

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2204 Session of
1986

INTRODUCED BY LEVDANSKY, GEORGE, MANDERINO, MICHLOVIC, FREEMAN,
LASHINGER, MORRIS, RYBAK, FEE, LUCYK, JOSEPHS, KOSINSKI,
SERAFINI, ARGALL, TIGUE, KUKOVICH, VEON AND J. TAYLOR,
FEBRUARY 19, 1986

REFERRED TO COMMITTEE ON CONSERVATION, FEBRUARY 19, 1986

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 powers and duties of the department, the
19 Environmental Quality Board and the Environmental Hearing
20 Board, for the management of hazardous waste, for permits and
21 licenses and for enforcement.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Section 102(10) and (11) of the act of July 7,
25 1980 (P.L.380, No.97), known as the Solid Waste Management Act,
26 are amended and the section is amended by adding paragraphs to

1 read:

2 Section 102. Legislative finding; declaration of policy.

3 The Legislature hereby determines, declares and finds that,
4 since improper and inadequate solid waste practices create
5 public health hazards, environmental pollution, and economic
6 loss, and cause irreparable harm to the public health, safety
7 and welfare, it is the purpose of this act to:

8 * * *

9 (10) implement Article I, section 27 of the Pennsylvania
10 Constitution; [and]

11 (11) utilize, wherever feasible, the capabilities of
12 private enterprise in accomplishing the desired objectives of
13 an effective, comprehensive solid waste management
14 program[.];

15 (12) correct the historical record of inadequate
16 enforcement of this act and the other police power statutes
17 of this Commonwealth against those persons who engage in the
18 illegal and improper disposal or handling of hazardous,
19 residual, municipal and industrial waste;

20 (13) vindicate the right of all Pennsylvanians pursuant
21 to section 27 of Article I of the Constitution of
22 Pennsylvania to clean air, pure water, and the preservation
23 of the natural, scenic, historic and esthetic values of the
24 environment through a vigorous and uncorrupted program of
25 effective law enforcement through the independent enforcement
26 of this statute and the other police power statutes of this
27 Commonwealth pertaining to environmental protection and the
28 protection of the public health, safety and welfare;

29 (14) provide for the assessment and cleanup of abandoned
30 inactive hazardous waste sites that pose a threat to public

1 health and the environment; and develop a comprehensive site
2 inventory, criteria for selection and priority funding and
3 administering State funds for these purposes;

4 (15) discourage the use of land disposal of hazardous
5 waste and provide incentives to encourage the use of
6 innovative treatment technologies, source reduction,
7 materials recovery and recycling of hazardous waste;

8 (16) provide a mechanism for the prompt and adequate
9 compensation for damage to life or property resulting from
10 improper operations or closure of a hazardous waste facility;
11 and

12 (17) provide for a hazardous waste emergency response
13 capability at the State and local levels to ensure prompt and
14 effective response to hazardous substance accidents.

15 Section 2. Section 104(16) and (17) of the act are amended
16 and the section is amended by adding paragraphs to read:

17 Section 104. Powers and duties of the department.

18 The department in consultation with the Department of Health
19 regarding matters of public health significance shall have the
20 power and its duty shall be to:

21 * * *

22 [(16) require the payment of such annual inspection fees
23 and perform such inspections of hazardous waste treatment and
24 disposal facilities as are provided for in the Environmental
25 Quality Board guidelines adopted pursuant to section 105(e).
26 This provision shall not be construed to limit or restrict
27 the department's inspection powers as elsewhere set forth in
28 this act; and]

29 (16.1) conduct inspections of all hazardous waste
30 facilities at a frequency provided for in section 602 in the

1 manner prescribed by regulation;

2 (16.2) require the payment of such annual inspection
3 fees as provided for in regulations to be adopted by the
4 Environmental Quality Board;

