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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1410 Session of  
2003

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INTRODUCED BY WANSACZ, BELFANTI, GEORGE, CAWLEY, CREIGHTON,  
DALEY, FAIRCHILD, GOODMAN, GORDNER, GRUCELA, HARHAI, JOSEPHS,  
KIRKLAND, LAUGHLIN, LEACH, LEVDANSKY, MCGEEHAN, MCILHATTAN,  
SAYLOR, SHANER, SURRA, THOMAS, WALKO, WASHINGTON, YOUNGBLOOD  
AND YUDICHAK, MAY 7, 2003

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
MAY 7, 2003

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AN ACT

1 Requiring host municipality agreements for certain municipal and  
2 residual waste facilities; and providing for proximity to  
3 State parks.

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1 The General Assembly of the Commonwealth of Pennsylvania  
2 hereby enacts as follows:

3 Section 1. Short title.

4 This act shall be known and may be cited as the Host  
5 Municipality Agreement Act.

6 Section 2. Legislative findings and declaration of policy.

7 (a) Legislative findings.--The General Assembly hereby  
8 determines, declares and finds that:

9 (1) Solid waste practices create public health hazards,  
10 environmental pollution and nuisances and can cause  
11 irreparable harm to the public health, safety and welfare.

12 (2) All aspects of solid waste management, particularly  
13 the disposal of solid waste, pose a critical threat to the  
14 health, safety and welfare of the residents of this  
15 Commonwealth when solid waste is improperly managed.

16 (3) The Commonwealth is responsible for the protection  
17 of the health, safety and welfare of its residents concerning  
18 solid waste management.

19 (4) The construction and expansion of commercial solid  
20 waste landfills and resource recovery facilities usually  
21 consumes natural lands, thereby impinging upon wildlife  
22 habitat and the public's use and enjoyment of the natural  
23 resources, including air, water and natural scenic, historic  
24 and esthetic values of the environment.

25 (5) Concentrated traffic in the vicinity of commercial  
26 solid waste landfills and resource recovery facilities can  
27 contribute to and cause substantial harm to this  
28 Commonwealth's roadways and environment and to the health and  
29 safety of the residents of this Commonwealth.

30 (6) Communities in the areas located near and along the

1 approach routes to commercial solid waste landfills and  
2 resource recovery facilities experience traffic problems,  
3 litter, odors, noise, dust and other nuisances that are  
4 threats to public health and safety resulting from the  
5 operation of the facilities and from the transportation of  
6 waste to these facilities.

7 (b) Purposes and goals.--The purposes and goals of this act  
8 are to:

9 (1) Provide municipalities across this Commonwealth with  
10 the ability to control the disposal of solid waste in their  
11 communities.

12 (2) Enhance the protection of the public health, safety  
13 and welfare from the short-term and long-term dangers  
14 associated with the disposal of solid waste.

15 (3) Implement section 27 of Article I of the  
16 Constitution of Pennsylvania.

17 (4) Conserve the environment and the natural resources  
18 of this Commonwealth.

19 (5) Limit the magnitude of environmental and  
20 transportation problems in and around communities which host  
21 commercial solid waste landfills or resource recovery  
22 facilities.

23 (6) Provide for greater local input from affected  
24 residents and communities in the planning of commercial solid  
25 waste landfills and resource recovery facilities.

26 (7) Protect residents of the communities affected by  
27 commercial solid waste landfills and resource recovery  
28 facilities from unnecessary traffic problems, litter, odors,  
29 noise, dust and other nuisances that are threats to public  
30 health and safety which may result from the operation of the

1 facilities and from the transportation of waste to these  
2 facilities.

3 Section 3. Definitions.

4 (a) General rule.--Unless specifically defined in this  
5 section, the terms in this act have the same meaning as provided  
6 in the act of July 7, 1980 (P.L.380, No.97), known as the Solid  
7 Waste Management Act, or the act of July 28, 1988 (P.L.556,  
8 No.101), known as the Municipal Waste Planning, Recycling and  
9 Waste Reduction Act, or regulations of the Department of  
10 Environmental Protection promulgated thereunder.

11 (b) Definitions.--As used in this section, the following  
12 words and phrases shall have the meanings given to them in this  
13 subsection:

14 "Commercial solid waste landfill." A landfill permitted or  
15 proposed for permitting under the act of July 7, 1980 (P.L.380,  
16 No.97), known as the Solid Waste Management Act, for the  
17 disposal of municipal waste, residual waste, construction and  
18 demolition waste or mixed municipal and residual waste,  
19 including mixed municipal or residual waste and construction and  
20 demolition debris. The term does not include a captive residual  
21 waste facility.

