

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 572 Session of
1989

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COLAIZZO, LAUGHLIN, BILLOW, BISHOP, TRELLO, GIGLIOTTI AND
RICHARDSON, FEBRUARY 15, 1989

REFERRED TO COMMITTEE ON CONSERVATION, FEBRUARY 15, 1989

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; establishing the Host
22 Municipalities Fund and providing for its administration; and
23 making an appropriation.

24 The General Assembly of the Commonwealth of Pennsylvania

25 hereby enacts as follows:

26 Section 1. Section 102(4), (10) and (11) of the act of July
27 7, 1980 (P.L.380, No.97), known as the Solid Waste Management

1 Act, are amended and the section is amended by adding paragraphs
2 to read:

3 Section 102. Legislative finding; declaration of policy.

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

9 * * *

10 (4) protect the public health, safety and welfare from
11 the short and long term dangers of transportation,
12 processing, treatment, storage, [and] disposal, recycling and
13 improper uses of all wastes;

14 * * *

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

17 (11) utilize, wherever feasible, the capabilities of
18 private enterprise in accomplishing the desired objectives of
19 an effective, comprehensive solid waste management program,
20 including source reduction, waste minimization, beneficial
21 reuse, materials recovery and recycling of solid wastes;

22 (12) provide prompt and effective enforcement of this
23 act and the other police power statutes of this Commonwealth
24 against those persons who engage in the illegal and improper
25 disposal or handling of hazardous, residual, municipal and
26 industrial waste;

27 (13) discourage the use of land disposal of hazardous
28 waste and provide incentives to encourage the use of
29 innovative treatment technologies, source reduction,
30 materials recovery and recycling of hazardous waste and to

encourage recycling and beneficial uses of solid wastes in a manner protective of human health and the environment; and

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

Section 2. The definitions of "hazardous waste,"

"processing" and "treatment" in section 103 of the act are amended and the section is amended by adding definitions to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Beneficial use." The use of any waste for other than its original purpose or the process that generated it, and where such use does not harm or present a threat of harm to the health and welfare to the people and environment of this Commonwealth.

* * *

"Discard." To relinquish possession, whether by abandonment, disposal or transfer to another.

* * *

"Hazardous waste." Any garbage, refuse, sludge from an industrial or other waste water treatment plant, sludge from a water supply treatment plant, or air pollution control facility and other discarded material or other waste including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities, or any combination of the above, (but does not include solid or

1 dissolved material in domestic sewage, or solid or dissolved
2 materials in irrigation return flows or industrial discharges
3 which are point sources subject to permits under § 402 of the
4 Federal Water Pollution Control Act, as amended (86 Stat. 880)
5 or source, special nuclear, or by-product material as defined by
6 the U.S. Atomic Energy Act of 1954, as amended (68 Stat. 923)),
7 which because of its quantity, concentration, or physical,
8 chemical, or infectious characteristics may:

9 (1) cause or significantly contribute to an increase in
10 mortality or an increase in morbidity in either an individual
11 or the total population; or

12 (2) pose a substantial present or potential hazard to
13 human health or the environment when improperly treated,
14 stored, transported, disposed of or otherwise managed.

15 The term "hazardous waste" shall not include coal refuse as
16 defined in the act of September 24, 1968 (P.L.1040, No.318),
17 known as the "Coal Refuse Disposal Control Act." "Hazardous
18 waste" shall not include treatment sludges from coal mine
19 drainage treatment plants, disposal of which is being carried on
20 pursuant to and in compliance with a valid permit issued
21 pursuant to the act of June 22, 1937 (P.L.1987, No.394), known
22 as "The Clean Streams Law."

23 * * *

24 "Processing." Any technology used for the purpose of
25 reducing the volume or bulk of municipal or residual waste or
26 any technology used to convert part or all of such waste
27 materials for [off-site reuse] beneficial use or recycling.

28 Processing facilities include but are not limited to transfer
29 facilities, composting facilities, and resource recovery
30 facilities.

1 "Recycling." The reclamation or processing of a waste to
2 return it to a form suitable for use in its original purpose,
3 reuse in the process that generated it or other beneficial use.