5 (17) administer funds collected by the United States
6 Government and granted to Pennsylvania for the purpose of
7 closing, maintaining or monitoring abandoned or closed
8 hazardous waste storage, treatment or disposal sites and for
9 the purpose of action to abate or prevent pollution at such
10 sites[. If Congress has not authorized the collection of such
11 funds within one year after the effective date of this act,
12 or if the department finds that the funding program
13 authorized is inadequate, the department shall transmit to
14 the General Assembly within 15 months after the effective
15 date of this act a proposal for the establishment of a fund
16 in Pennsylvania comprised of surcharges collected from users
17 of hazardous waste storage, treatment and disposal facilities
18 excluding captive facilities in the Commonwealth. Such fund
19 shall be proposed for the purpose of closing, maintaining or
20 monitoring hazardous waste storage, treatment or disposal
21 sites excluding captive facilities which have been abandoned
22 or which have been closed for at least 20 years, and for the
23 purpose of taking action to abate or prevent pollution at
24 such closed or abandoned sites.];

25 (18) develop, prepare and submit to the Environmental
26 Quality Board, within six months of the effective date of
27 this paragraph, its proposed residual waste regulations.

28 Section 3. Section 105(e) of the act is amended and the
29 section is amended by adding a subsection to read:

30 Section 105. Powers and duties of the Environmental Quality

Board.

* * *

(e) The Environmental Quality Board shall have the power and its duty shall be to adopt [guidelines] regulations which shall:

[(1) Provide for the necessary inspection of hazardous waste treatment and disposal facilities considering the degree of hazard and the quantity of wastes handled.]

(1.1) Establish the manner in which inspections of hazardous waste treatment and disposal facilities shall be performed and the procedures that must be followed.

(2) Establish an inspection fee based on the frequency of inspection provided for in [paragraph (1)] section 602 that is sufficient to cover the costs incurred by the Commonwealth for such inspections.

(3) Encourage cooperative agreements between local communities and the hazardous waste facility operators to minimize local concerns regarding the operation of the facility.

* * *

(k) The Environmental Quality Board shall by regulation establish what shall constitute technologically and economically feasible alternatives to land disposal for the purposes of this act.

Section 4. Section 108 of the act is amended to read:

Section 108. Powers and duties of the Environmental Hearing Board.

(a) In addition to exercising its powers and duties to hold hearings and issue adjudications or any order, permit, license or decision of the department according to the provisions of "The Administrative Code of 1929" and the Administrative Agency

1 Law, the Environmental Hearing Board shall have the power and
2 its duty shall be to hold, if requested to do so by any party to
3 a duly perfected appeal of an oral order under section 602(d),
4 to hold a hearing on any duly filed petition for supersedeas of
5 such order within six business days of the receipt of such
6 request by the board.

7 (b) Any person having an interest which is or may be
8 adversely affected by any action of the department may appeal
9 such action to the Environmental Hearing Board in the manner
10 prescribed by law or alternatively may elect to intervene in the
11 appeal of such action by another person. Such right of
12 intervention shall be absolute, unconditional and
13 nondiscretionary with the Environmental Hearing Board, and such
14 right may be exercised at any point in proceedings before the
15 Environmental Hearing Board.

16 Section 5. Section 401 of the act is amended by adding
17 subsections to read:

18 Section 401. Management of hazardous waste.

19 * * *

20 (c) The department shall not issue any permit, order or
21 consent order and agreement for the disposal of solid waste to
22 any person who owns or operates a site under study by the United
23 States Environmental Protection Agency pursuant to the
24 Comprehensive Environmental Response, Compensation, and
25 Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767).

26 (d) The fact that a site is under study pursuant to
27 subsection (c) shall be cause for the denial of any pending
28 permit application respecting the owner or operator of such
29 site.

30 (e) The intent of subsections (c) and (d) are ameliorative

and rehabilitative, and it is the express intent of the General Assembly that subsections (c) and (d) be retrospective in effect and applied retroactively.