22 "Department." The Department of Environmental Protection of  
23 the Commonwealth and its authorized representatives.

24 "Expansion modification." An application for permit  
25 modification filed by an owner or operator of a commercial solid  
26 waste landfill or resource recovery facility which requests an  
27 expansion, either laterally or vertically, of a permit area.

28 "Host municipality." A municipality other than the county  
29 which meets one of the following criteria:

30 (1) a commercial solid waste landfill or resource

1 recovery facility or any portion of a permit area is located  
2 or proposed to be located within the municipality; or

3 (2) the municipality is located within one mile of the  
4 footprint of a permit area of a proposed or operating  
5 commercial solid waste landfill or resource recovery  
6 facility.

7 "Host municipality agreement." A written, legally binding  
8 document or documents executed by authorized officials of each  
9 host municipality and an owner or operator of a commercial solid  
10 waste landfill or resource recovery facility.

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

14 "Permit." A permit issued pursuant to the act of July 7,  
15 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

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

18 "Volume modification." An application for permit  
19 modification filed by an owner or operator of a commercial solid  
20 waste landfill or resource recovery facility which requests an  
21 increased in average or maximum daily waste volume.

22 Section 4. Construction of act.

23 (a) Liberal construction.--This act shall be liberally  
24 construed so as best to achieve and effectuate the goals and  
25 purposes of this act.

26 (b) Pari materia.--This act shall be construed in pari  
27 materia with the Solid Waste Management Act, the Municipal Waste  
28 Planning, Recycling and Waste Reduction Act and sections 1935-A  
29 and 1936-A of the act of April 9, 1929 (P.L.177, No.175), known  
30 as The Administrative Code of 1929.

1 Section 5. Host municipality agreements.

2 (a) General rule.--Each host municipality may enter into  
3 negotiations for the development of a host municipality  
4 agreement. If a host municipality agreement is developed, the  
5 governing body of each host municipality shall vote to adopt or  
6 reject the agreement.

7 (b) Public notice and public involvement requirements.--

8 (1) If negotiations are entered into, each host  
9 municipality shall publish notice that discussions for  
10 developing a host municipality agreement with the commercial  
11 solid waste landfill or resource recovery facility have  
12 begun. The notice also shall describe the public involvement  
13 process that the host municipality will use to develop the  
14 agreement. The notice shall be published once a week for  
15 three consecutive weeks in a newspaper of general circulation  
16 in the municipality where the facility or proposed facility  
17 is located. The public involvement process shall, at a  
18 minimum, include the following:

19 (i) The host municipality shall hold a special  
20 public hearing at which a proposed host municipality  
21 agreement is presented to the public and at which the  
22 public is provided an opportunity to provide oral and  
23 written testimony. Notice of the hearing shall be  
24 published in a newspaper of general circulation in the  
25 municipality not less than ten days nor more than 30 days  
26 prior to the hearing. A public comment period of no less  
27 than 30 calendar days shall be provided after the public  
28 hearing to accept written comments on the proposed host  
29 municipality agreement.

30 (ii) The host municipality shall hold a special

1 public meeting at which revisions to the proposed host  
2 municipality agreement are presented to the public by the  
3 municipality, including changes to the proposed host  
4 municipality agreement that were adopted after the public  
5 hearing and public comment period. The public shall be  
6 provided a reasonable opportunity to ask questions to the  
7 host municipality on the host municipality agreement and  
8 to provide public comment. Notice of the hearing shall be  
9 published in a newspaper of general circulation in the  
10 municipality not less than ten days nor more than 30 days  
11 prior to the hearing.

12 (iii) The host municipality shall publish the  
13 decision on adopting or rejecting the final agreement  
14 within 30 calendar days of acting.

15 (2) The public involvement process may contain  
16 additional public notice and involvement in a manner  
17 determined by the municipality.

18 (c) Contents of agreement.--

19 (1) A host municipality agreement agreed to and executed  
20 by the parties shall address the following:

21 (i) The nature of the proposed facility.

22 (ii) The site of the proposed facility or expansion  
23 of the existing facility.

24 (iii) Measures to alleviate local issues, such as  
25 haul routes, traffic problems, litter, odors, noise, dust  
26 and any other nuisances that might result from the  
27 operation of the facility. Such local issues shall be  
28 identified by the host municipality.

29 (iv) The host benefit fee to be paid by the owner or  
30 operator of the facility to the host municipality, which

1 fee shall not be less than the statutory minimum fee  
2 established under the Municipal Waste Planning, Recycling  
3 and Waste Reduction Act and any other financial and in-  
4 kind contributions.

