

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 2031 Session of  
1995

INTRODUCED BY KIRKLAND, RAMOS, JAMES, THOMAS, McGEEHAN, JOSEPHS,  
WILLIAMS, LEDERER, YOUNGBLOOD, BUTKOVITZ, HORSEY, BISHOP,  
COWELL, PISTELLA, DeLUCA, GIGLIOTTI, VITALI, CARN, ROEBUCK,  
DONATUCCI, MICOZZIE, ADOLPH, LAWLESS, FLICK, CIVERA, SAYLOR  
AND GORDNER, SEPTEMBER 25, 1995

SENATOR LOEPER, RULES AND EXECUTIVE NOMINATIONS, IN SENATE, RE-  
REPORTED AS AMENDED, NOVEMBER 25, 1996

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 PERMIT PROVISIONS; <—  
16 further providing for civil penalties and criminal penalties  
17 AND FOR JOINT INSPECTIONS WITH HOST MUNICIPALITIES; AND <—  
18 MAKING A REPEAL.

19 The General Assembly of the Commonwealth of Pennsylvania  
20 hereby enacts as follows:

21 ~~Section 1. Sections 1102, 1704 and 1705 of the act of July~~ <—  
22 ~~28, 1988 (P.L.556, No.101), known as the Municipal Waste~~  
23 ~~Planning, Recycling and Waste Reduction Act, are amended to~~

1 read:

2 SECTION 1. SECTION 512(B) OF THE ACT OF JULY 28, 1988  
3 (P.L.556, NO.101), KNOWN AS THE MUNICIPAL WASTE PLANNING,  
4 RECYCLING AND WASTE REDUCTION ACT, IS REPEALED.

5 SECTION 2. THE ACT IS AMENDED BY ADDING A CHAPTER TO READ:

6 CHAPTER 6

7 PERMIT PROVISIONS

8 SECTION 601. PERMIT REQUIREMENTS.

9 THE FOLLOWING REQUIREMENTS SHALL APPLY TO THE DEPARTMENT'S  
10 REVIEW OF AN APPLICATION FOR A NEW PERMIT, PERMIT REISSUANCE,  
11 PERMIT RENEWAL OR FOR A MAJOR PERMIT MODIFICATION REGARDING A  
12 MUNICIPAL WASTE LANDFILL:

13 (1) THE DEPARTMENT SHALL CONDUCT A TECHNICAL REVIEW OF  
14 THE COMPLETE APPLICATION AND PROVIDE ITS TECHNICAL REVIEW  
15 COMMENTS TO THE APPLICANT IN WRITING.

16 (2) WITH RESPECT TO AN APPLICATION PENDING BEFORE THE  
17 DEPARTMENT WHICH HAS BEEN SUSPENDED FROM REVIEW BY THE  
18 DEPARTMENT AT THE REQUEST OF THE APPLICANT ON OR BEFORE  
19 OCTOBER 1, 1996, IF THE APPLICANT SUBMITS A SIGNIFICANT  
20 MODIFICATION TO THE APPLICATION, THE MODIFIED APPLICATION  
21 SHALL BE DEEMED FOR ALL LEGAL PURPOSES TO BE A NEW  
22 APPLICATION. FOR THE PURPOSES OF THIS SUBSECTION, A  
23 MODIFICATION TO AN APPLICATION SHALL BE CONSIDERED  
24 SIGNIFICANT IF IT MAKES ANY OF THE FOLLOWING CHANGES TO THE  
25 APPLICATION:

26 (I) CHANGE IN SITE VOLUME-WASTE CAPACITY.

27 (II) CHANGE IN DAILY WASTE VOLUME.

28 (III) CHANGE IN PERMITTED ACREAGE.

29 (IV) OTHER CHANGES OR CORRECTIONS AS SHALL BE  
30 DETERMINED BY REGULATION.