Section 6. The act is amended by adding sections to read:

Section 406. Host municipality incentives and guarantees.

With the approval of the department, all owners or operators of hazardous waste treatment and disposal facilities shall establish a reasonable surcharge on waste disposed at the facility to be paid to any host municipality for reimbursement for any reasonable additional local services, and for incentives and guarantees. These incentives and guarantees shall include, but not be limited to:

(1) A host municipality and department joint inspection program to be conducted by a certified local government employee or contractor cooperating with a department inspector.

(2) A periodic water well sampling program for property owners in the vicinity of the hazardous waste treatment or disposal facility. The sampling program shall be conducted by an independent testing laboratory certified under the act of May 1, 1984 (P.L.206, No.43), known as the "Pennsylvania Safe Drinking Water Act." Test results shall be supplied to the homeowner, department and operator by the testing laboratory as soon as the laboratory work is completed.

(3) A requirement that the department immediately submit all inspection reports to the host municipality.

(4) Immediate notification by the department to the host municipality of all enforcement or emergency actions taken at the hazardous waste facility.

(5) Reimbursement to the host community for all

reasonable cost incurred by the host community or in
contracting with independent consultants to evaluate the
permit application.

Section 407. Hazardous Waste Emergency Response Plan.

(a) A Commonwealth Hazardous Waste Emergency Response Plan
shall be prepared to provide prompt and effective response to
accidental spills and discharges of hazardous waste.

(b) Development of the plan shall be the responsibility of
the Pennsylvania Emergency Management Agency in cooperation with
the Department of Environmental Resources, the Department of
Transportation and the Department of Health and, at a minimum,
provide for the following:

(1) Designation of a lead agency for emergency response
planning.

(2) Establishment of a fast and accurate emergency
reporting system.

(3) Twenty-four hour hotline and contact persons for
hazardous waste information.

(4) A contingency plan that defines emergency
responsibilities for all agencies.

(5) A hazardous waste training program for local and
State public safety officials.

(6) Designation of disposal facilities for materials
recovered during cleanup.

(7) Personal protection gear and testing equipment for
on-site personnel.

(8) Monitoring and laboratory capacity to track and
analyze hazardous pollutants.

(c) The department shall create and maintain hazardous waste
emergency response units which shall have emergency response as

1 their principal duties and which shall be assigned to all the
2 department's Office of Environmental Protection regional
3 offices. All personnel assigned to these units shall be
4 adequately trained and provided with appropriate safety
5 equipment and devices.

6 Section 7. Sections 502 and 503 of the act are amended by
7 adding subsections to read:

8 Section 502. Permit and license application requirements.

9 * * *

10 (d.1) Land disposal of hazardous waste in this Commonwealth
11 is prohibited after the effective date of this subsection unless
12 the applicant for a disposal permit for a captive or commercial
13 disposal facility can demonstrate to the department's
14 satisfaction all of the following:

15 (1) That all technological and economically feasible
16 alternatives for recovery, source reduction, recycling and
17 treatment for each type of waste to be disposed of has been
18 adequately considered by the applicant.

19 (2) That each type of waste cannot be technologically,
20 economically and safely reused, treated, recycled,
21 incinerated or disposed of by other means.

22 (3) That the hazardous waste to be disposed of cannot be
23 reasonably treated further to reduce volume or the toxicity
24 of the waste.

25 * * *

26 Section 503. Granting, denying, renewing, modifying, revoking
27 and suspending permits and licenses.

28 * * *

29 (c.1) The department shall deny any application for a
30 permit, permit amendment, license, or license amendment to any

1 party issued or issuable under this act for solid, hazardous or
2 residual waste disposal if it determines that the applicant,
3 permittee or licensee or corporate principal has committed past
4 violations of this act or the rules and regulations of the
5 department or condition of the permit or license or order of the
6 department or other applicable environmental statutes, and if
7 such violation or practice results in one or more of the
8 following:

9 (1) The violation or practice is causing or has resulted
10 in the forfeiture of bonds for violation of this act.