4 * * *

5 "Treatment." Any method, technique, or process, including
6 neutralization, designed to change the physical, chemical, or
7 biological character or composition of any waste so as to
8 neutralize such waste or so as to render such waste
9 nonhazardous, safer for transport, suitable for recovery,
10 [suitable for] beneficial use, or storage, or reduced in volume.
11 Such term includes any activity or processing designed to change
12 the physical form or chemical composition of waste so as to
13 render it neutral or nonhazardous.

14 "Waste." Any garbage, refuse, spent material, by-product or
15 other material that is no longer of use to its owner; whether
16 discarded, transferred to another or collected or stored in
17 anticipation of disposal or transfer. A material is a waste
18 whether or not it has some value to the person or municipality
19 receiving it or whether or not the generator receives
20 consideration for its transfer.

21 Section 3. Section 104(6), (16) and (17) of the act are
22 amended and the section is amended by adding paragraphs to read:
23 Section 104. Powers and duties of the department.

24 The department in consultation with the Department of Health
25 regarding matters of public health significance shall have the
26 power and its duty shall be to:

27 * * *

28 (6) regulate the storage, collection, transportation,
29 processing, treatment, beneficial use, recycling, source
30 reduction, minimization and disposal of solid waste;

1 * * *

2 (8.1) develop a system of accounting for the costs
3 associated with the permitting and licensing process;

4 * * *

5 (14.1) review and submit to the Environmental Quality
6 Board its amendments to the Pennsylvania Hazardous Waste
7 Facilities Plan as necessary but at least once every five
8 years;

9 * * *

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

17 (16.1) conduct inspections of all hazardous waste
18 facilities at the minimum frequency provided for in section
19 601.1 in the manner prescribed by regulation. This provision
20 shall not be construed to limit or restrict the department's
21 inspection powers as elsewhere set forth in this act;

22 (16.2) require the payment of such annual inspection
23 fees as provided for in regulations to be adopted by the
24 Environmental Quality Board;

25 (17) administer funds collected by the United States
26 Government and granted to Pennsylvania for the purpose of
27 closing, maintaining or monitoring abandoned or closed
28 hazardous waste storage, treatment or disposal sites and for
29 the purpose of action to abate or prevent pollution at such
30 sites[. If Congress has not authorized the collection of such

1 funds within one year after the effective date of this act,
2 or if the department finds that the funding program
3 authorized is inadequate, the department shall transmit to
4 the General Assembly within 15 months after the effective
5 date of this act a proposal for the establishment of a fund
6 in Pennsylvania comprised of surcharges collected from users
7 of hazardous waste storage, treatment and disposal facilities
8 excluding captive facilities in the Commonwealth. Such fund
9 shall be proposed for the purpose of closing, maintaining or
10 monitoring hazardous waste storage, treatment or disposal
11 sites excluding captive facilities which have been abandoned
12 or which have been closed for at least 20 years, and for the
13 purpose of taking action to abate or prevent pollution at
14 such closed or abandoned sites.];

15 (18) develop, prepare and submit to the Environmental
16 Quality Board, within nine months of the effective date of
17 this paragraph, its proposed residual waste regulations; and

18 (19) issue general permits for any category of recycling
19 or beneficial uses of solid waste, on a regional or Statewide
20 basis, in accordance with rules adopted by the Environmental
21 Quality Board, if the department determines that the
22 operations in the category are similar in nature and can be
23 adequately regulated utilizing standardized specifications
24 and conditions. General permits shall specify the design,
25 operating and monitoring conditions as are necessary to
26 adequately protect life, health, property and the
27 environment, under which the operations may be conducted
28 without applying for and obtaining individual permits. The
29 department may require the registration of any activity
30 carried out or planned pursuant to a general permit. All

general permits shall be published in the Pennsylvania
Bulletin 30 days prior to the effective date of the permit.

Section 4. Section 105(e) of the act is amended and the
section is amended by adding subsections to read:

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 after the
effective date of those regulations.

(2) Establish an inspection fee based on the frequency
of inspection provided for in [paragraph (1)] section 601.1
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 have the power and
its duty shall be to adopt guidelines which shall establish
minimum standards for technologically and economically feasible
alternatives to land disposal for the purposes of this act. Such
alternatives shall include, but not be limited to, source waste

1 reduction, minimization, resource recovery, recycling and
2 treatment.

