

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL****No. 2206** Session of  
1986

INTRODUCED BY FREEMAN, GEORGE, MANDERINO, LEVDANSKY, MICHLOVIC,  
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J. TAYLOR AND ITKIN, FEBRUARY 19, 1986

AS REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF  
REPRESENTATIVES, AS AMENDED, SEPTEMBER 22, 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

1 article to read:

2 ARTICLE VII-A

3 HAZARDOUS WASTE CLEANUP AND

4 COMPENSATION

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

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

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

23 Section 702-A. Hazardous waste surcharge.

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

1 month following the close of each tax period, render an  
2 accounting and record of the total waste generated in that  
3 period on such forms as the department may require and make full  
4 payment of the surcharge in a manner to be prescribed by the  
5 department.

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

19 (C) TO CARRY OUT THE PURPOSES OF THIS ACT AND IN ORDER TO ←  
20 CARRY OUT THE NATIONAL AND STATE POLICIES TO MINIMIZE LAND  
21 DISPOSAL OF HAZARDOUS WASTE BY ENCOURAGING PROPERLY CONDUCTED  
22 RECYCLING AND REUSE, THE SURCHARGE FEE LEVIED UNDER SUBSECTION  
23 (A) OF THIS SECTION SHALL BE \$5 PER TON FOR HAZARDOUS WASTE  
24 WHICH IS RECYCLABLE MATERIAL UNDER 40 CFR § 261.6 AND SUCCESSOR  
25 FEDERAL AND STATE REGULATIONS AND WHICH IS SENT BY THE GENERATOR  
26 TO A VERIFIED RECYCLING FACILITY FOR RECYCLING OR REUSE; AND THE  
27 SURCHARGE LEVIED UNDER SUBSECTION (A) SHALL NOT APPLY TO WASTE  
28 GENERATED IN THE PROCESS OF RECYCLING RECYCLABLE MATERIALS  
29 LISTED IN 40 CFR § 261.6(A)(2) AND (3) AND ITS SUCCESSOR FEDERAL  
30 AND STATE REGULATIONS, AND SO VERIFIED BY THE DEPARTMENT:

1 PROVIDED, THAT ANY HAZARDOUS WASTE GENERATED IN THE RECYCLING  
2 PROCESS IS DISPOSED OF AT A PERMITTED DISPOSAL FACILITY. ALL  
3 VERIFICATIONS REFERRED TO IN THIS SUBSECTION SHALL BE IN WRITING  
4 AND APPROVED BY THE DEPARTMENT.

5 Section 703-A. Escrow accounts.

6 (a) All surcharge fees collected and deposited in the fund  
7 shall be placed in two escrow accounts for the following  
8 purposes:

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

12 (i) To identify, assess and inspect all abandoned  
13 sites in this Commonwealth where it is suspected  
14 hazardous waste exists which may pose a potential threat  
15 to human health or the environment. This shall be  
16 performed by the department and be completed within two  
17 years of the effective date of this article. To perform  
18 this duty, the department shall establish an abandoned  
19 site investigative unit within the department, and the  
20 required inspection shall be conducted by this unit  
21 within two years of the effective date of this article.

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

26 (iii) To cover the cost to the Commonwealth for  
27 operation and maintenance and post-closure care of sites  
28 where remedial action has been completed under the  
29 Comprehensive Environmental Response Compensation and  
30 Liability Act of 1980.

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

4           (v) For administrative costs incurred by the  
5           department directly related to the administration of the  
6           fund. NO MORE THAN 2% MAY BE EXPENDED FOR THE COLLECTION ←  
7           AND ADMINISTRATION OF THE FUND.

8           (2) Twenty-five percent of the moneys collected from the  
9           surcharge fees and deposited in the fund shall be placed in a  
10          Compensation Escrow Account within the fund to be used solely  
11          for:

12           (i) Compensation to parties for certain damages, no  
13           matter by whom sustained, proximately resulting from the  
14           handling, transportation, treatment, storage and disposal  
15           of hazardous waste and the improper operation or closure  
16           of hazardous waste disposal facilities.

17           (ii) Administrative costs incurred by the department  
18           directly related to the administration of the fund,  
19           including legal costs associated with the Office of  
20           Protector General in exercising any subrogation rights  
21           under section 709-A.

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

27           (1) Possible risk to the population.

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

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

1           (4) Potential for destruction of sensitive or important  
2           ecosystems.