11 (2) The violation or practice is causing or has caused
12 the pollution or diminution of public or private water
13 supplies.

14 (3) The violation or practice is causing or has caused
15 actual harm or injury to public health.

16 (4) The permittee, licensee or corporate principal has
17 failed to pay any fines imposed pursuant to this act or has
18 failed to make disposition of any moneys pursuant to any
19 civil penalties under the environmental statutes of this
20 Commonwealth.

21 (5) The permittee, licensee or corporate principal has
22 willfully failed to comply with any order or consent decree
23 of the department issued under this act or other applicable
24 environmental statutes of this Commonwealth.

25 * * *

26 Section 8. Section 505(a) of the act is amended to read:

27 Section 505. Bonds.

28 (a) With the exception of municipalities operating landfills
29 solely for municipal waste not classified hazardous, prior to
30 the commencement of operations, the operator of a municipal or

1 residual waste processing or disposal facility or of a hazardous
2 waste storage, treatment or disposal facility for which a permit
3 is required by this section shall file with the department a
4 bond for the land affected by such facility on a form prescribed
5 and furnished by the department. Such bond shall be payable to
6 the Commonwealth and conditioned so that the operator shall
7 comply with the requirements of this act, the act of June 22,
8 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the
9 act of May 31, 1945 (P.L.1198, No.418), known as the "Surface
10 Mining Conservation and Reclamation Act," the act of January 8,
11 1960 (1959 P.L.2119, No.787), known as the "Air Pollution
12 Control Act," and the act of November 26, 1978 (P.L.1375,
13 No.325), known as the "Dam Safety and Encroachments Act." The
14 department may require additional bond amounts for the permitted
15 areas should such an increase be determined by the department to
16 be necessary to meet the requirements of this act. The amount of
17 the bond required shall be in an amount determined by the
18 secretary based upon the total estimated cost to the
19 Commonwealth of completing final closure according to the permit
20 granted to such facility and such measures as are necessary to
21 prevent adverse effects upon the environment; such measures
22 include but are not limited to satisfactory monitoring, post-
23 closure care, and remedial measures. The bond amount shall
24 reflect the additional cost to the Commonwealth which may be
25 entailed by being required to bring personnel and equipment to
26 the site. All permits shall be bonded for at least \$10,000.
27 Liability under such bond shall be for the duration of the
28 operation, and for a period of [up to ten full years after final
29 closure of the permit site] time as long as the waste may pose a
30 significant threat to public health and the environment, as

1 determined by the department, but no less than 30 years after
2 closure. Such bond shall be executed by the operator and a
3 corporate surety licensed to do business in the Commonwealth and
4 approved by the secretary: Provided, however, That the operator
5 may elect to deposit cash, certificates of deposit,
6 automatically renewable irrevocable letters of credit which are
7 terminable only upon 90 days written notice to the operator and
8 the department, or negotiable bonds of the United States
9 Government or the Commonwealth of Pennsylvania, the Pennsylvania
10 Turnpike Commission, the General State Authority, the State
11 Public School Building Authority, or any municipality within the
12 Commonwealth, with the department in lieu of a corporate surety.
13 The cash amount of such deposit, irrevocable letters of credit
14 or market value of such securities shall be equal at least to
15 the sum of the bond. The secretary shall, upon receipt of any
16 such deposit of cash or negotiable bonds, immediately place the
17 same with the State Treasurer, whose duty it shall be to receive
18 and hold the same in the name of the Commonwealth, in trust, for
19 the purposes for which such deposit is made. The State Treasurer
20 shall at all times be responsible for the custody and
21 safekeeping of such deposits. The operator making the deposit
22 shall be entitled from time to time to demand and receive from
23 the State Treasurer, on the written order of the secretary, the
24 whole or any portion of any collateral so deposited, upon
25 depositing with him, in lieu thereof, other collateral of the
26 classes herein specified having a market value at least equal to
27 the sum of the bond, also to demand, receive and recover the
28 interest and income from said negotiable bonds as the same
29 becomes due and payable: Provided, however, That where
30 negotiable bonds, deposited as aforesaid, mature or are called,