3 (1) The Environmental Quality Board shall have the power and
4 its duty shall be to promulgate regulations to control and
5 encourage the beneficial use, source reduction, minimization and
6 recycling of solid wastes. These regulations may, where
7 necessary, include standards for the storage and transportation
8 of wastes prior to use or recycling, prior restrictions on the
9 use of materials before they become wastes and restrictions on
10 the methods for use and recycling to assure that these
11 activities are conducted in a manner that protects the health
12 and welfare of the people and the environment and resources of
13 the Commonwealth. To assure that these conditions are met, the
14 board may require permits or licenses for these activities.

15 Section 5. Sections 108 and 405 of the act are amended to
16 read:

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

19 (a) In addition to exercising its powers and duties to hold
20 hearings and issue adjudications or any order, permit, license
21 or decision of the department according to the provisions of
22 "The Administrative Code of 1929" and the Administrative Agency
23 Law, the Environmental Hearing Board shall have the power and
24 its duty shall be to hold, if requested to do so by any party to
25 a duly perfected appeal of an oral order under section 602(d),
26 to hold a hearing on any duly filed petition for supersedeas of
27 such order within six business days of the receipt of such
28 request by the board.

29 (b) Any person having an interest which is or may be
30 adversely affected by any action of the department may appeal

1 such action to the Environmental Hearing Board in the manner
2 prescribed by law or alternatively may elect to intervene in the
3 appeal of such action by another person. Such right of
4 intervention shall be absolute, unconditional and
5 nondiscretionary with the Environmental Hearing Board, and such
6 right may be exercised at any point in proceedings before the
7 Environmental Hearing Board.

8 Section 405. Conveyance of disposal site property.

9 After the effective date of this act, the grantor in every
10 deed for the conveyance of property on which municipal,
11 residual, or hazardous waste or any combination thereof is
12 presently being disposed, or has ever been disposed by the
13 grantor or to the grantor's actual knowledge shall include in
14 the property description section of such deed an acknowledgement
15 of such municipal, residual or hazardous waste disposal; such
16 acknowledgement to include to the extent such information is
17 available, but not be limited to, the surface area size and
18 exact location of the disposed waste [and], a description of the
19 types of municipal, residual or hazardous wastes and the amount
20 of municipal, residual or hazardous waste contained therein.

21 Such amended property description shall be made a part of the
22 deed for all future conveyances or transfers of the subject
23 property: Provided, however, That the warranty in such deed
24 shall not be applicable to the surface area size and exact
25 location of the disposed waste [and], a description of the types
26 of municipal, residual or hazardous wastes and the amount of
27 municipal, residual or hazardous waste contained therein.

28 Section 6. Section 502 of the act is amended by adding a
29 subsection to read:

30 Section 502. Permit and license application requirements.

1 * * *

2 (d.1) Land disposal of hazardous waste in this Commonwealth
3 shall be prohibited after the effective date of this subsection
4 unless the generator of the hazardous waste can demonstrate to
5 the department's satisfaction all of the following:

6 (1) That all demonstrated technological and economically
7 feasible alternatives for source reduction, recovery,
8 recycling and treatment for each type of waste to be disposed
9 of has been adequately considered by the applicant.

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

13 (3) That the hazardous waste to be disposed of cannot be
14 reasonably treated further to reduce volume or the toxicity
15 of the waste.

16 * * *

17 Section 7. Section 505(a) of the act is amended to read:

18 Section 505. Bonds.

19 (a) With the exception of municipalities operating landfills
20 solely for municipal waste not classified hazardous, prior to
21 the commencement of operations, the operator of a municipal or
22 residual waste processing or disposal facility or of a hazardous
23 waste storage, treatment or disposal facility for which a permit
24 is required by this section shall file with the department a
25 bond for the land affected by such facility on a form prescribed
26 and furnished by the department. Such bond shall be payable to
27 the Commonwealth and conditioned so that the operator shall
28 comply with the requirements of this act, the act of June 22,
29 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the
30 act of May 31, 1945 (P.L.1198, No.418), known as the "Surface

