

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2206 Session of
1986

INTRODUCED BY FREEMAN, GEORGE, MANDERINO, LEVDANSKY, MICHLOVIC,
SCHULER, MORRIS, RYBAK, FEE, LUCYK, JOSEPHS, KOSINSKI,
SERAFINI, ARGALL, TIGUE, McHALE, KUKOVICH, D. W. SNYDER 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," providing
18 for the cleanup of hazardous waste sites and for compensation
19 therefor; establishing the Hazardous Waste Abandoned Site
20 Cleanup and Compensation Fund; providing for a surcharge on
21 hazardous waste and for claims and awards; and providing
22 penalties.

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

25 Section 1. The act of July 7, 1980 (P.L.380, No.97), known
26 as the Solid Waste Management Act, is amended by adding an
27 article to read:

1 ARTICLE VII-A

2 HAZARDOUS WASTE CLEANUP AND

3 COMPENSATION

4 Section 701-A. Hazardous Waste Abandoned Site Cleanup and
5 Compensation Fund.

6 (a) There is hereby established within the Treasury of the
7 Commonwealth a separate account to be known as the Hazardous
8 Waste Abandoned Site Cleanup and Compensation Fund, hereafter
9 known as the fund. This fund is established as a nonlapsing
10 revolving fund to be administered by the department to provide
11 for the assessment, inspection and cleanup of abandoned
12 hazardous waste sites and for the compensation for damages to
13 persons or property from the improper handling, treating,
14 storing and transportation of hazardous waste and the improper
15 operation or closure of hazardous waste disposal facilities.

16 (b) Surcharge fees charged to generators of hazardous waste
17 and owners or operators of hazardous waste disposal facilities
18 in this Commonwealth shall be deposited in the fund for the
19 purposes specified in this section and in a manner to be
20 prescribed by the department. All interest received on moneys in
21 the fund shall be credited to the fund.

22 Section 702-A. Hazardous waste surcharge.

23 (a) Effective January 1, 1986, there is hereby levied on all
24 hazardous waste generated in this Commonwealth a surcharge fee
25 in the amount of \$10 per ton to be paid to the fund. In the
26 event that any hazardous waste is measured by other than
27 tonnage, the surcharge shall be levied on the equivalent thereof
28 as shall be determined by the department. Each generator of
29 hazardous waste shall, on or before the twentieth day of the
30 month following the close of each tax period, render an

1 accounting and record of the total waste generated in that
2 period on such forms as the department may require and make full
3 payment of the surcharge in a manner to be prescribed by the
4 department.

5 (b) Effective January 1, 1986, there is hereby levied on all
6 owners or operators of hazardous waste disposal facilities in
7 this Commonwealth a surcharge fee in the amount of \$5 per ton of
8 waste accepted, to be paid to the fund. In the event that any
9 hazardous waste is measured upon acceptance at the disposal
10 facility by other than tonnage, the surcharge shall be levied on
11 the equivalent thereof as shall be determined by the department.
12 Each owner or operator of a hazardous waste disposal facility
13 shall, on or before the twentieth day of the month following the
14 close of each tax period, render an accounting and record of the
15 total waste accepted at its facility in that period on such
16 forms as the department may require and make full payment of the
17 surcharge in a manner to be prescribed by the department.

18 Section 703-A. Escrow accounts.

19 (a) All surcharge fees collected and deposited in the fund
20 shall be placed in two escrow accounts for the following
21 purposes:

22 (1) Seventy-five percent of the moneys collected from
23 the surcharge fee shall be placed in an Abandoned Site Escrow
24 Account within the fund to be used solely for the following:

25 (i) To identify, assess and inspect all abandoned
26 sites in this Commonwealth where it is suspected
27 hazardous waste exists which may pose a potential threat
28 to human health or the environment. This shall be
29 performed by the department and be completed within two
30 years of the effective date of this article. To perform

1 this duty, the department shall establish an abandoned
2 site investigative unit within the department, and the
3 required inspection shall be conducted by this unit
4 within two years of the effective date of this article.