1 the State Treasurer, at the request of the permittee, shall
2 convert such negotiable bonds into such other negotiable bonds
3 of the classes herein specified as may be designated by the
4 permittee: And provided further, That where notice of intent to
5 terminate a letter of credit is given, the department shall,
6 after 30 days written notice to the operator and in the absence
7 of a replacement of such letter of credit within such 30-day
8 period by the operator with other acceptable bond guarantees
9 provided herein, draw upon and convert such letter of credit
10 into cash and hold it as a collateral bond guarantee.

11 * * *

12 Section 9. The act is amended by adding sections to read:

13 Section 601.1. Inspections and enforcement.

14 (a) The department, in order to determine compliance with
15 this act and rules and regulations promulgated hereunder, shall
16 at a minimum perform inspections of all hazardous waste
17 treatment and disposal facilities on a regular basis, averaging
18 not less than one complete and thorough inspection per month of
19 each hazardous waste treatment and disposal facility. The
20 content of these inspections shall be prescribed by regulation.

21 (b) Inspections shall occur without prior notice to the
22 permittee or his agents or employees except for necessary on-
23 site meetings with the permittee. Inspections shall include
24 inspection reports adequate to enforce the requirements of and
25 to carry out the purposes of this act.

26 (c) Upon detection of each and any violation of this act,
27 the department's inspector or agent shall forthwith identify the
28 violation on the inspection report and inform the permittee or
29 operator, in writing, of the violation. Copies of inspection
30 reports shall be transmitted immediately to the Protector

1 General and shall be made immediately available to the public.

2 (d) All violations of this act which are identified shall be
3 cited, and the department, through the Office of Protector
4 General, shall within ten days take appropriate enforcement
5 action as herein defined to cause said violations to be
6 corrected. All violations must be corrected within a reasonable
7 time, not to exceed 90 calendar days, except upon a showing of
8 good cause by the permittee that it is not feasible to abate the
9 violation within 90 days and that the violation or condition
10 will not pose an imminent danger to the health or safety of the
11 public or significant imminent environmental harm to land, air
12 or water resources during the extended abatement period.

13 (e) An extended abatement date under this section shall not
14 be granted by the department when the operator's failure to
15 abate within 90 days has been caused by a lack of diligence or
16 intentional delay by the operator in completing the remedial
17 action requested, nor shall an extension be granted for
18 financial or economic reasons.

19 (f) Circumstances which may qualify a hazardous waste
20 facility operator for an abatement period more than 90 days are
21 limited as follows:

22 (1) Where the department has required the operator of an
23 existing operation to apply to the department for a permit
24 amendment or other necessary approval of designs or plans,
25 and where the operator has submitted all necessary materials
26 to the department in an expeditious manner, but the
27 department is unable, through no fault of the operator, to
28 issue such permit or approval 90 days from the date of
29 submission of all required documentation.

30 (2) Where climatic conditions preclude abatement within

90 days or where abating the condition within 90 days would clearly cause more environmental harm than it would prevent.

(g) Whenever an abatement in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in subsection (b) exist, the permittee may request the department to grant an abatement period exceeding 90 days. The abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under this section. In determining whether or not to grant an abatement period exceeding 90 days, the department shall consider any relevant written information.

(i) Any inspector or agent of the department who observes a violation of this act but who fails to identify the violation on the inspection report and issue a citation for such violation commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100.

Section 602.1. Enforcement orders.