1 Mining Conservation and Reclamation Act," the act of January 8,
2 1960 (1959 P.L.2119, No.787), known as the "Air Pollution
3 Control Act," and the act of November 26, 1978 (P.L.1375,
4 No.325), known as the "Dam Safety and Encroachments Act." The
5 department may require additional bond amounts for the permitted
6 areas should such an increase be determined by the department to
7 be necessary to meet the requirements of this act. The amount of
8 the bond required shall be in an amount determined by the
9 secretary based upon the total estimated cost to the
10 Commonwealth of completing final closure according to the permit
11 granted to such facility and such measures as are necessary to
12 prevent adverse effects upon the environment; such measures
13 include but are not limited to satisfactory monitoring, post-
14 closure care, and remedial measures. The bond amount shall
15 reflect the additional cost to the Commonwealth which may be
16 entailed by being required to bring personnel and equipment to
17 the site. All permits shall be bonded for at least \$10,000.
18 Liability under such bond shall be for the duration of the
19 operation, and for a period of [up to ten full years after final
20 closure of the permit site] time as long as the waste may pose a
21 significant threat to public health and the environment, as
22 determined by the department, but no less than 30 years after
23 final closure for commercial disposal facilities. Such bond
24 shall be executed by the operator and a corporate surety
25 licensed to do business in the Commonwealth and approved by the
26 secretary: Provided, however, That the operator may elect to
27 deposit cash, certificates of deposit, automatically renewable
28 irrevocable letters of credit which are terminable only upon 90
29 days written notice to the operator and the department, or
30 negotiable bonds of the United States Government or the

1 Commonwealth of Pennsylvania, the Pennsylvania Turnpike
2 Commission, the General State Authority, the State Public School
3 Building Authority, or any municipality within the Commonwealth,
4 with the department in lieu of a corporate surety. The cash
5 amount of such deposit, irrevocable letters of credit or market
6 value of such securities shall be equal at least to the sum of
7 the bond. The secretary shall, upon receipt of any such deposit
8 of cash or negotiable bonds, immediately place the same with the
9 State Treasurer, whose duty it shall be to receive and hold the
10 same in the name of the Commonwealth, in trust, for the purposes
11 for which such deposit is made. The State Treasurer shall at all
12 times be responsible for the custody and safekeeping of such
13 deposits. The operator making the deposit shall be entitled from
14 time to time to demand and receive from the State Treasurer, on
15 the written order of the secretary, the whole or any portion of
16 any collateral so deposited, upon depositing with him, in lieu
17 thereof, other collateral of the classes herein specified having
18 a market value at least equal to the sum of the bond, also to
19 demand, receive and recover the interest and income from said
20 negotiable bonds as the same becomes due and payable: Provided,
21 however, That where negotiable bonds, deposited as aforesaid,
22 mature or are called, the State Treasurer, at the request of the
23 permittee, shall convert such negotiable bonds into such other
24 negotiable bonds of the classes herein specified as may be
25 designated by the permittee: And provided further, That where
26 notice of intent to terminate a letter of credit is given, the
27 department shall, after 30 days written notice to the operator
28 and in the absence of a replacement of such letter of credit
29 within such 30-day period by the operator with other acceptable
30 bond guarantees provided herein, draw upon and convert such

1 letter of credit into cash and hold it as a collateral bond
2 guarantee.

3 * * *

4 Section 8. The act is amended by adding sections to read:

5 Section 601.1. Inspections and enforcement.

6 (a) The department, in order to determine compliance with
7 this act and rules and regulations promulgated hereunder, shall
8 at a minimum perform inspections of all hazardous waste
9 treatment or disposal facilities on a regular basis, averaging
10 not less than one complete and thorough inspection per month of
11 each active hazardous waste treatment or disposal facility and
12 not less than one complete and thorough inspection per year of
13 each inactive hazardous waste treatment or disposal facility.

14 (b) Nothing in this act or regulations adopted hereunder
15 regarding inspections shall create a defense to any action
16 brought under this act, nor shall failure to comply with the
17 inspection requirements provide a basis to prevent the admission
18 of any evidence that is otherwise relevant to any administrative
19 or judicial proceeding where compliance with this act or
20 regulations may be an issue, nor shall failure to comply with
21 the inspection requirements be admissible for any purpose in any
22 proceeding for the enforcement of this act.