5 (ii) As Commonwealth matching funds for Federal
6 funds received under the Comprehensive Environmental
7 Response, Compensation and Liability Act of 1980 (Public
8 Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq.).

9 (iii) To cover the cost to the Commonwealth for
10 operation and maintenance and post-closure care of sites
11 where remedial action has been completed under the
12 Comprehensive Environmental Response Compensation and
13 Liability Act of 1980.

14 (iv) To finance all necessary remedial action at
15 abandoned hazardous waste sites in this Commonwealth
16 which pose a threat to human health or the environment.

17 (v) For administrative costs incurred by the
18 department directly related to the administration of the
19 fund.

20 (2) Twenty-five percent of the moneys collected from the
21 surcharge fees and deposited in the fund shall be placed in a
22 Compensation Escrow Account within the fund to be used solely
23 for:

24 (i) Compensation to parties for certain damages, no
25 matter by whom sustained, proximately resulting from the
26 handling, transportation, treatment, storage and disposal
27 of hazardous waste and the improper operation or closure
28 of hazardous waste disposal facilities.

29 (ii) Administrative costs incurred by the department
30 directly related to the administration of the fund,

1 including legal costs associated with the Office of
2 Protector General in exercising any subrogation rights
3 under section 709-A.

4 (b) The determination by the department of priority sites
5 for remedial action, using money from the Abandoned Site Escrow
6 Account, shall be based on selection criteria to be developed in
7 the form of regulations which shall consider, but not be limited
8 to, the following:

9 (1) Possible risk to the population.

10 (2) Hazard potential of substances at the site.

11 (3) Potential for contaminating drinking water supplies
12 and other pathways that affect human health.

13 (4) Potential for destruction of sensitive or important
14 ecosystems.

15 Section 704-A. Payments from the fund.

16 (a) Upon submittal of claims as provided for in section 705-
17 A, the fund shall make payments for certain costs and expenses,
18 no matter by whom sustained, proximately resulting from the
19 handling, treatment, transportation, storage and disposal of
20 hazardous waste and the improper operation and closure of
21 hazardous waste disposal facilities. These costs and expenses
22 shall be limited to the following:

23 (1) The actual total cost of restoring, repairing or
24 replacing any real or personal property damaged or destroyed
25 to a condition equivalent to what existed prior to the damage
26 or destruction, but only to its predamaged state, provided
27 that payment for any single claim shall not exceed \$30,000.

28 (2) The actual total cost of restoration and
29 replacement, where possible, of any natural resources damaged
30 or destroyed, including any public or private potable water

1 supply, but only to its predamaged state, provided that
2 payment for any single claim shall not exceed \$30,000.

3 (3) The actual total cost of immediate medical expenses
4 reasonably necessary for treatment of personal injuries
5 proximately related to hazardous waste handling, treatment,
6 transportation, storage and disposal, provided that payment
7 for any single claim shall not exceed \$15,000. The fund shall
8 be considered as secondary coverage to any other medical or
9 health insurance which covers the claimant, and the fund
10 shall not pay for immediate medical expenses paid by any
11 other form of insurance. The fund shall not cover, for the
12 purposes of this section, any person whose exposure is
13 related to his employment and who is eligible for
14 compensation under the act of June 2, 1915 (P.L.736, No.338),
15 known as "The Pennsylvania Workmen's Compensation Act." For
16 the purposes of this paragraph, "immediate medical expenses"
17 shall mean medical, dental or other health care expenses
18 directly related to an acute episode of illness.

19 (4) An allowance for wages and salary lost as a result
20 of personal injuries proximately related to hazardous waste
21 handling, treatment, transportation, storage and disposal.
22 The fund shall not cover, for the purposes of this section,
23 any person whose exposure is related to his employment and
24 who is eligible for compensation under "The Pennsylvania
25 Workmen's Compensation Act." The amount of said allowance
26 shall be calculated in the same way and to provide the same
27 amount per week as compensation for lost wages under "The
28 Pennsylvania Workmen's Compensation Act," except that said
29 allowance under this section shall not be paid for a period
30 of time in excess of 26 weeks for any single claim.