3   Section 704-A. Payments from the fund.

4           (a) Upon submittal of claims as provided for in section 705-  
5   A, the fund shall make payments for certain costs and expenses,  
6   no matter by whom sustained, proximately resulting from the  
7   handling, treatment, transportation, storage and disposal of  
8   hazardous waste and the improper operation and closure of  
9   hazardous waste disposal facilities. These costs and expenses  
10 shall be limited to the following:

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

16           (2) The actual total cost of restoration and  
17 replacement, where possible, of any natural resources damaged  
18 or destroyed, including any public or private potable water  
19 supply, but only to its predamaged state, provided that  
20 payment for any single claim shall not exceed \$30,000.

21           (3) The actual total cost of immediate medical expenses  
22 reasonably necessary for treatment of personal injuries  
23 proximately related to hazardous waste handling, treatment,  
24 transportation, storage and disposal, provided that payment  
25 for any single claim shall not exceed \$15,000. The fund shall  
26 be considered as secondary coverage to any other medical or  
27 health insurance which covers the claimant, and the fund  
28 shall not pay for immediate medical expenses paid by any  
29 other form of insurance. The fund shall not cover, for the  
30 purposes of this section, any person whose exposure is

1 related to his employment and who is eligible for  
2 compensation under the act of June 2, 1915 (P.L.736, No.338),  
3 known as "The Pennsylvania Workmen's Compensation Act." For  
4 the purposes of this paragraph, "immediate medical expenses"  
5 shall mean medical, dental or other health care expenses  
6 directly related to an acute episode of illness.

7 (4) An allowance for wages and salary lost as a result  
8 of personal injuries proximately related to hazardous waste  
9 handling, treatment, transportation, storage and disposal.  
10 The fund shall not cover, for the purposes of this section,  
11 any person whose exposure is related to his employment and  
12 who is eligible for compensation under "The Pennsylvania  
13 Workmen's Compensation Act." The amount of said allowance  
14 shall be calculated in the same way and to provide the same  
15 amount per week as compensation for lost wages under "The  
16 Pennsylvania Workmen's Compensation Act," except that said  
17 allowance under this section shall not be paid for a period  
18 of time in excess of 26 weeks for any single claim.

19 (5) The actual total costs of the design, construction,  
20 installation, operation and maintenance of any device or  
21 action deemed necessary by the department to clean up,  
22 remedy, mitigate, monitor or analyze any threat to the public  
23 health, safety or welfare of the citizens of this State,  
24 including the installation and maintenance of monitoring  
25 wells and the sampling and analysis of any public or private  
26 potable water supply.

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

1 Section 705-A. Claims.

2 (a) Claims for damages made under section 704-A(1), (2) or  
3 (5) shall be filed with the department not later than one year  
4 after the date of discovery of damage, or not later than six  
5 years after the date of the incident which caused the damage.  
6 Claims for damages made under section 704-A(3) or (4) shall be  
7 filed with the department within one year of the date that  
8 claimant possessed, or reasonably should have possessed:  
9 knowledge of the injury, knowledge of the operative cause of the  
10 injury, and knowledge of the causative relationship between the  
11 injury and the operative conduct. All claims for damages shall  
12 be filed in a manner to be prescribed by regulation. The  
13 department shall prescribe appropriate forms and procedures for  
14 such claims, which shall include a provision requiring the  
15 claimant to make a sworn verification of the claim to the best  
16 of his knowledge. The department shall not fail to process a  
17 claim because the claimant is unable, to the best of his  
18 knowledge, to demonstrate fault or identify a responsible party.  
19 For the purposes of this section, the date of the incident shall  
20 be deemed to be the date of the first official notice given by  
21 the department to the operator of the waste site.

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

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

28 (d) (1) The department shall attempt to promote and arrange  
29 a settlement between the claimant and the person responsible  
30 for the damage. If the source of the damage can be determined



1 and liability is conceded, the claimant and the alleged  
2 responsible party may agree to a settlement, which shall be  
3 final and binding upon the parties and which will waive all  
4 recourse against the fund.

5 (2) If the responsible party is unknown or cannot be  
6 determined, the claimant and the department shall attempt to  
7 arrange a settlement of any claim against the fund, following  
8 procedures to be prescribed by regulation. The department is  
9 authorized to enter and certify payment of such settlement,  
10 subject to such proof and procedures contained in regulations  
11 to be promulgated by the Environmental Quality Board.

12 Section 706-A. Fund balance and awards.

13 (a) In the event that the total of claims awarded exceeds  
14 the current balance of the fund, the immediate award shall be  
15 paid on a prorated basis, and all claimants paid on a prorated  
16 basis shall be paid, as determined by the department, on a pro  
17 rata share of all moneys received by the fund until the total  
18 amount of the proven damages is paid to the claimants. The  
19 Environmental Quality Board shall also establish, by regulation,  
20 priorities for the payment of claims based on extreme hardship  
21 or extreme existing or imminent hazard.

