the chosen source reduction
6 method on emissions and discharges to air, water and land.

7 (5) For each hazardous waste stream that will not be
8 eliminated by source reduction techniques, a plan for using
9 or reclaiming the waste to the greatest extent that is
10 technologically and economically feasible. For each waste,
11 the plan shall include an evaluation of the likelihood that
12 listing such waste with a waste exchange would result in the
13 use or reclamation of such waste. For each waste, a detailed
14 analysis of the potential for onsite use or reclamation shall
15 be conducted, including an analysis of available
16 technologies. A detailed analysis of the potential for
17 offsite use or reclamation, including consideration of
18 potential markets or reclamation facilities, shall be
19 completed. An analysis of the potential for costs savings
20 from recycling shall be prepared, including the criteria
21 listed in paragraph (2).

22 (6) For each waste stream that will not be eliminated by
23 source reduction, use or reclamation techniques, an analysis
24 of the treatment and disposal alternatives available. The
25 selected alternative must minimize the present and future
26 threat to human health and the environment.

27 (7) A timetable for implementation of each element of
28 the waste minimization plan.

29 (c) Certification.--At the time a waste minimization plan is
30 submitted to the department, the generator shall certify that

1 the generator has implemented, is implementing or will be
2 implementing the source reduction measures identified in the
3 waste minimization plan according to the implementation schedule
4 contained in the plan. A generator may determine not to
5 implement a measure contained in the plan only if the generator
6 determines, upon conducting further analysis or due to
7 unexpected circumstances, that the selected measure is not
8 technically feasible or economically practicable and the
9 department concurs in this determination or if attempts to
10 implement that measure reveal that the measure would result in,
11 or has resulted in, any of the following:

12 (1) An increase in the generation of hazardous waste.

13 (2) An increase in the release of hazardous chemicals to
14 other environmental media.

15 (3) A significant increase in the risk of an adverse
16 impact to human health or the environment.

17 (d) Annual report.--Each generator shall submit an annual
18 waste minimization report. The report shall be on a form
19 provided by the department and shall contain the following
20 information:

21 (1) The name, identification number, mailing address and
22 location of the generator.

23 (2) A list of each hazardous waste stream generated, the
24 hazardous waste number, the generation rate by weight or
25 volume per unit of production for the current or previous
26 years and the percent increase or decrease in the generation
27 rate.

28 (3) An assessment of the effect, during the current year
29 and previous years, of each hazardous waste minimization
30 measure implemented upon the generation of hazardous waste.

The report shall consider, but not be limited to, measures which use all of the following approaches:

(i) Source reduction.

(ii) Recycling.

(iii) Treatment.

(4) A description of factors during the current reporting year or two previous years that have affected hazardous waste generation and onsite and offsite management, including, but not limited to, any of the following:

(i) Changes in business activity.

(ii) Changes in waste classification.

(iii) Natural phenomena.

(iv) Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(5) Other information as required by the department.

(e) Annual report to Governor and General Assembly.--

Commencing July 1, 1993, the secretary shall prepare and submit to the Governor and to the General Assembly an annual report of the department's operations and activities in carrying out the provisions of this section. The report shall include, but not be limited to, all of the following information:

(1) An evaluation of the hazardous waste source reduction progress in this Commonwealth.

(2) Recommendations for legislation.

(3) Identification of any Federal, State or private economic and financial incentives that can best accelerate and maximize the research and development of source reduction and other hazardous waste minimization technologies and approaches.

1 (4) The status, funding and results of all research
2 projects.

3 (f) Trade secrets.--The department shall adopt regulations
4 to ensure that trade secrets designated by a hazardous waste
5 generator in the waste minimization plan required by this
6 section are utilized by the department only in connection with
7 the responsibilities of the department under this section and
8 that those trade secrets are not otherwise disseminated by the
9 department or any authorized representative of the department
10 without the consent of the generator. However, any information
11 shall be made available to governmental agencies for use in
12 making studies and for use in judicial review or enforcement
13 proceedings involving the person furnishing the information. The
14 regulations shall conform with the corresponding trade secret
15 regulations adopted by the Environmental Protection Agency
16 pursuant to the Resource Conservation and Recovery Act of 1976
17 (Public Law 94-580, 42 U.S.C. § 6901 et seq.), except that the
18 regulations adopted by the department may be more stringent or
19 more extensive than the Federal trade secret regulations.

20 (1) The department shall protect from disclosure any
21 trade secret designated by the generator under this section.

22 (2) This section does not permit a generator to refuse
23 to disclose the information required under this section to
24 the department.

25 (3) Any officer or employee of the department who,
26 because of employment or official position, has possession of
27 or access to confidential information and who, knowing that
28 disclosure of the information to the general public is
29 prohibited by this section, knowingly and intentionally
30 discloses the information to any person not entitled to

1 receive it, commits a misdemeanor of the third degree and
2 shall, upon conviction, be sentenced to pay a fine of not
3 more than \$1,000.

4 Section 4. This act shall take effect in 60 days.