5 (v) The maximum and daily average waste volume to be  
6 received at the facility.

7 (vi) The days and hours of operation of the  
8 facility.

9 (vii) The availability of capacity at the facility  
10 for the disposal of solid waste generated within the host  
11 municipality.

12 (viii) Activities to promote recycling, waste  
13 reduction and the proper management and disposal of solid  
14 waste generated within the host municipality.

15 (ix) The process for resolution in a cooperative and  
16 nonbinding manner of complaints and other grievances  
17 concerning the construction and operation of the  
18 facility.

19 (x) Provision for access to the facility and its  
20 records by the host municipality inspector.

21 (xi) A statement that if Congress enacts a law that  
22 places restrictions on out-of-State waste, the host  
23 municipality may renegotiate its host municipality  
24 agreement in regard to out-of-State waste.

25 (2) A host municipality agreement agreed to and executed  
26 by the parties may address any other terms or conditions to  
27 which the parties agree should be included in the agreement.

28 (d) Requirement for host municipality agreement.--

29 (1) The department shall revoke the permit of any  
30 currently permitted commercial solid waste landfill or



1 resource recovery facility that does not execute a host  
2 municipality agreement in accordance with the schedule  
3 established in this section.

4 (2) For a commercial solid waste landfill or resource  
5 recovery facility for which a host municipality agreement was  
6 executed prior to or on the effective date of this act,  
7 except as provided in paragraphs (3) and (4), a new host  
8 municipality agreement shall be:

9 (i) executed by the owner or operator and the host  
10 municipality or municipalities on the date the existing  
11 host municipality agreement expires or five years after  
12 the effective date of this act, whichever occurs first;  
13 and

14 (ii) submitted to the department for review within  
15 30 days of execution.

16 (3) For a commercial solid waste landfill or resource  
17 recovery facility for which:

18 (i) no host municipality agreement has been executed  
19 as of the effective date of this act; or

20 (ii) a host municipality agreement was executed on  
21 or before the effective date of this act but which  
22 agreement expires within two years of the effective date  
23 of this act,

24 a host municipality agreement shall be executed by the owner  
25 or operator and the host municipality or municipalities  
26 within two years of the effective date of this act and  
27 submitted to the department for review within 30 days of  
28 execution.

29 (4) For any commercial solid waste landfill or resource  
30 recovery facility for which a host municipality agreement was

1       executed prior to or on the effective date of this act but  
2       which has not begun to accept solid waste as of the effective  
3       date of this act, a new host municipality agreement shall be  
4       executed by the owner or operator and the host municipality  
5       or municipalities within two years of the effective date of  
6       this act and submitted to the department for approval within  
7       30 days of execution.

8           (5) A new host municipality agreement for each host  
9       municipality shall be executed in accordance with this  
10      section and submitted to the department for review for any  
11      expansion modification or volume modification filed by an  
12      owner or operator of a commercial solid waste landfill or  
13      resource recovery facility after the effective date of this  
14      act.

15          (6) A host municipality agreement shall be executed in  
16      accordance with this section by an owner or operator and the  
17      host municipality or municipalities and shall be submitted to  
18      the department for review for any new commercial solid waste  
19      landfill or resource recovery facility.

20      (e) Relationship to permit applications.--

21          (1) An application for a permit, volume modification or  
22      expansion modification for a commercial solid waste landfill  
23      or resource recovery facility which is submitted to the  
24      department for review after the effective date of this act  
25      shall only be accepted as administratively complete under  
26      section 512(a) of the Municipal Waste Planning, Recycling and  
27      Waste Reduction Act and the regulations promulgated  
28      thereunder if it includes written evidence that a host  
29      municipality agreement complies with the requirements of this  
30      section and has been executed by the applicant and each host

1 municipality. Such written evidence shall be contained as  
2 part of the application.

3 (2) An application for a permit, volume modification or  
4 expansion modification for a commercial solid waste landfill  
5 or resource recovery facility which is submitted to the  
6 department for review on, before or after the effective date  
7 of this act shall be issued by the department only if a host  
8 municipality agreement that complies with this section has  
9 been executed by the applicant and each host municipality.

10 The department shall not issue the permit or permit  
11 modification until an executed host municipality agreement  
12 has been submitted to the department.

13 (f) Department review of host municipality agreements.--

14 (1) For all host municipality agreements submitted to  
15 the department for review under this section, the department  
16 shall review each executed host municipality agreement to  
17 ensure that the agreement addresses the requirements of  
18 subsection (c)(1) and also to ensure that there has been  
19 compliance with the public notice and public comment  
20 requirements of subsection (b).