(3) THE DEPARTMENT MAY GRANT THE REQUEST OF AN APPLICANT THAT THE DEPARTMENT SUSPEND ITS REVIEW OF THE APPLICATION. THE MAXIMUM LENGTH OF THIS SUSPENSION SHALL BE 60 DAYS. THE DEPARTMENT SHALL NOT GRANT MORE THAN ONE SUSPENSION REQUEST EVERY 180 DAYS.

SECTION 602. TIMETABLE FOR REVIEW.

UPON THE REQUEST OF AN APPLICANT, THE DEPARTMENT SHALL ESTABLISH A TIMETABLE IN WHICH THE DEPARTMENT SHALL REVIEW AND APPROVE OR DENY ANY PERMIT APPLICATION FOR A MUNICIPAL WASTE LANDFILL OR RESOURCE RECOVERY FACILITY. THE DEPARTMENT SHALL ESTABLISH A REASONABLE TIMETABLE FOR THE APPROVAL OR DENIAL OF THE PERMIT APPLICATION IN CONSULTATION WITH THE PERMIT APPLICANT AND THE GOVERNING BODY OF ANY COUNTY AND OTHER MUNICIPALITY WITHIN WHICH THE FACILITY IS LOCATED AND SHALL PUBLISH A NOTICE REGARDING THE TIMETABLE IN THE PENNSYLVANIA BULLETIN.

SECTION 603. BID PREFERENCE.

THE DEPARTMENT OF GENERAL SERVICES SHALL NOT APPLY A PREFERENCE EQUAL TO 5% OF THE BID AMOUNT AS PROVIDED FOR IN SECTION 1505(B) TO HIGHWAY CONSTRUCTION MATERIALS AND HIGHWAY SAFETY OR MAINTENANCE MATERIALS WHICH HAD BEEN IDENTIFIED AS MATERIALS ACCEPTABLE TO COMMONWEALTH AGENCIES, OR SET FORTH IN THE SPECIFICATION OF COMMONWEALTH AGENCIES AS ACCEPTABLE HIGHWAY CONSTRUCTION MATERIALS OR HIGHWAY SAFETY OR MAINTENANCE MATERIALS, AT ANY TIME PRIOR TO SEPTEMBER 28, 1988.

SECTION 3. SECTIONS 1102, 1704 AND 1705 OF THE ACT ARE AMENDED TO READ:

SECTION 1102. JOINT INSPECTIONS WITH HOST MUNICIPALITIES.

(A) TRAINING OF INSPECTORS.--

(1) THE DEPARTMENT SHALL ESTABLISH AND CONDUCT A TRAINING PROGRAM TO CERTIFY HOST MUNICIPALITY INSPECTORS FOR

1 MUNICIPAL WASTE LANDFILLS, TRANSFER FACILITIES AND RESOURCE  
2 RECOVERY FACILITIES. THIS PROGRAM WILL BE AVAILABLE TO NO  
3 MORE THAN TWO PERSONS WHO HAVE BEEN DESIGNATED IN WRITING BY  
4 THE HOST MUNICIPALITY. THE DEPARTMENT SHALL HOLD TRAINING  
5 PROGRAMS AT LEAST TWICE A YEAR. THE DEPARTMENT SHALL CERTIFY  
6 HOST MUNICIPALITY INSPECTORS UPON COMPLETION OF THE TRAINING  
7 PROGRAM AND SATISFACTORY PERFORMANCE IN AN EXAMINATION  
8 ADMINISTERED BY THE DEPARTMENT.

