

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 305 Session of
2007

INTRODUCED BY RAFFERTY, O'PAKE, STOUT, GORDNER, KITCHEN,
FONTANA, MUSTO, RHOADES AND FERLO, MARCH 9, 2007

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 9, 2007

AN ACT

1 Amending the act of July 7, 1980 (P.L.380, No.97), entitled "An
2 act providing for the planning and regulation of solid waste
3 storage, collection, transportation, processing, treatment,
4 and disposal; requiring municipalities to submit plans for
5 municipal waste management systems in their jurisdictions;
6 authorizing grants to municipalities; providing regulation of
7 the management of municipal, residual and hazardous waste;
8 requiring permits for operating hazardous waste and solid
9 waste storage, processing, treatment, and disposal
10 facilities; and licenses for transportation of hazardous
11 waste; imposing duties on persons and municipalities;
12 granting powers to municipalities; authorizing the
13 Environmental Quality Board and the Department of
14 Environmental Resources to adopt rules, regulations,
15 standards and procedures; granting powers to and imposing
16 duties upon county health departments; providing remedies;
17 prescribing penalties; and establishing a fund," further
18 providing for permit and license application requirements and
19 for enforcement orders; and providing for repeat violations.

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

22 Section 1. Section 502 of the act of July 7, 1980 (P.L.380,
23 No.97), known as the Solid Waste Management Act, is amended to
24 read:

25 Section 502. Permit and license application requirements.

26 (a) Application for any permit or license shall be in

1 writing, shall be made on forms provided by the department and
2 shall be accompanied by such plans, designs and relevant data as
3 the department may require. Such plans, designs and data shall
4 be prepared by a registered professional engineer.

5 (b) The application for a permit to operate a hazardous
6 waste storage, treatment or disposal facility shall also be
7 accompanied by a form, prepared and furnished by the department,
8 containing the written consent of the landowner to entry upon
9 any land to be affected by the proposed facility by the
10 Commonwealth and by any of its authorized agents prior to and
11 during operation of the facility and for 20 years after closure
12 of the facility, for the purpose of inspection and for the
13 purpose of any such pollution abatement or pollution prevention
14 activities as the department deems necessary. Such forms shall
15 be deemed to be recordable documents and prior to the initiation
16 of operations under the permit, such forms shall be recorded and
17 entered into the deed book (d.b.v.) indexing system at the
18 office of the recorder of deeds in the counties in which the
19 area to be affected under the permit is situated.

20 (c) All records, reports, or information contained in the
21 hazardous waste storage, treatment or disposal facility permit
22 application submitted to the department under this section shall
23 be available to the public; except that the department shall
24 consider a record, report or information or particular portion
25 thereof, confidential in the administration of this act if the
26 applicant can show cause that the records, reports or
27 information, or a particular portion thereof (but not emission
28 or discharge data or information concerning solid waste which is
29 potentially toxic in the environment), if made public, would
30 divulge production or sales figures or methods, processes or

1 production unique to such applicant or would otherwise tend to
2 affect adversely the competitive position of such applicant by
3 revealing trade secrets. Nothing herein shall be construed to
4 prevent disclosure of such report, record or information to the
5 Federal Government or other State agencies as may be necessary
6 for purposes of administration of any Federal or State law.

7 (d) The application for a permit shall set forth the manner
8 in which the operator plans to comply with the requirements of
9 the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean
10 Streams Law," the act of May 31, 1945 (P.L.1198, No.418), known
11 as the "Surface Mining Conservation and Reclamation Act," the
12 act of January 8, 1960 (1959 P.L.2119, No.787), known as the
13 "Air Pollution Control Act," and the act of November 26, 1978
14 (P.L.1375, No.325), known as the "Dam Safety and Encroachments
15 Act," as applicable. No approval shall be granted unless the
16 plan provides for compliance with the statutes hereinabove
17 enumerated, and failure to comply with the statutes hereinabove
18 enumerated during construction and operation or thereafter shall
19 render the operator liable to the sanctions and penalties
20 provided in this act for violations of this act and to the
21 sanctions and penalties provided in the statutes hereinabove
22 enumerated for violations of such statutes. Such failure to
23 comply shall be cause for revocation of any approval or permit
24 issued by the department to the operator. Compliance with the
25 provisions of this subsection and with the provisions of this
26 act and the provisions of the statutes hereinabove enumerated
27 shall not relieve the operator of the responsibility for
28 complying with the provisions of all other applicable statutes,
29 including, but not limited to the act of July 17, 1961 (P.L.659,
30 No.339), known as the "Pennsylvania Bituminous Coal Mine Act,"