21 (2) The department shall review the terms and conditions  
22 of the host municipality agreement that address subsection  
23 (c)(1)(iii), (v), (vi), (vii) and (viii) to ensure the terms  
24 and conditions of the host municipality agreement are not in  
25 conflict with the terms and conditions of the existing or  
26 proposed permit and applicable regulations. Where the  
27 department determines there is a conflict between the terms  
28 and conditions of the host municipality agreement and the  
29 terms and conditions of the regulations or existing or  
30 proposed permit, the more stringent or restrictive

1 requirement or condition as determined by the department  
2 shall apply. In making its determination, the department  
3 shall consider any comments submitted by any affected or  
4 potentially affected party. The department shall modify the  
5 permit to incorporate any such term or condition, including  
6 any term or condition that is not addressed in the proposed  
7 or existing permit.

8 (g) Enforcement of host municipality agreement.--

9 (1) The terms of a host municipality agreement shall be  
10 enforceable by the parties to the agreement. The courts of  
11 common pleas are hereby given jurisdiction over disputes  
12 between the host municipality and the facility owner or  
13 operator regarding the enforcement of a host municipality  
14 agreement.

15 (2) A host municipality which is successful in an action  
16 brought under this subsection to enforce an agreement  
17 involving a facility owner or operator shall be awarded  
18 reasonable attorney fees and costs of litigation.

19 (h) Reimbursement of host municipality costs.--At the  
20 request of a host municipality, the department shall reimburse  
21 the host municipality for costs incurred in negotiating a host  
22 municipality agreement under this section. Costs covered shall  
23 be limited to costs incurred for professional fees for lawyers,  
24 engineers and other professionals used in the efforts to reach  
25 an agreement. Any reimbursement shall be provided from funds in  
26 the recycling fund established by section 706 of the Municipal  
27 Waste Planning, Recycling and Waste Reduction Act or in the  
28 Solid Waste Abatement Fund established under section 701 of the  
29 Solid Waste Management Act, upon approval by the Governor.  
30 Reimbursement shall not exceed \$50,000 for each host

municipality agreement. The combined total reimbursement from the two funds shall not exceed \$750,000 annually or \$2,500,000 over a five-year period from the effective date of this act.

(i) Relationship to other laws.--

(1) To the extent the terms of a host municipality agreement differ from any existing ordinance adopted pursuant to section 304(b) of the Municipal Waste Planning, Recycling and Waste Reduction Act and concerning:

(i) the hours and days during which vehicles may deliver waste to the commercial solid waste facility or resource recovery facility; or

(ii) the routing of traffic to and from the commercial solid waste landfill or resource recovery facility,

the host municipality shall amend the ordinance to comply with the agreement within 90 days of the adoption of the host municipality agreement.

(2) Host municipality agreements shall be executed by the parties in the manner provided for in this act and shall not be subject to competitive bidding or other competitive procurement requirements.

(3) The provisions of section 1305 of the Municipal Waste Planning, Recycling and Waste Reduction Act shall be applicable to any host benefit fee set forth in any host municipality agreement executed pursuant to this act.

(4) Except as required by this section, the discussions for developing a host municipality agreement shall not be subject to the requirements of 65 Pa.C.S. Ch. 7 (relating to open meetings).

Section 6. Proximity to State parks.

1 No new municipal waste or residual waste landfill or resource  
2 recovery facility may be permitted to operate within 2,500 feet  
3 of a Pennsylvania State park.

4 Section 7. Enforcement.

5 (a) Orders.--

6 (1) The department may issue orders to persons and  
7 municipalities as it deems necessary to aid in the  
8 enforcement of this act. An order issued under this act shall  
9 take effect upon notice unless the order specifies otherwise.

10 (2) An appeal to the Environmental Hearing Board shall  
11 not act as a supersedeas.

12 (3) The power of the department to issue an order under  
13 this act is in addition to any other remedy which may be  
14 afforded to the department pursuant to this act or any other  
15 act.

16 (b) Duty to comply with orders of department.--It shall be  
17 the duty of any person and municipality to proceed diligently to  
18 comply with any order issued pursuant to this section. If the  
19 person or municipality fails to proceed diligently or fails to  
20 comply with the order within the time, if any, as may be  
21 specified, the person or municipality shall be guilty of  
22 contempt and shall be punished by the court in an appropriate  
23 manner and, for this purpose, application may be made by the  
24 department to the court.

25 Section 8. Civil penalties.

26 (a) Authority.--

27 (1) In addition to proceeding under any other remedy  
28 available at law or in equity for a violation of any  
29 provision of this act, any rule or regulation of the  
30 department or order of the department, the department may

1        assess a civil penalty upon a person for the violation. The  
2        penalty may be assessed whether or not the violation was  
3        willful or negligent.