9 (2) CERTIFIED MUNICIPAL INSPECTORS ARE AUTHORIZED TO  
10 ENTER PROPERTY, INSPECT ONLY THOSE RECORDS REQUIRED BY THE  
11 DEPARTMENT, TAKE SAMPLES AND CONDUCT INSPECTIONS IN  
12 ACCORDANCE WITH DEPARTMENT REGULATIONS AS APPLICABLE TO  
13 DEPARTMENT INSPECTORS. HOWEVER, CERTIFIED MUNICIPAL  
14 INSPECTORS MAY NOT ISSUE ORDERS EXCEPT AS PROVIDED IN THIS  
15 SUBSECTION. A CERTIFIED MUNICIPAL INSPECTOR MAY ORDER THE  
16 OPERATOR OF A FACILITY TO CEASE ANY OPERATION OR ACTIVITY AT  
17 THE FACILITY WHICH CONSTITUTES AN IMMEDIATE THREAT TO PUBLIC  
18 HEALTH AND SAFETY AND WHICH REPRESENTS A VIOLATION OF THE  
19 SOLID WASTE MANAGEMENT ACT, THE REGULATIONS PROMULGATED UNDER  
20 THAT ACT, ANY ORDER ISSUED UNDER THAT ACT OR THE TERMS OR  
21 CONDITIONS OF A PERMIT ISSUED UNDER THAT ACT. THE ORDER SHALL  
22 EXPIRE WITHIN TWO HOURS UNLESS THE INSPECTOR NOTIFIES THE  
23 DEPARTMENT AND THE GOVERNING BODY OF THE HOST MUNICIPALITY.  
24 THE DEPARTMENT MAY, AFTER CONDUCTING AN INSPECTION, SUPERSEDE  
25 THE INSPECTOR'S ORDER BY ISSUING AN ORDER OF ITS OWN WHICH  
26 VACATES OR MODIFIES THE TERMS OF THE INSPECTOR'S ORDER. IF  
27 THE DEPARTMENT DOES NOT SUPERSEDE THE ORDER, THE ORDER SHALL  
28 EXPIRE AFTER 24 HOURS UNLESS OTHERWISE EXTENDED, CONTINUED OR  
29 MODIFIED BY A COURT PURSUANT TO SECTION 1703(B).

30 [(3) THE DEPARTMENT IS AUTHORIZED TO PAY FOR THE HOST

1 INSPECTION TRAINING PROGRAM AND TO PAY 50% OF THE APPROVED  
2 COST OF EMPLOYING A CERTIFIED HOST MUNICIPALITY INSPECTOR FOR  
3 A PERIOD NOT TO EXCEED FIVE YEARS.]

4 (4) THE DEPARTMENT MAY DECERTIFY HOST MUNICIPALITY  
5 INSPECTORS PURSUANT TO REGULATIONS PROMULGATED BY THE  
6 ENVIRONMENTAL QUALITY BOARD.

7 (A.1) PAYMENTS FOR CERTAIN INSPECTORS.--

8 (1) THE DEPARTMENT OF ENVIRONMENTAL PROTECTION IS  
9 AUTHORIZED TO PAY FOR THE HOST INSPECTION TRAINING PROGRAM  
10 AND TO PAY 50% OF THE APPROVED COST OF EMPLOYING A CERTIFIED  
11 HOST MUNICIPALITY INSPECTOR.

12 (2) THE DEPARTMENT OF ENVIRONMENTAL PROTECTION SHALL  
13 REIMBURSE HOST MUNICIPALITIES FOR 50% OF THE APPROVED COST OF  
14 EMPLOYING CERTIFIED HOST MUNICIPALITY INSPECTORS, AS PROVIDED  
15 UNDER SECTION 304 OF THE ACT OF OCTOBER 18, 1988 (P.L.756,  
16 NO.108), KNOWN AS THE HAZARDOUS SITES CLEANUP ACT.