23 (c) The department's inspector or agent shall forthwith
24 record any violation identified during the inspection on the
25 inspection report and inform the permittee or operator, in
26 writing, of the violation. Copies of inspection reports shall be
27 transmitted within 48 hours to the host municipality and shall
28 be made available within 48 hours to the public.

29 (d) All violations of this act which are identified shall be
30 cited, and the department shall immediately take appropriate

enforcement action as herein defined to cause said violations to be corrected. All violations must be corrected within a reasonable time, not to exceed 90 calendar days, except upon a showing of good cause by the permittee that it is not feasible to abate the violation within 90 days and that the violation or condition will not pose an imminent danger to the health or safety of the public or significant imminent environmental harm to land, air or water resources during the extended abatement period.

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

(f) Circumstances which may qualify a hazardous waste facility operator for an abatement period of more than 90 days shall include, but not be limited to:

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

(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.

(3) Where physical conditions prevent the owner or

operator from abating the condition within 90 days.

(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) When any of the conditions in subsection (f) 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.

Section 602.1. Enforcement orders.

(a) The department shall issue cessation orders when 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 601.1 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 shall remain in effect until the condition, practice or violation has been satisfactorily abated or until modified, vacated or terminated by the secretary or his authorized representative. Where the department finds that the ordered cessation of operations, or any portion thereof, will not completely abate the imminent danger to the health or safety of

1 the public or significant imminent environmental harm to land,
2 air or water resources, the department shall, in addition to the
3 cessation order, impose affirmative obligations on the owner or
4 operator requiring him to take whatever steps the department
5 deems necessary to abate the imminent danger or the significant
6 environmental harm.

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

19 (d) The department shall issue an order suspending the
20 permit of any permittee when it determines that the permittee
21 has committed violations of this act or the rules and
22 regulations of the department or the conditions of any permit or
23 license or order of the department or other applicable
24 environmental statutes; and that such violations were caused by
25 the unwarranted failure of the permittee to comply with any
26 requirement of this act or any permit condition or that such
27 violations were willfully caused by the permittee, and when such
28 violation or practice results in one or more of the following:

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

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

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

6 (4) The permittee, licensee or corporate principal has
7 failed to pay any fines imposed pursuant to this act or has
8 failed to make disposition of any moneys pursuant to any
9 civil penalties under the environmental statutes of this
10 Commonwealth.

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

15 (e) In issuing such suspension order, the department shall
16 also order the permittee to show cause as to why the permit
17 should not be revoked and shall provide opportunity for public
18 hearing. When a hearing is requested, the secretary shall inform
19 all interested parties of the time and place of the hearing.
20 Upon the permittee's failure to provide clear and convincing
21 evidence as to why the permit should not be revoked, the
22 department shall forthwith revoke the permit. It shall be cause
23 not to revoke the permit when the permittee shows by clear and
24 convincing evidence, that:

25 (1) the violation has been completely abated or removed;

26 (2) the applicant has fully complied or is fully
27 complying with all department orders or consent decrees as to
28 cleanup and payment for such cleanup and related costs; or

29 (3) the conditions which gave rise to the violation are
30 no longer present and the applicant will post a sufficient

1 bond to meet the costs of a subsequent violation.

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

14 (g) The department may enter into consent orders pursuant to
15 its authority to administer and enforce the act and regulations
16 hereunder. The department shall publish notice of consent orders
17 requiring compliance under this act. Where a consent order
18 authorizes an act which would otherwise be a violation of the
19 act or regulations hereunder, the consent order must set forth,
20 with reasonable particularity, a timetable for satisfaction of
21 its terms. Any person who successfully appeals the issuance of a
22 consent order may recover reasonable attorney fees from the
23 party entering into the consent order with the department.