(a) The department shall issue cessation orders if it is determined that a condition, practice or violation exists which:

(1) creates an imminent danger to the health of the public;

(2) is causing or can reasonably be expected to cause significant imminent harm to land, air or water resources; or

(3) will not be abated within the abatement period specified in section 601 or does not meet criteria for an extended abatement period beyond the 90-day limit.

(b) Any such cessation order issued pursuant to this section

1 shall remain in effect until the condition, practice or
2 violation has been satisfactorily abated or until modified,
3 vacated or terminated by the secretary or his authorized
4 representative. Where the department finds that the ordered
5 cessation of operations, or any portion thereof, will not
6 completely abate the imminent danger to the health or safety of
7 the public or significant imminent environmental harm to land,
8 air or water resources, the department shall, in addition to the
9 cessation order, impose affirmative obligations on the owner or
10 operator requiring him to take whatever steps the department
11 deems necessary to abate the imminent danger or the significant
12 environmental harm.

13 (c) The requirements that the department issue cessation
14 orders in those circumstances specified in subsection (a)(1),
15 (2) and (3) shall not be construed to limit the department's
16 discretionary authority to issue cessation orders, or to modify
17 Pennsylvania's criteria for the issuance of cessation orders in
18 other cases. The requirement placed on the department to issue
19 cessation orders under this section shall not be deemed to limit
20 the availability of other remedies at law or in equity. When
21 cessation of the operator does not in itself abate the
22 violation, the cessation order shall impose affirmative
23 obligations to abate the condition, practice or violation.

24 (d) When the department determines that a pattern of
25 violations of any requirement of this act or any permit
26 conditions required by this act exists or has existed, and if
27 the department finds that such violations are caused by the
28 unwarranted failure of the permittee to comply with any
29 requirements of this act or any permit conditions or that such
30 violations are willfully caused by the permittee, the department

1 shall forthwith issue an order suspending the permit and order
2 the permittee to show cause as to why the permit should not be
3 revoked and shall provide opportunity for public hearing. If a
4 hearing is requested, the secretary shall inform all interested
5 parties of the time and place of the hearing. Upon the
6 permittee's failure to show cause as to why the permit should
7 not be revoked, the department shall forthwith revoke the
8 permit.

9 (e) Notices and orders issued pursuant to this section shall
10 set forth with reasonable specificity the nature of the
11 violation and the remedial action required, the period of time
12 established for abatement, and a reasonable description of the
13 facility to which the notice or order applies. Each notice or
14 order issued under this section shall be given promptly to the
15 permittee or his agent by the department or its authorized
16 representative who issues such notice or order, and all such
17 notices and orders shall be in writing and shall be assigned by
18 such authorized representatives. Any notice or order issued
19 pursuant to this section may be modified, vacated or terminated
20 by the department.

21 Section 10. Section 604 of the act is amended by adding
22 subsections to read:

23 Section 604. Restraining violations.

24 * * *

25 (d.1) Except as provided in subsection (b), any person
26 having an interest which is or may be adversely affected may
27 commence a civil action on his own behalf to compel compliance
28 with this act or any rule, regulation, order or permit issued
29 pursuant to this act against the department where there is
30 alleged a failure of the department to perform any act which is

1 not discretionary with the department or against any other
2 person alleged to be in violation of any provision of this act.
3 Any other provision of law to the contrary notwithstanding, the
4 courts of common pleas shall have jurisdiction of such actions,
5 and venue in such actions shall be as set forth in the Rules of
6 Civil Procedure concerning actions in assumpsit.

7 (e) Whenever a person presents information to the department
8 which gives the department reason to believe that any person is
9 in violation of any requirement of this act or any condition of
10 any permit issued hereunder or of the acts enumerated in section
11 315(h) or any condition or any permit issued thereunder, the
12 department shall immediately order inspection of the operation
13 at which the alleged violation is occurring, and the department
14 shall notify the person presenting such information and such
15 person shall be allowed to accompany the inspector during the
16 inspection.