1 (5) The actual total costs of the design, construction,
2 installation, operation and maintenance of any device or
3 action deemed necessary by the department to clean up,
4 remedy, mitigate, monitor or analyze any threat to the public
5 health, safety or welfare of the citizens of this State,
6 including the installation and maintenance of monitoring
7 wells and the sampling and analysis of any public or private
8 potable water supply.

9 (b) The fund shall not pay and shall not be liable for
10 damages for pain and suffering, mental anguish, emotional
11 distress, or any other type of damages not involving the direct
12 costs and expenses enumerated in subsection (a).

13 Section 705-A. Claims.

14 (a) Claims for damages made under section 704-A(1), (2) or
15 (5) shall be filed with the department not later than one year
16 after the date of discovery of damage, or not later than six
17 years after the date of the incident which caused the damage.
18 Claims for damages made under section 704-A(3) or (4) shall be
19 filed with the department within one year of the date that
20 claimant possessed, or reasonably should have possessed:
21 knowledge of the injury, knowledge of the operative cause of the
22 injury, and knowledge of the causative relationship between the
23 injury and the operative conduct. All claims for damages shall
24 be filed in a manner to be prescribed by regulation. The
25 department shall prescribe appropriate forms and procedures for
26 such claims, which shall include a provision requiring the
27 claimant to make a sworn verification of the claim to the best
28 of his knowledge. The department shall not fail to process a
29 claim because the claimant is unable, to the best of his
30 knowledge, to demonstrate fault or identify a responsible party.

1 For the purposes of this section, the date of the incident shall
2 be deemed to be the date of the first official notice given by
3 the department to the operator of the waste site.

4 (b) Any person who knowingly gives or causes to be given any
5 false information as a part of any such claim, in addition to
6 any other penalties herein or elsewhere prescribed, commits a
7 misdemeanor of the third degree.

8 (c) Upon receipt of any claim, the department shall as soon
9 as practicable inform all affected parties of the claim.

10 (d) (1) The department shall attempt to promote and arrange
11 a settlement between the claimant and the person responsible
12 for the damage. If the source of the damage can be determined
13 and liability is conceded, the claimant and the alleged
14 responsible party may agree to a settlement, which shall be
15 final and binding upon the parties and which will waive all
16 recourse against the fund.

17 (2) If the responsible party is unknown or cannot be
18 determined, the claimant and the department shall attempt to
19 arrange a settlement of any claim against the fund, following
20 procedures to be prescribed by regulation. The department is
21 authorized to enter and certify payment of such settlement,
22 subject to such proof and procedures contained in regulations
23 to be promulgated by the Environmental Quality Board.

24 Section 706-A. Fund balance and awards.

25 (a) In the event that the total of claims awarded exceeds
26 the current balance of the fund, the immediate award shall be
27 paid on a prorated basis, and all claimants paid on a prorated
28 basis shall be paid, as determined by the department, on a pro
29 rata share of all moneys received by the fund until the total
30 amount of the proven damages is paid to the claimants. The

1 Environmental Quality Board shall also establish, by regulation,
2 priorities for the payment of claims based on extreme hardship
3 or extreme existing or imminent hazard.

4 (b) In each fiscal year following any year in which the
5 balance in the fund equals or exceeds \$50,000,000, no surcharge
6 shall be levied unless either of the following occurs:

7 (1) The current balance in the fund is less than
8 \$25,000,000.

9 (2) Pending claims against the fund and the cost of
10 planned remedial actions exceed 50% of the existing balance.