4            (2) In determining the amount of the penalty, the  
5        department shall consider the willfulness of the violation,  
6        damage to air, water, land or other natural resources of this  
7        Commonwealth or their uses, cost or restoration and  
8        abatement, savings resulting to the person in consequence of  
9        the violation and other relevant factors.

10           (3) The maximum civil penalty that may be assessed  
11        pursuant to this section is \$25,000 per offense. Each  
12        violation for each separate day and each violation of any  
13        provision of this act, any rule or regulation under this act,  
14        any order of the department or any term or condition of a  
15        permit or permits shall constitute a separate and distinct  
16        offense under this section.

17        (b) Procedure.--

18           (1) When the department proposes to assess a civil  
19        penalty, it shall inform the person of the proposed amount of  
20        the penalty. The person charged with the penalty shall then  
21        have 30 calendar days to pay the proposed penalty in full or,  
22        if the person wishes to contest the amount of the penalty or  
23        the fact of the violation to the extent not already  
24        established, the person shall forward the proposed amount of  
25        the penalty to the Environmental Hearing Board within the 30-  
26        calendar day period for placement in an escrow account with  
27        the State Treasurer or any Commonwealth bank or post an  
28        appeal bond to the hearing board within 30 calendar days in  
29        the amount of the proposed penalty if the bond is executed by  
30        a surety licensed to do business in this Commonwealth and is

1       satisfactory to the department.

2           (2) If through administrative or final judicial review  
3 of the proposed penalty it is determined that no violation  
4 occurred or that the amount of the penalty shall be reduced,  
5 the hearing board shall within 30 calendar days remit the  
6 appropriate amount to the person with any interest  
7 accumulated by the escrow deposit.

8           (3) Failure to forward the money or the appeal bond at  
9 the time of the appeal shall result in a waiver of all legal  
10 rights to contest the violation or the amount of the civil  
11 penalty unless the appellant alleges financial inability to  
12 prepay the penalty or to post the appeal bond. The hearing  
13 board shall conduct a hearing to consider the appellant's  
14 alleged inability to pay within 30 calendar days of the date  
15 of the appeal.

16           (4) The hearing board may waive the requirement to  
17 prepay the civil penalty or to post an appeal bond if the  
18 appellant demonstrates and the hearing board finds that the  
19 appellant is financially unable to pay. The hearing board  
20 shall issue an order within 30 calendar days of the date of  
21 the hearing to consider the appellant's alleged inability to  
22 pay.

23           (5) The amount assessed after administrative hearing or  
24 after waiver of administrative hearing shall be payable to  
25 the Commonwealth and shall be collectible in any manner  
26 provided by law for the collection of debts, including the  
27 collection of interest at the legal rate, which shall run  
28 from the date of assessment of the penalty.

29           (6) If any person liable to pay a penalty neglects or  
30 refuses to pay the same after demand, the amount, together



1 with interest and any costs that may accrue, shall constitute  
2 a debt of the person, as may be appropriate, to the Solid  
3 Waste Abatement Fund. The debt shall constitute a lien on all  
4 property owned by the person when a notice of lien  
5 incorporating a description of the property of the person  
6 subject to the action is filed with the prothonotary of the  
7 court of common pleas where the property is located.

8 (7) The prothonotary shall promptly enter upon the civil  
9 judgment or order docket, at no cost to the department, the  
10 name and address of the person, as may be appropriate, and  
11 the amount of the lien as set forth in the notice of lien.  
12 Upon entry by the prothonotary, the lien shall attach to the  
13 revenues and all real and personal property of the person,  
14 whether or not the person is solvent.

15 (8) The notice of lien, filed pursuant to this  
16 subsection, which affects the property of the person shall  
17 create a lien with priority over all subsequent claims or  
18 liens which are filed against the person, but it shall not  
19 affect any valid lien, right or interest in the property  
20 filed in accordance with established procedure prior to the  
21 filing of a notice of lien under this subsection.

## 22 Section 9. Regulations.

23 The Environmental Quality Board shall have the power and its  
24 duty shall be to adopt the regulations of the department to  
25 accomplish the purposes and to carry out the provisions of this  
26 act.

## 27 Section 10. Severability.

28 The provisions of this act are severable. If any provision of  
29 this act or its application to any person or circumstance is  
30 held invalid, the invalidity shall not affect other provisions

1 or applications of this act which can be given effect without  
2 the invalid provision or application.

3 Section 11. Repeals.

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

6 Section 12. Effective date.

7 This act shall take effect immediately.