17 (f) No action pursuant to this section may be commenced
18 prior to 60 days after the plaintiff has given notice, in
19 writing, of the violation to the department and to any alleged
20 violation, nor may such action be commenced if the department has
21 commenced and is diligently prosecuting a civil action in a
22 court of the United States or a state to require compliance with
23 this act or any rule, regulation, order or permit issued
24 pursuant to this act, but in any such action in a court of the
25 United States or of the Commonwealth, any person may intervene
26 as a matter of right.

27 (g) The provisions of subsection (b) to the contrary
28 notwithstanding, any action pursuant to this section may be
29 initiated immediately upon written notification to the
30 department in the case where the violation or order complained

1 of constitutes an imminent threat to the health or safety of the
2 plaintiff or would immediately affect a legal interest of the
3 plaintiff.

4 (h) The court, in issuing any final order in any action
5 brought pursuant to this section, may award costs of litigation
6 (including attorney and expert witness fees) to any party,
7 whenever the court determines such award is appropriate. The
8 court may, if a temporary restraining order or preliminary
9 injunction is sought, require the filing of a bond or equivalent
10 security in accord with the Rules of Civil Procedure.

11 Section 11. Section 605 of the act is amended to read:

12 Section 605. Civil penalties.

13 (a) In addition to proceeding under any other remedy
14 available at law or in equity for a violation of any provision
15 of this act, any rule or regulation of the department or order
16 of the department or any term or condition of any permit issued
17 by the department, the department may assess a civil penalty
18 upon a person for such violation. Such a penalty may be assessed
19 whether or not the violation was willful or negligent. In
20 determining the amount of the penalty, the department shall
21 consider the willfulness of the violation, damage to air, water,
22 land or other natural resources of the Commonwealth or their
23 uses, cost of restoration and abatement, savings resulting to
24 the person in consequence of such violation, and other relevant
25 factors. If the violation leads to the issuance of a cessation
26 order or occurs after the release of security for performance, a
27 civil penalty shall be assessed. When the department proposes to
28 assess a civil penalty, it shall inform the person or
29 municipality of the proposed amount of said penalty. The person
30 charged with the penalty shall then have 30 days to pay the

1 proposed penalty in full or, if the person wishes to contest
2 either the amount of the penalty or the fact of the violation,
3 the person shall within such 30 day period file an appeal of
4 such action with the Environmental Hearing Board. Failure to
5 appeal within 30 days shall result in a waiver of all legal
6 rights to contest the violation or the amount of the penalty.
7 The maximum civil penalty which may be assessed pursuant to this
8 section is \$25,000 per offense. Each violation for each separate
9 day and each violation of any provision of this act, any rule or
10 regulation under this act, any order of the department, or any
11 term or condition of a permit shall constitute a separate and
12 distinct offense under this section. A generator of hazardous
13 waste who has complied with section 403 and has designated on
14 the manifest a facility permitted to treat or dispose of his
15 wastes shall not be held liable for civil penalties with respect
16 to such wastes by other persons after:

17 (1) the wastes have been transported in compliance with
18 all applicable provisions of this act and regulations
19 promulgated and licenses issued thereunder; and

20 (2) such wastes have been accepted by a disposal or
21 treatment facility permitted to receive such wastes and
22 designated on the manifest.

23 (b) If the violation leads to the issuance of a cessation
24 order, a civil penalty shall be assessed.

25 (c) If the violation involves the failure to correct, within
26 the period prescribed for its correction, a violation for which
27 a cessation order, other abatement order or notice of violation
28 has been issued, a civil penalty of not less than \$5,000 shall
29 be assessed for each day the violation continues beyond the
30 period prescribed for its correction. The correction of a

1 violation within the period prescribed for its correction shall
2 not, however, preclude assessment of a penalty for the
3 violation.

4 Section 12. This act shall take effect in 60 days.