24 Section 9. Section 604 of the act is amended by adding
25 subsections to read:

26 Section 604. Restraining violations.

27 * * *

28 (d.1) Except as provided in subsection (f), any person
29 having an interest which is or may be adversely affected may
30 commence an action on his own behalf to compel compliance with

this act or any rule, regulation, order or permit issued pursuant to this act against any person alleged to be in violation of any provision of this act. Any other provision of law to the contrary notwithstanding, the Environmental Hearing Board shall have jurisdiction of such actions against the department and the courts of common pleas shall have jurisdiction of such actions against other persons.

(e) Whenever a person presents information to the department which gives the department reason to believe that any person is in violation of any requirement of this act or any condition of any permit issued hereunder the department shall immediately order inspection of the operation at which the alleged violation is occurring, and the department shall notify the person presenting such information and such person shall be allowed to accompany the inspector during the inspection.

(f) No action pursuant to this section may be commenced prior to 60 days after the plaintiff has given notice, in writing, of the violation to the department and to any alleged violator, nor may such action be commenced when the department has commenced and is diligently prosecuting a criminal, civil or administrative action in a court of the United States or of a state or the Environmental Hearing Board to require compliance with this act or any rule, regulation, order or permit issued pursuant to this act, but in any such action, any person may intervene as a plaintiff as a matter of right.

(g) The provisions of subsections (a) and (b) to the contrary notwithstanding, any action pursuant to this section may be initiated immediately upon written notification to the department in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the

1 plaintiff or would immediately affect a legal interest of the
2 plaintiff.

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

11 Section 10. Sections 605, 606(f), 609, 617 and 701(a) of the
12 act are amended to read:

13 Section 605. Civil penalties.

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

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

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

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

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

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

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

5 Section 606. Criminal penalties.

6 * * *

7 (f) Any person who stores, transports, treats, or disposes
8 of hazardous waste within the Commonwealth in violation of
9 section 401, section 610(1) through (6) or section 610(8) and
10 (9), or in violation of any order of the department shall be
11 guilty of a felony of the second degree and, upon conviction,
12 shall be sentenced to pay a fine of not less than \$2,500 but not
13 more than \$100,000 per day for each violation or to imprisonment
14 for not less than two years but not more than ten years, or
15 both.

16 * * *

17 Section 609. Search warrants.

18 An agent or employee of the department may apply for a search
19 warrant to any Commonwealth official authorized to issue a
20 search warrant for the purposes of [inspecting or examining]
21 searching any property, building, premise[,] or place, of
22 seizing any book, record or other physical evidence, of
23 conducting tests, or of taking samples of any solid waste. Such
24 warrant shall be issued upon probable cause. It shall be
25 sufficient probable cause to show any of the following:

26 (1) that the [inspection, examination] search, seizure,
27 test, or sampling is pursuant to a general administrative
28 plan to determine compliance with this act;

29 (2) that the agent or employee has reason to believe
30 that a violation of this act has occurred or may occur; or

(3) that the agent or employee has been refused access to the property, building, premise[,] or place, has been refused possession of any book, record or physical evidence, or has been prevented from conducting tests or taking samples.

Section 617. Limitation on action.

The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties, and civil actions for activities governed under this act may be commenced at any time within a period of 20 years from the date the offense is discovered.

Section 701. Solid Waste Abatement Fund.

(a) All fines, fees, penalties and bond forfeitures collected under the provisions of this act shall be paid into the Treasury of the Commonwealth into a special fund to be known as the "Solid Waste Abatement Fund" hereby established. The Solid Waste Abatement Fund shall be administered by the department for abatement or elimination of present or potential hazards to human health or to the environment from the improper treatment, transportation, storage, processing, or disposal of solid wastes, and for the enforcement of this act. It is the intent of the General Assembly that this fund shall not be used for recurring costs of the department.

* * *

Section 11. (a) The fees required by section 104(8) of the act shall be proposed within six months of the effective date of this amendatory act.

(b) The system of accounting for costs, as required by section 104(8.1) of the act, shall be established within six months of the effective date of this amendatory act.

1 (c) The rules and regulations effectuating section 502(e) of
2 the act shall be proposed within six months of the effective
3 date of this amendatory act.

4 (d) The department shall develop and submit guidelines to
5 the Environmental Quality Board concerning land disposal of
6 hazardous waste, as required by section 502(d.1) within 12
7 months of the effective date of this amendatory act.

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