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

25 (1) The current balance in the fund is less than  
26 \$25,000,000.

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

29 Section 707-A. Limit on awards.

30 The damages which may be recovered by the fund without regard

1 to fault, subject to the defenses enumerated in section 708-A  
2 against a generator or owner or operator of a facility, shall  
3 not exceed \$10,000,000 for each facility, except that such  
4 maximum limitation shall not apply, and the generator or owner  
5 or operator shall be liable, jointly and severally, for the full  
6 amount of such damages, if it can be shown that such discharge  
7 was the result of either of the following:

8 (1) Gross negligence or willful misconduct within the  
9 knowledge and privity of the owner, operator or person in  
10 charge.

11 (2) A grossly negligent or willful violation of  
12 applicable safety, construction or operating standards or  
13 regulations.

14 Damages which may be recovered from, or by, any other person  
15 shall be limited to those authorized by common or statutory law.  
16 Section 708-A. Defenses.

17 An act of God or occurrence caused solely by war or sabotage,  
18 or a combination thereof, shall be the only defenses which may  
19 be raised by any owner or operator of a facility or generator  
20 responsible for any damage arising under the provisions of this  
21 article, but said defense shall not be available if it can be  
22 shown that the damage would not have occurred but for the  
23 negligence of the owner or operator.

24 Section 709-A. Subrogation.

25 Payment of any damages by the fund shall give the department  
26 all rights of the claimant to recovery against the responsible  
27 party of those particular costs or damages actually paid by the  
28 fund. The department, through the Office of the Protector  
29 General, shall then seek satisfaction from the responsible party  
30 in a court of law if the responsible party does not voluntarily

1 reimburse the fund, provided that the department shall first  
2 give reasonable written advance notice to the claimant of its  
3 intention to file suit against the responsible party and provide  
4 the claimant a reasonable period of time to join in the  
5 commencement of said suit or to institute a separate suit  
6 against the responsible party. In any such suit, the department  
7 need prove only that an unlawful act occurred which was the  
8 responsibility of the generator, owner, operator or responsible  
9 party. The department may compromise and settle the amount  
10 sought for cost and damages from the responsible party and any  
11 person accused under this article, but only to the extent of its  
12 actual subrogation interest. Nothing in this section shall limit  
13 or preclude a claimant, after receipt of payment of costs or  
14 damages from the fund, from seeking any other civil or  
15 injunctive remedies provided by existing law against the  
16 responsible party, except that the subrogation rights of the  
17 fund shall be protected by the claimant from any money damages  
18 received.

19 Section 710-A. Penalty.

20 Any owner or operator of a hazardous waste disposal facility  
21 or generator who fails to file required forms or fails to pay  
22 the surcharge, as required by this article, or who makes or  
23 causes to be made, or who gives or causes to be given, any  
24 return, certificate, affidavit, representation, information,  
25 testimony or statement required or authorized by this act, or  
26 rules or regulations adopted hereunder, which is willfully  
27 false, or who fails to keep any records required by this  
28 article, or rules and regulations adopted hereunder, in addition  
29 to any other penalties herein or elsewhere prescribed, commits a  
30 misdemeanor of the second degree.

1 Section 711-A. Remedies cumulative.

2 (a) Nothing in this article shall in any way relieve any  
3 person, corporation, partnership, business or other entity from  
4 liability with regard to the health and safety of any other  
5 person exposed to or affected by hazardous waste, nor shall it  
6 relieve any person, corporation, partnership, business or other  
7 entity from any other duty or responsibility under any other  
8 provision of law.

9 (b) Nothing in this article shall be deemed to preclude the  
10 pursuit of any other civil or injunctive remedy by any person,  
11 including, but not limited to, civil claims and suits for money  
12 damages. The remedies provided and damages recoverable in this  
13 article are in addition to those provided by existing law, but  
14 no person who receives compensation for damages or cleanup costs  
15 pursuant to any other Commonwealth or Federal law shall be  
16 permitted to receive compensation for the same damages or  
17 cleanup costs under this article.

18 Section 712-A. Annual report.

19 The secretary shall make an annual report to the Governor and  
20 the General Assembly which shall describe the costs and damages  
21 paid by and recovered for the fund, and the economic and  
22 environmental impact on this Commonwealth as a result of the  
23 administration of this article.

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