1 the act of November 10, 1965 (P.L.721, No.346), known as the
2 "Pennsylvania Anthracite Coal Mine Act," and the act of July 9,
3 1976 (P.L.931, No.178), entitled "An act providing emergency
4 medical personnel; employment of emergency medical personnel and
5 emergency communications in coal mines."

6 (e) The application for a permit shall certify that the
7 operator has in force, or will, prior to the initiation of
8 operations under the permit have in force, an ordinary public
9 liability insurance policy in an amount to be prescribed by
10 rules and regulations promulgated hereunder.

11 (e.1) (1) The application for a new permit or a permit
12 modification that would result in an increased average or
13 maximum daily waste volume, increased disposal capacity or
14 expansion of the permit area shall certify that the applicant
15 does not have any outstanding violations of this act at the
16 facility that is the subject of the application and that have
17 not been corrected as of the date of filing of the
18 application. The permit application shall also certify that
19 the applicant has complied with any enforcement orders issued
20 by the department. The department shall not accept an
21 application for review until it verifies that the application
22 contains the certification required by this section. Failure
23 to so certify shall be grounds to return the application to
24 the applicant without action. Submission of a false
25 certification shall be cause for denial of the application
26 and may constitute cause for the revocation or modification
27 of any approval or permit issued by the department to the
28 applicant in reliance on the false certification.

29 (2) A violation is outstanding within the meaning of
30 this section if the department has issued an enforcement

1 order under section 602, the violation cited in the
2 enforcement order is not corrected as of the date of the
3 filing of the application and the enforcement order has not
4 been appealed to the Environmental Hearing Board.

5 (3) A violation is not outstanding within the meaning of
6 this section if the applicant has entered into an agreement
7 with the department addressing the violation and is in
8 compliance with the agreement as of the date of the filing of
9 the application.

10 (f) The department may require such other information, and
11 impose such other terms and conditions, as it deems necessary or
12 proper to achieve the goals and purposes of this act.

13 (g) The department, upon receipt of an application for a
14 permit, shall give written notice to each and every municipality
15 in which the proposed hazardous waste facility will be located.

16 Section 2. Section 602(b) of the act, amended July 11, 1989
17 (P.L.331, No.55), is amended to read:

18 Section 602. Enforcement orders.

19 * * *

20 (b) If the department finds that the storage, collection,
21 transportation, processing, treatment, beneficial use or
22 disposal of solid waste is causing pollution of the air, water,
23 land or other natural resources of the Commonwealth or is
24 creating a public nuisance, the department [may] shall either
25 institute an action under section 604 or order the person or the
26 municipality to alter its storage, collection, transportation,
27 processing, treatment, beneficial use or disposal systems to
28 provide such storage, collection, transportation, processing,
29 treatment, beneficial use or disposal systems as will prevent
30 pollution and public nuisances. Such order shall specify the

length of time after receipt of the order within which the facility or area shall be repaired, altered, constructed or reconstructed.

* * *

Section 3. The act is amended by adding a section to read:

Section 607.1. Repeat violations.

(a) The department may impose an additional penalty of up to \$50,000 per violation upon any person or municipality that demonstrates a pattern of multiple violations of a single regulation occurring at a single facility. A pattern of multiple violations exists when three or more notices of violation are issued for the same regulation for a single facility within a period of 90 days.

(b) In determining the amount of a penalty to be assessed under this section, the department shall consider the severity of the violations, the duration of the violations and the culpability of the person or municipality.

(c) An assessment of a penalty under this section is final and appealable.

(d) Penalties imposed by the department under this section upon any person or municipality that demonstrates a pattern of multiple violations of section 610 shall not be waived by the department. Nothing in this section shall be construed to limit or otherwise restrict the department in settling claims against violators under this section or section 602.

(e) This section shall not preclude the department from approving a community environmental project in lieu of all or part of a penalty assessed under this section.

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