17 (B) DEPARTMENTAL INFORMATION.--

18 (1) WHENEVER ANY HOST MUNICIPALITY PRESENTS INFORMATION  
19 TO THE DEPARTMENT WHICH GIVES THE DEPARTMENT REASON TO  
20 BELIEVE THAT ANY MUNICIPAL WASTE LANDFILL, TRANSFER FACILITY  
21 OR RESOURCE RECOVERY FACILITY IS IN VIOLATION OF ANY  
22 REQUIREMENT OF THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394),  
23 KNOWN AS THE CLEAN STREAMS LAW, THE ACT OF JANUARY 8, 1960  
24 (1959 P.L.2119, NO.787), KNOWN AS THE AIR POLLUTION CONTROL  
25 ACT, THE ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN  
26 AS THE DAM SAFETY AND ENCROACHMENTS ACT, THE SOLID WASTE  
27 MANAGEMENT ACT, ANY REGULATION PROMULGATED PURSUANT THERETO,  
28 ANY ORDER ISSUED PURSUANT THERETO OR THE CONDITION OF ANY  
29 PERMIT ISSUED PURSUANT THERETO, THE DEPARTMENT WILL PROMPTLY  
30 CONDUCT AN INSPECTION OF SUCH FACILITY.

1 (2) THE DEPARTMENT WILL NOTIFY THE HOST MUNICIPALITY OF  
2 THIS INSPECTION AND WILL ALLOW A CERTIFIED MUNICIPAL  
3 INSPECTOR FROM THE HOST MUNICIPALITY TO ACCOMPANY THE  
4 INSPECTOR DURING THE INSPECTION.

5 (3) IF THERE IS NOT SUFFICIENT INFORMATION TO GIVE THE  
6 DEPARTMENT REASONS TO BELIEVE THAT THERE IS A VIOLATION, THE  
7 DEPARTMENT WILL PROVIDE A WRITTEN EXPLANATION TO THE HOST  
8 MUNICIPALITY OF ITS DECISION NOT TO CONDUCT AN INSPECTION  
9 WITHIN 30 DAYS OF THE REQUEST FOR INSPECTION.

10 (4) UPON WRITTEN REQUEST OF A HOST MUNICIPALITY TO THE  
11 DEPARTMENT, THE DEPARTMENT WILL ALLOW A CERTIFIED INSPECTOR  
12 OF SUCH MUNICIPALITY TO ACCOMPANY DEPARTMENT INSPECTORS ON  
13 ROUTINE INSPECTIONS OF MUNICIPAL WASTE LANDFILLS, TRANSFER  
14 FACILITIES AND RESOURCE RECOVERY FACILITIES.

15 (C) COUNTY INVOLVEMENT.--IF THE HOST MUNICIPALITY OWNS OR  
16 OPERATES THE MUNICIPAL WASTE LANDFILL, TRANSFER FACILITY OR  
17 RESOURCE RECOVERY FACILITY, THE TRAINING AND INSPECTION  
18 REQUIREMENTS OF THIS SECTION SHALL BE AVAILABLE TO THE COUNTY  
19 WITHIN WHICH THE LANDFILL, TRANSFER FACILITY OR RESOURCE  
20 RECOVERY FACILITY IS LOCATED INSTEAD OF THE HOST MUNICIPALITY.  
21 Section 1704. Civil penalties.

22 (a) Assessment.--In addition to proceeding under any other  
23 remedy available at law or in equity for a violation of any  
24 provision of this act, the regulations promulgated hereunder,  
25 any order of the department issued hereunder or any term or  
26 condition of an approved municipal waste management plan, the  
27 department may assess a civil penalty upon a person for such  
28 violation. Such a penalty may be assessed whether or not the  
29 violation was willful or negligent. In determining the amount of  
30 the penalty, the department shall consider the willfulness of

1 the violation; the effect on the municipal waste planning  
2 process; damage to air, water, land or other natural resources  
3 of this Commonwealth or their uses; cost of restoration and  
4 abatement; savings resulting to the person in consequence of  
5 such violation; deterrence of future violations; and other  
6 relevant factors. If the violation leads to issuance of a  
7 cessation order, a civil penalty shall be assessed.