11 Section 707-A. Limit on awards.

12 The damages which may be recovered by the fund without regard
13 to fault, subject to the defenses enumerated in section 708-A
14 against a generator or owner or operator of a facility, shall
15 not exceed \$10,000,000 for each facility, except that such
16 maximum limitation shall not apply, and the generator or owner
17 or operator shall be liable, jointly and severally, for the full
18 amount of such damages, if it can be shown that such discharge
19 was the result of either of the following:

20 (1) Gross negligence or willful misconduct within the
21 knowledge and privity of the owner, operator or person in
22 charge.

23 (2) A grossly negligent or willful violation of
24 applicable safety, construction or operating standards or
25 regulations.

26 Damages which may be recovered from, or by, any other person
27 shall be limited to those authorized by common or statutory law.

28 Section 708-A. Defenses.

29 An act of God or occurrence caused solely by war or sabotage,
30 or a combination thereof, shall be the only defenses which may

1 be raised by any owner or operator of a facility or generator
2 responsible for any damage arising under the provisions of this
3 article, but said defense shall not be available if it can be
4 shown that the damage would not have occurred but for the
5 negligence of the owner or operator.

6 Section 709-A. Subrogation.

7 Payment of any damages by the fund shall give the department
8 all rights of the claimant to recovery against the responsible
9 party of those particular costs or damages actually paid by the
10 fund. The department, through the Office of the Protector
11 General, shall then seek satisfaction from the responsible party
12 in a court of law if the responsible party does not voluntarily
13 reimburse the fund, provided that the department shall first
14 give reasonable written advance notice to the claimant of its
15 intention to file suit against the responsible party and provide
16 the claimant a reasonable period of time to join in the
17 commencement of said suit or to institute a separate suit
18 against the responsible party. In any such suit, the department
19 need prove only that an unlawful act occurred which was the
20 responsibility of the generator, owner, operator or responsible
21 party. The department may compromise and settle the amount
22 sought for cost and damages from the responsible party and any
23 person accused under this article, but only to the extent of its
24 actual subrogation interest. Nothing in this section shall limit
25 or preclude a claimant, after receipt of payment of costs or
26 damages from the fund, from seeking any other civil or
27 injunctive remedies provided by existing law against the
28 responsible party, except that the subrogation rights of the
29 fund shall be protected by the claimant from any money damages
30 received.

1 Section 710-A. Penalty.

2 Any owner or operator of a hazardous waste disposal facility
3 or generator who fails to file required forms or fails to pay
4 the surcharge, as required by this article, or who makes or
5 causes to be made, or who gives or causes to be given, any
6 return, certificate, affidavit, representation, information,
7 testimony or statement required or authorized by this act, or
8 rules or regulations adopted hereunder, which is willfully
9 false, or who fails to keep any records required by this
10 article, or rules and regulations adopted hereunder, in addition
11 to any other penalties herein or elsewhere prescribed, commits a
12 misdemeanor of the second degree.

13 Section 711-A. Remedies cumulative.

14 (a) Nothing in this article shall in any way relieve any
15 person, corporation, partnership, business or other entity from
16 liability with regard to the health and safety of any other
17 person exposed to or affected by hazardous waste, nor shall it
18 relieve any person, corporation, partnership, business or other
19 entity from any other duty or responsibility under any other
20 provision of law.

21 (b) Nothing in this article shall be deemed to preclude the
22 pursuit of any other civil or injunctive remedy by any person,
23 including, but not limited to, civil claims and suits for money
24 damages. The remedies provided and damages recoverable in this
25 article are in addition to those provided by existing law, but
26 no person who receives compensation for damages or cleanup costs
27 pursuant to any other Commonwealth or Federal law shall be
28 permitted to receive compensation for the same damages or
29 cleanup costs under this article.

30 Section 712-A. Annual report.

1 The secretary shall make an annual report to the Governor and
2 the General Assembly which shall describe the costs and damages
3 paid by and recovered for the fund, and the economic and
4 environmental impact on this Commonwealth as a result of the
5 administration of this article.

6 Section 2. This act shall take effect in 60 days.