
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 62

Session of
2003

INTRODUCED BY CAWLEY, TIGUE, GEORGE, LEDERER, FICHTER, READSHAW,
CRUZ, CAPPELLI, MELIO, HARHAI, GRUCELA, PRESTON, SCRIMENTI,
KELLER, ROBERTS, WANSACZ, DONATUCCI, HENNESSEY, HORSEY,
SOLOBAY, McCALL, LAUGHLIN, PISTELLA, TANGRETTI, JOSEPHS AND
SATHER, FEBRUARY 18, 2003

REFERRED TO COMMITTEE ON RULES, FEBRUARY 18, 2003

A RESOLUTION

1 Directing the Environmental Resources and Energy Committee to
2 study and report on land disposal operations of the Marjol
3 Battery Company and on Commonwealth agency regulation of such
4 operations.

5 WHEREAS, The House of Representatives is concerned that the
6 December 1, 2000, decision of the United States Environmental
7 Protection Agency Region III Regional Administrator Bradley M.
8 Campbell, Esquire, approving a final remedial decision for the
9 Marjol Battery Site located in the Borough of Throop, County of
10 Lackawanna, Pennsylvania, does not protect the long-term health
11 and welfare of the citizens of the Borough of Throop and the
12 citizens of the surrounding communities; and

13 WHEREAS, The House of Representatives is concerned that the
14 United States Environmental Protection Agency does not fully
15 understand or appreciate the long-term risk posed by a mine fire
16 to Throop's citizens and those citizens in neighboring
17 communities through the engagement in such a mine fire of the

1 untreated and unstabilized highly lead-contaminated combustible
2 materials that this December 1, 2000, decision allows to remain
3 in contact with coal measures, whether mined or unmined; and

4 WHEREAS, The House of Representatives is concerned that the
5 decision by the United States Environmental Protection Agency to
6 allow untreated and unstabilized highly lead-contaminated
7 combustible waste to remain in what is effectively an
8 unpermitted, unlined hazardous waste landfill will allow the
9 long-term migration of lead, a persistent toxic metal, into the
10 groundwater and surface waters and air of this Commonwealth; and

11 WHEREAS, The House of Representatives is concerned that the
12 decision of the Secretary of Environmental Protection to approve
13 or otherwise accept this final decision of the United States
14 Environmental Protection Agency contravenes the regulations and
15 policies of the Commonwealth which would otherwise prohibit the
16 permanent disposal of concentrated lead-contaminated combustible
17 waste in an unlined landfill, allowing the direct contact of
18 these materials with coal measures; therefore be it

19 RESOLVED, That the House of Representatives direct the
20 Environmental Resources and Energy Committee to investigate and
21 report to the House of Representatives by May 1, 2003, on the
22 role of the Department of Environmental Protection in regulating
23 and overseeing the lead battery recovery and related land
24 disposal activities of Mr. Lawrence Fiegelman and the Marjol
25 Battery Company (Marjol) from commencement of Marjol operations
26 in the 1960s until cessation of active Marjol lead battery
27 recovery operations and in then designing, assessing, commenting
28 upon and otherwise participating in the joint Environmental
29 Protection Agency and department investigation and remedial
30 decision-making process pertaining to the selection of the

1 remedial decision for the source areas of the Marjol Battery
2 Site in Throop (Marjol Site); and be it further

3 RESOLVED, That the report of the committee include, at a
4 minimum, responses to the issues and concerns identified in this
5 resolution, proposals to address and correct errors identified
6 in the remedy selected by the agency in its December 1, 2000,
7 remedial decision for the Marjol Site and recommendations
8 regarding the avoidance of future failures in effective remedial
9 decision making; and be it further

10 RESOLVED, That without intending to limit the scope of the
11 investigation of the committee, the House of Representatives
12 request the committee to address the following questions:

13 (1) Why were the department and its predecessor
14 ineffective in regulating and placing under permit or
15 otherwise abating the illegal land disposal activities of
16 Marjol under the former act of July 31, 1968 (P.L.788,
17 No.241), known as the Pennsylvania Solid Waste Management
18 Act, from at least 1968 until September 5, 1980, the
19 effective date of the act of July 7, 1980 (P.L.380, No.97),
20 known as the Solid Waste Management Act, when this improper
21 disposal had been reported to the Wilkes-Barre office of the
22 department's predecessor as early as 1967?

23 (2) Why were the department and its predecessor
24 ineffective in regulating and placing under permit or
25 otherwise abating the unpermitted land disposal of solid and
26 hazardous substances and wastes of Marjol from September 5,
27 1980, until the present?

28 (3) With regard to questions 1 and 2, does the committee
29 find:

30 (i) that the statutory or regulatory basis for the

1 department and its predecessor enforcement action was
2 insufficient;

3 (ii) that the staffing level or training of staff
4 was insufficient;

5 (iii) that the decisions made by either staff or
6 managers were ineffective or erroneous; or

7 (iv) that Marjol deceived the department or
8 otherwise evaded effective regulation of its conduct by
9 resistance to appropriate regulatory requirements?

10 (4) On what substantial basis did the department
11 conclude, in supporting the December 1, 2000, decision of the
12 agency, Final Decision and Response to Comments on Selection
13 of Corrective Measure Under Section 3008(h) of the Resource
14 Conservation and Recovery Act for the Marjol Battery Site,
15 Throop, Pennsylvania (Final Decision), that there was a
16 distinction to be made between allowing combustible hazardous
17 waste or substances to remain in contact with unmined coal as
18 opposed to mined coal measures? What analysis of the
19 available geologic data did the department perform to
20 determine which coal measures underlying the Marjol Site had
21 been mined?

22 (5) If the department did conclude that hazardous
23 substances and combustible battery casing material waste
24 could prudently be allowed to be in contact with unmined
25 coal, how did it reconcile this decision with its regulatory
26 requirement in both the residual and solid waste regulations
27 for a minimum 25-foot isolation distance between combustible
28 waste and coal seams? This requirement has been present in
29 State environmental regulations since at least 1975 and, as
30 has been restated in the December 2000 regulation, continues

1 to require an effective separation distance between waste and
2 all coal measures to protect against subsidence and mine fire
3 hazards.

4 (6) Why did not the department or its predecessor,
5 during work plan development for the Marjol Site and
6 certainly no later than its concurrence in the Final
7 Decision, require that any permanent on-site disposal option
8 be developed and evaluated or remedy be selected, utilizing
9 the requirement that all contaminated, combustible battery
10 casing material be removed from contact with any coal outcrop
11 or seam, whether mined or unmined, or coal refuse and
12 isolated from said coal measures or coal refuse by a 25-foot
13 barrier of natural or compacted noncombustible soil or some
14 other equally effective separation mechanism?

15 (7) Why the department or its predecessor, if it was
16 going to allow contaminated battery casing material to remain
17 in contact with the various coal seams, did not require the
18 creation of an effective 25-foot underground barrier or other
19 effective separation distance between all battery casing
20 material being left in place and all known coal seams?

21 (8) After review of all relevant materials does the
22 committee recommend that the department's approval of this
23 December 1, 2000, agency Final Decision be withdrawn?

24 (9) What recommendations does the committee offer to
25 correct the deficiencies, if any, of the December 1, 2000,
26 agency Final Decision?