8 (b) Escrow.--When the department assesses a civil penalty,  
9 it shall inform the person of the amount of the penalty. The  
10 person charged with the penalty shall then have 30 days to pay  
11 the penalty in full or, if the person wishes to contest either  
12 the amount of the penalty or the fact of the violation, either  
13 to forward the proposed amount to the department for placement  
14 in an escrow account with the State Treasurer or with a bank in  
15 this Commonwealth or to post an appeal bond in the amount of the  
16 penalty. The bond must be executed by a surety licensed to do  
17 business in this Commonwealth and must be satisfactory to the  
18 department. If, through administrative or judicial review of the  
19 proposed penalty, it is determined that no violation occurred or  
20 that the amount of the penalty shall be reduced, the department  
21 shall, within 30 days, remit the appropriate amount to the  
22 person, with an interest accumulated by the escrow deposit.  
23 Failure to forward the money or the appeal bond to the  
24 department within 30 days shall result in a waiver of all legal  
25 rights to contest the violation or the amount of the penalty.

26 (c) Amount.--The maximum civil penalty which may be assessed  
27 pursuant to this section is [\$10,000] \$25,000 per violation.  
28 Each violation for each separate day and each violation of any  
29 provision of this act, any regulation promulgated hereunder, any  
30 order issued hereunder or the terms or conditions of any

1 approved municipal waste management plan shall constitute a  
2 separate offense under this section.

3 (d) Statute of limitations.--Notwithstanding any other  
4 provision of law to the contrary, there shall be a statute of  
5 limitations of five years upon actions brought by the  
6 Commonwealth under this section.  
7 Section 1705. Criminal penalties.

8 (a) Summary offense.--Any person, other than a municipal  
9 official exercising his official duties, who violates any  
10 provision of this act, any regulation promulgated hereunder, any  
11 order issued hereunder or the terms or conditions of any  
12 approved municipal waste management plan shall, upon conviction  
13 thereof in a summary proceeding, be sentenced to pay a fine of  
14 not less than [~~\$100~~] \$1,000 and not more than [~~\$1,000~~] \$5,000  
15 and costs and, in default of the payment of such fine and costs,  
16 to undergo imprisonment for not more than 30 days.

17 (b) Misdemeanor offense.--Any person, other than a municipal  
18 official exercising his official duties, who violates any  
19 provision of this act, any regulation promulgated hereunder, any  
20 order issued hereunder or the terms or conditions of any  
21 approved municipal waste management plan commits a misdemeanor  
22 of the third degree and shall, upon conviction, be sentenced to  
23 pay a fine of not less than [~~\$1,000~~] \$2,500 but not more than  
24 [~~\$10,000~~] \$20,000 per day for each violation or to imprisonment  
25 for a period of not more than one year, or both.

26 (c) Second or subsequent offense.--Any person, other than a  
27 municipal official exercising his official duties, who, within  
28 two years after a conviction of a misdemeanor for any violation  
29 of this act, violates any provision of this act, any regulation  
30 promulgated hereunder, any order issued hereunder or the terms



1 or conditions of any approved municipal waste management plan  
2 commits a misdemeanor of the second degree and shall, upon  
3 conviction, be sentenced to pay a fine of not less than [\$2,500]  
4 \$5,000 nor more than [\$25,000] \$50,000 for each violation or to  
5 imprisonment for a period of not more than two years, or both.

6 (d) Violations to be separate offense.--Each violation for  
7 each separate day and each violation of any provision of this  
8 act, any regulation promulgated hereunder, any order issued  
9 hereunder or the terms or conditions of any approved municipal  
10 waste management plan shall constitute a separate offense under  
11 subsections (a), (b) and (c).

12 SECTION ~~2~~ 4. SECTION 304(B)(3) OF THE ACT OF OCTOBER 18, <—  
13 1988 (P.L.756, NO.108), KNOWN AS THE HAZARDOUS SITES CLEANUP  
14 ACT, IS REPEALED.

15 ~~Section 2 3. This act shall take effect in 60 days.~~ <—

16 SECTION 5. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

17 (1) THE ADDITION OF SECTION 601 OF THE ACT SHALL TAKE  
18 EFFECT JANUARY 11, 1997.

19 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60  
20 DAYS.